

CHAPTER 254

THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 254

THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

An Act to provide for mutual assistance in criminal matters between Tanzania and foreign countries; to facilitate the provision and obtaining by Tanzania of such assistance and to provide for related matters.

[1st May, 1994]

[G.N. No. 299 of 1994]

Act No. 24 of 1991

PART I

PRELIMINARY PROVISIONS (ss 1-9)

[PCh254s1]1. Short title

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

[PCh254s2]2. Interpretation

(1) In this Act—

"appropriate authority" means the authority of a foreign country which is authorised in terms of its law to make requests;

"dealing with property" includes removing the property from the United Republic or receiving or making a gift of it;

"financial institution" means a bank or other financial institution authorised as such under the Banking and Financial Institutions Act *;

"foreign forfeiture order" means an order registered in the United Republic in terms of subsection (1) of section 32 for the forfeiture of property located in the United Republic in respect of a foreign specified offence;

"foreign interdict" means an order registered in the United Republic in terms of subsection (2) of section 32 in respect of a foreign specified offence and 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 United Republic in terms of subsection (1) of section 32 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;

"magistrate" means a district magistrate or resident magistrate as defined in the Magistrates Courts Act *;

"Minister" means the Minister responsible for legal affairs;

"money-laundering offence", in relation to the proceeds of a serious narcotics offence, means an offence involving—

(a) the engaging, directly or indirectly, in a transaction which involves money or other property; which is, in terms of the Proceeds of Crime Act *;

(b) the receiving, possessing, concealing, disposing of property, which is proceeds of crime in terms of the Proceeds of Crime Act *;

"monitoring order" has the meaning assigned to it in the Proceeds of Crime Act *;

"pecuniary penalty order" has the meaning assigned to it in the Proceeds of Crime Act *;

"police officer" means any member of the Police Force of or above the rank of corporal;

"property-tracking document" has the meaning assigned to it in the Proceeds of Crime Act *;

"serious narcotics offence" has the meaning assigned to it in the Proceeds of Crime Act *;

"serious offence" means an offence the maximum penalty for which is death or imprisonment for not less than twelve months and "criminal matter" shall be construed accordingly;

"specified offence" has the meaning assigned to it in the Proceeds of Crime Act;

"tainted property" has the meaning assigned to it in the Proceeds of Crime Act *.

(2) A reference in this Act to a law of a foreign country shall include a reference to a law of a part of, or a law in force in a part of, the foreign country.

(3) 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.

[PCh254s3]3. Application of Act

(1) Subject to subsections (2) and (3), whenever the Minister is satisfied that reciprocal provisions have been made by any foreign country to facilitate the provision to Tanzania of assistance in criminal matters, he may, by order published in the Gazette, declare that the provisions of this Act shall apply in relation to that 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 statutory instrument, and thereupon this Act shall apply accordingly.

(3) This section shall not apply to Part II.

[PCh254s4]4. Aspects of mutual assistance

For the purposes of this Act, mutual assistance in criminal matters shall 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 that may be needed to satisfy pecuniary penalties imposed, in respect of offences;
- (i) the location of property that may be forfeited, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences; and
- (j) the service of documents.

[PCh254s5]5. Act not to prevent other provision of mutual assistance

Nothing in this Act shall be construed as preventing the provision or obtaining of assistance in criminal matters otherwise than as provided in this Act.

[PCh254s6]6. Refusal of assistance

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

(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 to 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 his 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 Tanzania, would have constituted an offence under the military law of Tanzania but not under the ordinary criminal law of Tanzania;

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

(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; or

(g) except in the case of a request under section 11, the foreign country is not a country to which this Act applies.

(2) A request by a foreign country 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 Tanzania would not have constituted an offence against the law of Tanzania;

(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 Tanzania in similar circumstances would not have constituted an offence against the law of Tanzania;

(c) the request relates to the prosecution or punishment in respect of an act or omission where, if it had occurred in Tanzania at the same time and had constituted an offence against the law of Tanzania, 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 proceedings in relation to a criminal matter in Tanzania;

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

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

[PCh254s7]7. Assistance may be conditional

Assistance in terms of this Act may be provided to a foreign country subject to such conditions as the Attorney-General may determine.

