

MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL, 2023

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THE GAMBIA

NO. 04 OF 2023

Assented to by The President,
this 23rd day of April, 2023.



Hammar
President



**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT,
2023**

A BILL ENTITLED

AN ACT to provide for mutual legal assistance in criminal matters between the Republic of The Gambia and foreign countries and for connected matters.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Mutual Legal Assistance in Criminal Matters Act, 2023.

2. Interpretation

(1) In this Act unless the context otherwise requires -

"appropriate authority" means the authority of a foreign country which is authorized to make a request;

"dealing with property" includes removing the property from The Gambia;

"financial institution" has the same meaning as in the Banking Act;

"foreign forfeiture order" means an order registered in The Gambia for the forfeiture of property located in The Gambia in respect of a foreign specified offence;

"foreign interdict" means an order registered in The Gambia in respect of a foreign specified offence restraining any person from dealing with any property referred to in the order;

"foreign pecuniary penalty order" means an order imposing a pecuniary penalty in respect of a foreign specified offence and registered in The Gambia but does not include an order for the payment of money by way of compensation, restitution or damages;

"foreign specified offence" means a specified offence against a law of a foreign country;

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

"Minister" means the Attorney General and Minister of Justice;

"money-laundering offence" means-

- (a) the conversion or transfer of property knowing that such property is the proceeds of crimes, for the purpose of concealing or disguising the illicit origin of the proceeds or helping any person who is involved in the commission of the predicate offences to evade the legal consequences of his or her action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of rights in respect of property knowing that such property is the proceeds of crime;
- (c) the acquisition, possession or use of property knowing at the time of receipt that such property is the proceeds of crime; or
- (d) participation in, association with or conspiracy to commit, aiding and abetting, facilitating or counselling the commission of any of the above offences;

"serious offence" means an offence punishable with a minimum of five years imprisonment;

(2) For the purposes of this Act-

- (a) a colony, territory or protectorate of a foreign country; or
- (b) a territory for the international relations of which a foreign country is responsible; or
- (c) a ship or aircraft of, or registered in, a foreign country,

shall, unless a contrary intention appears, be deemed to be part of that country.

"tainted property" means-

- (a) property used, or intended to be used, by a person in or in connection with, the commission of the offence;

(b) property or another benefit derived by a person from property mentioned in paragraph (a);

(c) property to another benefit derived by a person from the commission of the offence; or

(d) if the offence is money laundering, property.

3. Application of this Act

(1) Subject to sub-section (2), whenever the Minister is satisfied that reciprocal provisions have been made by any foreign country to facilitate the provision to The Gambia of assistance in criminal matters, he or she may by order published in the Gazette, declare that the provisions of this Act shall apply in relation to any such foreign country.

(2) The Minister may by order published in the Gazette, direct that the application of this Act in relation to a specified foreign country shall be subject to such conditions or modifications as may be specified in the order

PART II – MUTUAL LEGAL ASSISTANCE

4. Scope of mutual legal assistance

For the purposes of this Act, mutual legal assistance in criminal matters include-

- (a) the obtaining of evidence, documents or other articles;
- (b) the provision of documents and other records;
- (c) the location and identification of witnesses or suspects;
- (d) the execution of requests for search and seizure;
- (e) the making of arrangements for persons to give evidence or assist in investigations;
- (f) the forfeiture or confiscation of property in respect of offences;
- (g) the recovery of pecuniary penalties in respect of offences;
- (h) the interdicting of dealings in property, or the freezing of assets that may be forfeited or confiscated or needed to

satisfy pecuniary penalties imposed, in respect of offences;

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

(j) the service of documents.

5. Refusal of assistance

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

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

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

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

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

(e) the granting of the request would prejudice public safety, public order, defence or the economic interests of The Gambia; and

(f) the request relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent court or authority in the foreign country or has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence.