[PCh254s8]8. Requests by Tanzania

Any request by Tanzania for assistance in any criminal matter in terms of this Act shall be made by the Attorney-General.

[PCh254s9]9. Request for assistance by foreign country

(1) A request by the appropriate authority of a foreign country for assistance in a criminal matter shall be made to the Attorney-General.

(2) A request made in terms of subsection (1) shall contain or be accompanied by a document giving the following information—

(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 summary of the relevant facts and laws;

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

(d) details of the procedure that the foreign country wishes to be followed by Tanzania 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 wishes of the foreign country concerning the confidentiality of the request and the reasons for those wishes;

(f) details of the period within which the foreign country wishes that the request be complied with;

(g) if the request involves a person travelling from Tanzania to the foreign country, details of allowances to which the person will be entitled and of the arrangements for accommodation for the person, while the person 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 Tanzania and the foreign country; and

(i) 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.

PART II

ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES (ss 10-11)

[PCh254s10]10. Request by Tanzania for taking of evidence, etc.

The Attorney-General may request an appropriate authority of a foreign country to arrange for—

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

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

for the purposes of proceedings in relation to a criminal matter in Tanzania.

[PCh254s11]11. Request for evidence by foreign country

(1) Where a request is made by the appropriate authority of a foreign country for evidence to be taken in Tanzania or documents or other articles in Tanzania to be produced for the purposes of proceedings in relation to a criminal matter in the foreign

country, the Attorney-General may, subject to such terms and conditions as he may determine, authorise the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the foreign country.

(2) Where the Attorney-General authorises the taking of evidence or the production of documents or other articles in terms of subsection (1)–

(a) in the case of the taking of evidence, a magistrate may take the evidence on oath of each witness appearing before him to give evidence in relation to the matter, and shall–

(i) cause the evidence to be put in writing and certify that the evidence was taken by him; and

(ii) cause the evidence so certified to be sent to the Attorney-General;
or

(b) in the case of the production of documents or other articles, a magistrate may, subject to subsection (6), require the production of the documents or other articles and shall send the documents, or copies of the documents certified by him to be true copies, or the other articles, to the Attorney-General.

(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 relate or in the presence of his legal representative, if any.

(4) The magistrate conducting proceedings in terms of subsection (2) may permit–

(a) any other person giving evidence or producing documents or other articles at the proceedings before him; and

(b) the appropriate authority of the foreign country, to be legally represented at the proceedings.

(5) The certificate by the magistrate made in terms of subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced—

(a) the person to whom the proceedings in the foreign country relate or his legal representative; or

(b) any person other than the person giving evidence or producing documents or other articles or his legal representative, was present.

(6) Subject to subsection (7), the laws of Tanzania with respect to the compelling of persons to attend before a magistrate, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for any offence shall, *mutatis mutandis*, apply with respect to the compelling of persons to attend before a magistrate and to giving evidence, answering questions and the production of documents or other articles, for the purposes of this section.

(7) 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 III

ASSISTANCE IN RELATION TO SEARCH AND SEIZURE (ss 12-13)

[PCh254s12]12. Requests by Tanzania for search and seizure

(1) This section applies to proceedings or investigations relating to a serious offence against the law of Tanzania if there are reasonable grounds to believe that a thing relevant to the proceedings or investigations may be located in a foreign country to which this Act applies.

(2) Subject to subsection (1), the Attorney-General may request an appropriate authority of a foreign country to obtain a warrant or other instrument authorising the search for a thing relevant to the proceedings or investigation and, if such a thing, or any other thing that is or may be relevant to the proceedings or investigation, as the case may be, is found pursuant to such a search, authorising the seizure of that thing.