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

(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 The Gambia would not have constituted an offence against the laws of The Gambia;

(b) the request relates to the prosecution or punishment of a person in respect of an act or omission that, occurred, or is alleged to have occurred, outside the foreign country and a similar act or omission occurring outside The Gambia in similar circumstances would not have constituted an offence against the laws of The Gambia;

(c) the request relates to the prosecution or punishment in respect of an act or omission where, if it had occurred in The Gambia at the same time and had constituted an offence against the law of The Gambia, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason;

(d) the provision of the assistance may prejudice an investigation or proceedings in relation to a criminal matter in The Gambia;

(e) the provision of the assistance would, or would be likely to prejudice the safety of any person, whether in or outside The Gambia; and

(f) the provision of the assistance would impose an excessive burden on the resources of The Gambia.

6. Conditions relating to the provision of Assistance

The Minister may impose such conditions as he or she may determine in providing assistance under this Act to a foreign country.

7. Request for assistance by The Gambia

A request for assistance by The Gambia to a foreign country in any criminal matter shall be made by the Minister.

8. Request for assistance by a foreign country

(1) A request by the appropriate authority of a foreign country for assistance to The Gambia in a criminal matter shall be made to the Minister.

(2) A request made under sub-section (1) shall be accompanied by a document giving the following information-

- (a) the name of the authority dealing with the criminal matter to which the request relates;
- (b) a description of the nature of the criminal matter and 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 country wishes to be followed in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign country pursuant to the request;
- (e) the confidentiality or otherwise of the request;
- (f) the time-frame within which the foreign country wishes that the request be treated;
- (g) if the request involves a person travelling from The Gambia to the foreign country, details of the arrangements for the person while he or she is in the foreign country pursuant to the request;
- (h) any other information required to be included with the request under a treaty or other arrangement between The Gambia and the foreign country; and
- (i) any other information that may assist in giving effect to the request;

(3) The absence of any document in sub-section (2) shall not be a reason for refusal but rather the request for that particular document.

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

9. Request for evidence by The Gambia

The Minister may request the appropriate authority of a foreign country to arrange for-

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

- (b) documents or other articles located in the foreign country to be produced,

for the purpose of criminal proceedings in The Gambia.

10. Request for evidence by a foreign country

(1) Where a request is made by the appropriate authority of a foreign country for-

- (a) evidence to be taken in The Gambia; or
- (b) documents or other articles located in The Gambia to be produced,

for the purpose of criminal proceedings in the foreign country, the Minister may, subject to such terms and conditions as he or she may determine as specified in the Act, authorise the taking of the evidence or the production of the documents or other articles, and their transmission to the foreign country.

(2) Where the Minister authorises the taking of evidence or the production of documents or other articles under subsection (1) -

- (a) a Magistrate may summon a witness to appear before him or her to give evidence on oath in relation to the matter, and shall forward the evidence so collected to the Minister; or
- (b) a Magistrate may, subject to subsection (6), require the production of any document or other articles and shall send the documents, or copies of the documents certified by him or her to be true copies, to the Minister.

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

(4) The Magistrate conducting proceedings under subsection (2) shall permit-

- (a) any person giving evidence or producing documents or other articles at the proceedings before him or her, and
- (b) the appropriate authority of the foreign country;

to be legally represented at the proceedings.

(5) Subject to subsection (6), the laws of The Gambia relating to the compelling of persons to appear before a Magistrate and to give evidence in criminal proceedings shall mutatis mutandis, apply with respect to the compelling of persons to appear before a Magistrate and to giving evidence, answering questions and the production of documents or other articles.

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

PART IV - ASSISTANCE IN RELATION TO SEARCH AND SEIZURE

11. Request by The Gambia for search and seizure

(1) The Minister may request an appropriate authority of a foreign country to obtain a warrant or other instrument authorizing the search and seizure of anything relevant to criminal proceedings or investigations in The Gambia.

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

12. Request by foreign countries for search and seizure

(1) Where-

- (a) criminal proceedings or investigations relating to a serious offence has commenced in a foreign country;
- (b) there are reasonable grounds to believe that a thing relevant to the proceedings or investigations is located in The Gambia; and
- (c) the appropriate authority of the foreign country requests the Minister to arrange for the issue of a search warrant in relation to that thing.

the Minister may authorize a police officer in writing to apply to a Magistrate in the area in which that thing is believed to be located for the search warrant requested by the foreign country.

(2) Where a police officer authorized under sub-section (1) has reason to believe that the thing to which the request relates is or will be, at a specified time-

- (a) on a person;
- (b) in the clothing that is being worn by a person; or
- (c) otherwise in a person's immediate control,

the police officer shall lay before a Magistrate information on oath setting out the grounds for that belief and apply for the issue of a warrant to search the person for that thing.

(3) Where an application is made under sub-section (2), the Magistrate may subject to sub-section (6), issue a warrant authorizing a police officer-

- (a) to search the person for the thing; and
- (b) to seize anything found in the course of the search that he or she believes, on reasonable grounds, to be relevant to the proceedings or investigation.

(4) Where a police officer authorized under sub-section (1) has reason to believe that the thing to which the request relates to is or will be at a specified time, upon anything or in any premises, the police officer may-

- (a) lay before a Magistrate information on oath, setting out the grounds for that belief; and
- (b) apply for the issue of a warrant under this section to search the land or premises for that thing.

(5) Where an application is made under sub-section (4), the Magistrate may subject to sub-section (6), issue a warrant authorizing a police officer-

- (a) to enter upon the land or into the premises;
- (b) to search the land or premises for the thing; and
- (c) to seize anything found in the course of the search that the police officer believes, on reasonable ground, to be relevant to the proceedings or investigation.

(6) A Magistrate shall not issue a warrant under this section unless-

- (a) a person has given to the Magistrate, either orally or by affidavit, such further information as he or she may

require concerning the grounds on which the issue of the warrant is sought; and

- (b) he or she is satisfied that there are reasonable grounds for issuing the warrant.

(7) There shall be stated in a warrant issued under this section, the purpose for which the warrant is issued, including a reference to the nature of the criminal proceeding in relation to which the search is authorized.

(8) If in the course of conducting a search under a warrant issued in terms of this section for a thing of a kind specified in the warrant, the police officer finds another thing that he or she believes on reasonable grounds-

- (a) to be relevant to the proceedings or investigation in the foreign country or to afford evidence as to the commission of an offence in The Gambia; and
- (b) it is likely to be concealed, lost or destroyed if it is not seized.

the warrant shall be deemed to authorize the police officer to seize the other thing.

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

(10) Where a thing is delivered into the custody and control of the Inspector-General of Police under sub-section (9), the Inspector-General of Police shall arrange for the thing to be kept for a period not exceeding one month from the day on which the thing was seized, pending a direction in writing from the Minister as to the manner in which the thing is to be dealt with.

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

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

- (b) the name of the Magistrate who issued the warrant and the date it was issued; and

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

(12) A police officer acting, in accordance with a warrant issued under sub-section (3) may remove, or require a person to remove any of the clothing that the person is wearing which is necessary and reasonable for an effective search of the person in terms of the warrant.

(13) A person shall not be searched under a warrant issued under sub-section (12) except by a person of the same sex and the search shall be conducted in strict accordance with decency.

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

(15) Where a police officer is authorized under a warrant issued under sub-section (12) to search a person, the police officer may also search-

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

PART V- ARRANGEMENT FOR PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS

13. Request for removal of certain persons from a foreign country to The Gambia

(1) Where -

- (a) proceedings relating to a criminal matter have commenced in The Gambia; and
- (b) the Minister is of the opinion that a person who is in a foreign country to which this Act applies-
 - (i) is a foreign prisoner,
 - (ii) is capable of giving evidence relevant to the proceedings, and

- (iii) has given his or her consent to being removed from a foreign country to The Gambia for the purpose of giving evidence in the proceedings;

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

(2) Where –

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

the Minister may request the appropriate authority of the foreign country to authorize the removal of the person to The Gambia for the purpose of giving assistance in relation to the investigation.

(3) Where the Minister makes a request under sub-section (1) or (2), he or she may make arrangements with an appropriate authority of the foreign country for-

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

14. Arrangements in relation to custody of certain persons

(1) The Minister may make arrangements in relation to the keeping in custody of persons who are in The Gambia pursuant to a request under section 13.

(2) The Minister may arrange for the variation or revocation of arrangements made under subsection (1).

15. Custody of certain persons

Where –

- (a) a person is to be brought to The Gambia from a foreign country pursuant to a request under section 13; and
- (b) the foreign country requests that the person be kept in custody while he or she is in The Gambia,

the person shall be kept in such custody as the Minister may direct in writing.