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

[PCh254s13]13. Requests by foreign countries for search and seizure

(1) Where—

(a) proceedings have, or an investigation relating to a criminal matter involving a serious offence has, commenced in a foreign country;

(b) there are reasonable grounds to believe that a thing relevant to the proceedings or investigation is located in Tanzania; and

(c) the appropriate authority of the foreign country requests the Attorney-General to arrange for the issue of a search warrant in terms of this section in relation to that thing,

the Attorney-General may, in writing, authorise a police officer 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 authorised under subsection (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 may lay before a magistrate information on oath setting out the grounds for that belief and apply for the issue of a warrant in terms of this section to search the person for that thing.

(3) Where an application is made in terms of subsection (2), the magistrate may, subject to subsection (6), issue a warrant authorising a police officer—

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

(4) Where a police officer authorised in terms of subsection (1) has reason to believe that the thing to which the request relates is or will be at a specified time, upon any land 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 in terms of this section to search the land or premises for that thing.

(5) Where an application is made in terms of subsection (4), the magistrate may, subject to subsection (6), issue a warrant authorising a police officer—

- (a) to enter upon the land or upon 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 in terms of this section unless—

(a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information, if any as the magistrate may require concerning the grounds on which the issue of the warrant is sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(7) There shall be stated in a warrant issued in terms of this section—

(a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorised;

(b) whether the search is authorised at any time of the day or night or during specified hours of the day or night;

(c) a description of the kind of things authorised to be seized; and

(d) a day, not being later than one month after the issue of the warrant, on which the warrant ceases to have effect.

(8) If in the course of searching 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 the police officer 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 Tanzania; and

(b) is likely to be concealed, lost or destroyed if it is not seized,
the warrant shall be deemed to authorise the police officer to seize the other thing.

(9) Where a police officer finds, as a result of a search in accordance with a warrant issued in terms of this section, a thing which the police officer seizes wholly or partly because he believes on reasonable grounds the thing 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 in terms of subsection (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 Attorney-General as to the manner in which the thing is to be dealt with, which may include a direction that the thing be sent to an authority of a foreign country.

(11) A police officer who executes a search warrant issued in terms of subsection (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 day on which 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 in terms of subsection (3) may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing 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 in terms of subsection (3) except by a person of the same sex and the search shall be conducted with strict regard to decency.

(14) Nothing in this section shall be taken to authorise a police officer, in executing a warrant issued in terms of subsection (3), to carry out a search by way of an examination of a body cavity of a person.

(15) Where a police officer is authorised under a warrant issued in terms of subsection (3) 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 IV

ARRANGEMENT FOR PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS (ss 14-26)

[PCh254s14]14. Request for removal of certain persons to Tanzania

(1) Where—

- (a) proceedings relating to a criminal matter have commenced in Tanzania; and
- (b) the Attorney-General is of the opinion that a person who is in a foreign

country to which this Act applies—

- (i) is a foreign prisoner; and
- (ii) is capable of giving evidence relevant to the proceedings;
- (iii) has given his consent to being removed to Tanzania for the purpose

of giving evidence in the proceedings,

the Attorney-General may request the appropriate authority of the foreign country to authorise 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 Tanzania;
- (b) the Attorney-General 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 to Tanzania for the purpose of giving assistance in relation to the investigation, the Attorney-General may request the appropriate authority of the foreign country to authorise the removal of the person to Tanzania for the purpose of giving assistance in relation to the investigation.

(3) Where the Attorney-General makes a request in terms of subsection (1) or (2), he may make arrangements with an appropriate authority of the foreign country for—

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

[PCh254s15]15. Arrangements between Attorney-General and Minister in relation to custody of certain persons

(1) The Attorney-General may make arrangements with the Minister in relation to the keeping in custody of persons who are in Tanzania pursuant to requests under section 14.

(2) The Attorney-General may arrange with the Minister for the variation or revocation of arrangements made in terms of subsection (1).