16. Immunities

(1) Where a person is in The Gambia-

- (a) pursuant to a request under section 13; or
- (b) is required to give evidence in criminal proceedings or to give assistance in relation to an investigation pursuant to a request made by or on behalf of the Minister, otherwise than under section 13,

he or she shall not, subject to sub-section (2), be detained, prosecuted or punished for any offence that is alleged to have been committed before the person's departure from the foreign country pursuant to the request, or be required to give evidence in any proceedings in The Gambia other than the proceedings to which the request relates.

(2) Sub-section (1) shall cease to apply to a person if he or she-

- (a) has left The Gambia; or
- (b) has had the opportunity to leave The Gambia but has remained in The Gambia otherwise than for-
 - (i) the purpose to which the request related;
 - (ii) the purpose of giving evidence in proceedings in The Gambia certified by the Minister, in writing, to be proceedings in which it is desirable that the person give evidence; or

- (iii) the purpose of giving assistance in relation to an investigation in The Gambia certified by the Minister, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(3) A certificate given by the Minister for the purposes of sub-section (2) shall have effect from the day specified in the certificate.

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

(1) Where a person has come to The Gambia pursuant to a request to a foreign country under section 13, he or she shall be deemed for the purposes of this Act, to be in The Gambia pursuant to the request during any period which he or she remains in The Gambia for the purpose of being tried after his or her arrival in The Gambia from the foreign country.

(2) Without limiting the generality of sub-section (1), the person shall be kept in such custody as the Minister directs under section 15.

18. Limitation on use of evidence given by certain persons

Where-

- (a) a person is in The Gambia-
- (i) pursuant to a request in terms of section 13; or
 - (ii) to give evidence in proceedings, or to give assistance in relation to an investigation pursuant to a request made by or on behalf of the Minister, not being a request in terms of section 13, for assistance in criminal matters; and
- (b) the person has given evidence in the proceedings to which the request relates or in proceedings certified by the Minister under section 16(2) in relation to that person,

the evidence shall not be admitted or otherwise used in any prosecution of the person for an offence against the laws of The Gambia, other than the offence of perjury in relation to the giving of that evidence.

19. Conditions of imprisonment

The provisions relating to-

- (a) the conditions of imprisonment of persons convicted of offences;
- (b) the treatment of persons during imprisonment; and
- (c) the transfer of any such persons from prison to prison;

shall mutatis mutandis, apply in relation to a person who is in The Gambia pursuant to a request under section 13 and who has been committed to a prison in accordance with the direction of the Minister in terms of this Act.

20. Release of person from custody

Where-

- (a) a person is being held in custody in accordance with the direction of the Minister under section 15; and
- (b) the foreign country from which the person has been brought, requests the release of the person from custody,

the Minister shall direct that the person be released from custody.

21. Escape from custody

(1) A person who escapes from lawful custody while in The Gambia pursuant to a request under section 13 commits an offence and is liable to imprisonment for a term not exceeding two years.

(2) Sections 33, 34 and 35 of the Criminal Procedure Act shall mutatis mutandis apply as if a reference in those sections to custody in respect of any offence against the laws of The Gambia were a reference to custody while in The Gambia pursuant to a request.

22. Arrest of person who has escaped from custody

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

- (a) has been brought to The Gambia pursuant to a request under section 13; and
- (b) has escaped from lawful custody while in The Gambia pursuant to the request.

(2) A person who has been arrested pursuant to sub-section (1) shall be returned to custody.

23. Request for giving evidence at hearings in foreign countries

(1) Where-

- (a) proceedings relating to a criminal matter have commenced in a foreign country;
- (b) the appropriate authority of the foreign country requests the attendance of a prisoner who is in The Gambia at a hearing in connection with the proceedings;
- (c) there are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceedings; and
- (d) the Minister is satisfied that-
 - (i) the prisoner has consented to giving evidence in the foreign country; and
 - (ii) the foreign country has given adequate undertakings in respect of the matter referred to in sub-section (3);

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

(2) Where-

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

- (ii) the foreign country has given adequate undertakings in respect of the matters referred to in sub-section (3),

the Minister may make arrangements for the person to travel to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purpose of a request for a person to give evidence in the foreign country shall be-

- (a) that the person shall not-
 - (i) be detained, prosecuted or punished for any offence against the laws of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from The Gambia;
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from The Gambia; or
 - (iii) be required to give evidence in any Proceedings in the foreign country other than the Proceedings to which the request relates,

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

- (b) that any evidence given by the person in the proceedings to which the request relates shall be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence;
- (c) that the person shall be returned to The Gambia in accordance with arrangements agreed by the Minister;
- (d) in a case where the person is being held in custody in The Gambia and the Minister requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country-

- (i) the making of appropriate arrangements for that purpose;
 - (ii) that the person will not be released from custody in the foreign country unless the Minister notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under the laws of The Gambia; and
 - (iii) if the person is released in the foreign country in terms of subparagraph (ii), that person's accommodation and other expenses pending the completion of the proceedings to which the request relates or shall be paid for by the foreign country;
- (e) such other matters as the Minister thinks appropriate.

24. Requests for assistance in relation to investigations in foreign countries

(1) Where-

- (a) an investigation relating to a criminal matter has commenced in a foreign country;
- (b) the appropriate authority of the foreign country requests the removal of a prisoner who is in The Gambia to the foreign country for the purpose of giving assistance in relation to the investigation;
- (c) there are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and
- (d) the Minister is satisfied that-
 - (i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigation; and
 - (ii) the foreign country has given adequate undertakings in respect of the matters referred to in sub-section (3),

the Minister may, after consultation with the Director General of Prisons, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give assistance in relation to the investigation and shall make arrangements for the travelling of the

prisoner to the country in the custody of a police or prison officer designated by the Minister for the purpose.

(2) Where-

- (a) an investigation relating to a criminal matter has commenced in a foreign country;
- (b) the appropriate authority of the foreign country requests that a person in The Gambia who is not a prisoner, travel to the foreign country to give assistance in relation to the investigation;
- (c) there are reasonable grounds to believe that the person is capable of giving assistance in relation to the investigation; and
- (d) the Minister is satisfied that-
 - (i) the person has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigation; and
 - (ii) the country has given adequate undertakings in respect of the matters referred to in subsection (3);

the Minister may make arrangements for the travelling of the person to the foreign country.

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

- (a) that the person shall not-
 - (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed before the person's departure from The Gambia;
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred before the person's departure from The Gambia; or
 - (iii) be required to give evidence in any proceedings in the foreign country,

unless the person left the foreign country or has had the opportunity to leave the foreign country but has remained in that country other than for the purpose of giving assistance in relation to the investigation to which the request relates;

- (b) that the person shall be returned to The Gambia; in accordance with arrangements agreed by the Minister; and
- (c) in a case where the person is being held in custody in The Gambia and the Minister requests the foreign country to make arrangements for the keeping of the Person in custody while the person is in the foreign country-
 - (i) the making of appropriate arrangements for that purpose,
 - (ii) that the person shall not be released from custody in the foreign country unless the Minister notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under the laws of The Gambia, and
 - (iii) if the person is released in the foreign country in terms of sub-paragraph (ii), that the person's accommodation and of the investigation to which the request relates shall be paid for by the foreign country;
- (d) such other matters as the Minister thinks appropriate.

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

Where a Prisoner who is serving a term of imprisonment for an offence against the laws of The Gambia is released from prison pursuant to a request by the appropriate authority of the foreign country under section 23 or section 24, the prisoner shall, while in custody in connection with the request, including custody outside The Gambia, be deemed to be continuing to serve that term of imprisonment.

PART VI - CUSTODY OF PERSONS IN TRANSIT

26. Transit

(1) Where-

- (a) a person is to be transported in custody from a foreign country through The Gambia to another foreign country for the purpose of giving evidence in proceedings or giving assistance in relation to an investigation relating to a criminal matter in the other foreign country; and
- (b) at least one of these foreign countries is a foreign country to which this Act applies,

the person may be transported through The Gambia in the custody of another person and, if an aircraft, vehicle or train by which the person is being transported lands or calls at a place in The Gambia, shall be kept in such custody as the Minister, after consultation with the Head of Prisons, directs in writing until his or her transportation is continued.