[PCh254s16]16. Custody of certain persons

Where—

(a) a person is to be brought to Tanzania from a foreign country pursuant to a request in terms of section 14; and

(b) the foreign country requests that the person be kept in custody while he is in Tanzania,

the person shall, while he is in Tanzania or travelling to or from Tanzania pursuant to the request, be kept in such custody as the Attorney-General may direct in writing.

[PCh254s17]17. Immunities

(1) Where a person is in Tanzania—

(a) pursuant to a request in terms of section 14; or

(b) to give evidence in proceedings or to give assistance in relation to an investigation pursuant to request made by or on behalf of the Attorney-General, not being a request in terms of section 14, for assistance in a criminal matter,

the person, subject to subsection (2), shall not be detained, prosecuted or punished in Tanzania 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 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 country pursuant to the request, or be required to give evidence in any proceedings in Tanzania other than the proceedings to which the request relates.

(2) Subsection (1) shall cease to apply to a person—

(a) once the person has left Tanzania; or

(b) where the person has had the opportunity to leave Tanzania but has remained in Tanzania otherwise than for—

(i) the purpose to which the request related; or

(ii) the purpose of giving evidence in proceedings in Tanzania certified by the Attorney-General, 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 Tanzania 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 (ii) or (iii) of paragraph (b) of subsection (2) shall have effect from the day specified in the certificate.

[PCh254s18]18. Status of person prosecuted for offence committed after departure from foreign country

(1) Where a person has come to Tanzania pursuant to a request to a foreign country in terms of section 14, the person shall be taken, for the purposes of this Act, to be in Tanzania pursuant to the request during any period which the person remains in Tanzania for the purpose of being tried for a Tanzania criminal offence that the person is alleged to have committed after the his arrival in Tanzania from the foreign country.

(2) Without limiting the generality of subsection (1) the person shall be kept in such custody as the Attorney-General directs in terms of section 16.

[PCh254s19]19. Limitation on use of evidence given by certain persons

Where—

(a) a person is in Tanzania—

(i) pursuant to a request in terms of section 14;

(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 Attorney-General, not being a request in terms of section 14, for assistance in criminal matters; or

(b) the person has given evidence in the proceedings to which the request related or in proceedings certified by the Attorney-General in terms of subparagraph (ii) of paragraph (b) of subsection (2) of section 17 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 law of Tanzania other than the offence of perjury in relation to the giving of that evidence.

[PCh254s20]20. Conditions of imprisonment

The provisions of the Prisons Act *, relating to—

(a) the conditions of imprisonment of persons convicted of offences;

(b) the treatment of any such 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 Tanzania pursuant to a request in terms of section 14 and who has been committed to a prison in accordance with a direction of the Attorney-General in terms of this Act.

[PCh254s21]21. Release of person from custody

Where—

(a) a person is being held in custody in accordance with a direction of the Attorney-General in terms of section 16; and

(b) the foreign country from which the person has been brought requests release from custody,

the Attorney-General shall direct that the person be released from custody.

[PCh254s22]22. Escaping

(1) Any person who escapes from lawful custody while in Tanzania pursuant to a request in terms of section 14 shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years.

(2) Sections 34, 35 and 36 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 law of Tanzania were a reference to custody while in Tanzania pursuant to a request in terms of section 14.

[PCh254s23]23. Arrest of person who has escaped from custody

(1) Any 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 Tanzania pursuant to a request in terms of section 14; and

(b) has escaped from lawful custody while in Tanzania pursuant to the request.

(2) A person who has been arrested in terms of subsection (1) shall be returned to custody.