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

27. Escape from custody

(1) A person who, whilst in custody pursuant to a direction under sub-section (1) of section 26, escapes from such custody commits an offence and is liable to imprisonment for a term not exceeding two years.

(2) Section 33, 34 and 35 of the Criminal Procedure Code shall, mutatis mutandis, apply as if a reference in those sections to custody in respect of any offence against the laws of The Gambia were a reference to custody pursuant to a direction in terms of sub-section (1) of section 26 of this Act.

[cap 11.01]

28. Arrest of person in transit

(1) A police officer may without warrant, arrest a person, if he or she has reasonable grounds to believe that the person was being held in custody pursuant to a direction under sub-section (1) of section 26 and has escaped from such custody.

(2) A person has been arrested in terms of sub-section (1) shall be returned to custody.

PART VII - PROCEEDS OF CRIME

29. Request for enforcement of orders

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

- (a) a forfeiture order made in The Gambia against property that is believed to be located in that country; or
- (b) a pecuniary penalty order made in The Gambia where some or all the property available to satisfy the order is believed to be located in that country; or
- (c) an order made in The Gambia against property that is believed to be located in that country,

if the order is in respect of a specified offence.

30. Request for issue of orders in foreign country

Where criminal proceedings or criminal investigations have commenced in The Gambia in relation to a specified offence, the Minister may request an appropriate authority of a foreign country to direct the issue of a warrant, order or other instrument similar in nature to any of the following orders under the law for the time being in force relating to proceeds of crime in respect of the specified offence-

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

31. Registration of order

(1) Where-

- (a) an appropriate authority of a foreign country requests the Minister to make arrangements for the enforcement of-

- (i) a foreign forfeiture order made in respect of a foreign specified offence against property that is believed to be located in The Gambia, or

- (ii) a foreign pecuniary penalty order made in respect of a foreign specified offence where some or all of the property available to satisfy the order is believed to be located in The Gambia; and

(b) the Minister if satisfied that-

- (i) a person has been convicted of the offence, and

- (ii) the conviction and the order not subject to appeal in the foreign country,

the Minister may on application, obtain the registration of the order from the High Court.

(2) Where an appropriate authority of a foreign country requests the Minister to make arrangements for the enforcement of a foreign interdict issued in respect of a foreign specified offence against property that is believed to be located in The Gambia, the Minister may obtain the registration of the order from the High Court.

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

- (a) was properly made against the person concerned; and

- (b) the person concerned was given an adequate opportunity to make representations in regards to the registration of any such order,

the High Court may register the order.

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

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

(6) A foreign forfeiture order registered with the High Court in terms of this section shall have effect and may be enforced as if it were a forfeiture order made by a court under the law relating to proceeds of crime at the time of registration.

(7) A foreign pecuniary penalty order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a pecuniary penalty order made by a court under the law relating to proceeds of crime at the time of registration and requiring the payment to The Gambia of the amount payable under the order.

(8) A foreign interdict registered with the High Court in terms of this section shall have effect and may be enforced as if it were an interdict made by a court under the law relating to proceeds of crime at the time of registration.

(9) Where any order is registered with the High Court in terms of this section, any amendments made to the order, whether before or after registration, may be registered in the same way as the order and amendments shall not, for the purposes of this Act and the law relating to proceeds of crime have effect until they are registered.

(10) A copy of the appropriate order or amendment sealed or authenticated by the court or other authority making that order or amendment or a copy of that order or amendment duly authenticated in accordance with sub-section (2) of section 38, shall be filed with the High Court on registration of the order or amendment.

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

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

(13) Without limiting the generality of sub-section (12), the Minister may apply for a cancellation if he or she is satisfied that-

- (a) the order has ceased to have effect in the foreign country in which it was made; or
- (b) cancellation of the order is appropriate having regards to the arrangements entered into between The Gambia and

the foreign country in relation to enforcement of orders of the kind.

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

32. Requests for search and seizure warrants in respect of tainted property

Where-

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign specified offence;
- (b) there are reasonable grounds for believing that tainted Property in relation to the offence is located in The Gambia; and
- (c) the appropriate authority of the foreign country requests the Minister to obtain the issue of a search warrant under the Proceeds of Crime Act, 1991, in relation to the tainted property,

the Minister may authorize a police officer in writing to apply to a Magistrate for the search warrant requested by the appropriate authority of the foreign country.

33. Requests for interim interdicts

Where-

- (a) criminal proceedings have commenced in a foreign country in respect of a foreign specified offence;
- (b) there are reasonable grounds for believing that tainted property that may be made, or is about to be made, the subject of an interdict is located in The Gambia; and
- (c) the appropriate authority of the foreign country requests the Minister to obtain the issue of an interdict against the property,

the Minister may authorize an application to the High Court for the issue of the interdict requested by the appropriate authority of the foreign country.

34. Requests for information gathering order

(1) In this section-

"ancillary offence" in relation to an offence referred to in subparagraph (i) or (ii) of paragraph (a) of sub-section (3), means-

- (a) a conspiracy to commit, aid, abet, counsel or procure the commission of, such offence;
- (b) an offence of receiving or assisting another person to escape punishment or disposing of the proceeds of such offence; or
- (c) an attempt to commit such offence.

(2) Where-

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign specified offence; and
- (b) a property tracking document in relation to the offence is reasonably believed to be located in The Gambia, and the appropriate authority of the foreign country requests the Minister to obtain the issue of a production order or a search warrant the Minister may, in writing authorize a police officer to apply to a judge of the High Court for the order requested by the foreign country.

(3) Where-

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign specified offence that is-
 - (i) a serious narcotics offence,
 - (ii) a money-laundering offence in respect of proceeds of a serious narcotics offence, or
 - (iii) an ancillary offence to an offence referred to in subparagraph (1) or (ii);
- (b) information about transactions conducted through an account with a financial institution in The Gambia is

reasonably believed to be relevant to the proceedings or investigations; and

- (c) the appropriate authority of the foreign country requests the Minister to obtain the issue of a monitoring order, directing the financial institution to give information to the Inspector General of Police about transactions conducted through the account,

the Minister may authorize a police officer in writing to apply to a Judge of the High Court for the order requested by the foreign country.

PART VIII - GENERAL

35. Inconsistency with other laws

In the event of any inconsistency between the provisions of this Act and the any other Act other than the provisions of an Act prohibiting the disclosure of information, the provisions of this Act shall prevail to the extent of the inconsistency.

36. Service of documents

(1) Where the appropriate authority of a foreign country requests the Minister to arrange for the service of process in The Gambia to a criminal matter in the foreign country, the Minister may arrange for the service of the process.

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

37. Evidence

A certificate by the Minister stating that-

- (a) The Gambia or a specified foreign country is a party to a specified treaty;
- (b) a specified treaty entered into force for The Gambia or a specified foreign country on a specified day; or
- (c) on a day specified in the certificate, a specified treaty remained in force for the Gambia or a specified country,

shall for the purposes of any proceedings under this Act, be prima facie evidence of the matters stated in the certificate.

38. Authentication of documents

(1) In proceedings under this Act arising directly or indirectly from a request made under this Act, any document that is duly authenticated in terms of sub-section (2) shall be admissible in evidence.

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

(a) signed or certified by a Judge, Magistrate or authorised legal officer of a foreign country; and

(b) authenticated by oath of a witness or an officer of the Government of the foreign country or sealed with an official public seal of the foreign country or of a Minister.

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

39. Regulations

(1) The Minister may make regulations prescribing matters-

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of sub-section (1) may provide for-

(a) the practice and procedure in relation to the performance by magistrates of functions under this Act, including-

(i) the summoning of witnesses,

(ii) the production of documents,

(iii) the taking of evidence on oath, or

(iv) the immunity of persons and legal practitioners appearing before magistrates and of witnesses;

(b) the forms of any orders processed or certificates made, issued or given in terms of this Act;

(c) facilitating communication between The Gambia and foreign countries for the purposes of this Act; and

(d) penalties for a contravention of any regulation.

PASSED in the National Assembly this 28th day of March, in the year of Our Lord
Twenty Twenty Three.



M. A. Sise
Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill
which has passed in the National Assembly, and found by me to be a true and correct copy of
the said Bill.



M. A. Sise
Clerk of the National Assembly.