[PCh254s24]24. Requests for giving of evidence at hearing in foreign country

(1) Where—

(a) proceedings relating to a criminal matter have commenced in a foreign country; and

(b) the appropriate authority of the foreign country requests the attendance at a hearing in connection with the proceedings of a prisoner who is in Tanzania;

(c) there are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceedings; and

(d) the Attorney-General 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 subsection (3),

the Attorney-General may, after consultation with the Minister, 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 Attorney-General 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 at the proceedings of a person in Tanzania who is not a prisoner;

(c) there are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceedings; and

(d) the Attorney-General 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 subsection (3),
the Attorney-General 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 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 law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Tanzania;

(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 Tanzania,

(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 Tanzania in accordance with arrangements agreed by the Attorney-General;

(d) in a case where the person is being held in custody in Tanzania and the Attorney-General 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 Attorney-General notifies as appropriate authority of the foreign country that the person is entitled to be released from custody under the law of Tanzania;

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 shall be paid for by the foreign country; and

(e) such other matters as the Attorney-General thinks appropriate.

[PCh254s25]25. 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 Tanzania 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 Attorney-General 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 subsection (3),

the Attorney-General may, after consultation with the Minister, 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 foreign country in the custody of a police or prison officer designated by the Attorney-General 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 Tanzania 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;

(d) the Attorney-General 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 foreign country has given adequate undertakings in respect of the matters referred to in subsection (3),

the Attorney-General 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 Tanzania;

(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 Tanzania; 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 otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates; and

(b) that the person shall be returned to Tanzania in accordance with arrangements agreed by the Attorney-General; and

(c) in a case where the person is being held in custody in Tanzania and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country—

(i) that appropriate arrangements are made for that purpose;

(ii) that the person shall not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under the law of Tanzania; and

(iii) if the person is released in the foreign country in terms of subparagraph (ii), that the person's accommodation and of the investigation to which the request relates shall be paid for by the foreign country; and

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

[PCh254s26]26. 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 law of Tanzania is released from prison pursuant to a request by the appropriate authority of the foreign country under section 24 or 25, the prisoner shall, while in custody in connection with the request, including custody outside Tanzania, be deemed to be continuing to serve that term of imprisonment.

PART V

CUSTODY OF PERSONS IN TRANSIT (ss 27-29)

[PCh254s27]27. Transit

(1) Where—

(a) a person is to be transported in custody from a foreign country through Tanzania to another foreign country for the purposes 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 Tanzania 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 Tanzania, shall be kept in such custody as the Attorney-General, after consultation with the Minister, directs in writing until his transportation is continued.

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

[PCh254s28]28. Escaping

(1) Any person who, being a person being kept in custody pursuant to a direction under subsection (1) of section 27, escapes from such custody, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years.

(2) Sections 34, 35 and 36 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 law of Tanzania were a reference to custody pursuant to a direction in terms of subsection (1) of section 27.

[PCh254s29]29. Arrest of person in transit

(1) Any police officer may, without warrant arrest a person, if the police officer has reasonable grounds to believe that the person was being held in custody pursuant to a direction under subsection (1) of section 27 and has escaped from custody.

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

PART VI

PROCEEDS OF CRIME (ss 30-35)

[PCh254s30]30. Request for enforcement of orders

The Attorney-General 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 Tanzania against property that is believed to be located in that country;

(b) a pecuniary penalty order made in Tanzania where some or all the property available to satisfy the order is believed to be located in that country, or

(c) an interdict made in Tanzania against property that is believed to be located in that country,

if the order is in respect of a specified offence.

[PCh254s31]31. Requests for issue of orders in foreign countries

Where criminal proceedings or criminal investigations have commenced in Tanzania in relation to a specified offence, the Attorney-General may request an appropriate authority of a foreign country to which this Act applies to direct the issue of a warrant, order or other instrument similar in nature to any of the following warrants or 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; or
- (e) a monitoring order.

[PCh254s32]32. Registration of orders

(1) Where—

(a) an appropriate authority of a foreign country requests the Attorney-General 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 Tanzania; 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 Tanzania; and

(b) the Attorney-General is satisfied that—

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

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

the Attorney-General may, on application, obtain the registration of the order with the High Court.

(2) Where an appropriate authority of a foreign country requests the Attorney-General 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 Tanzania, the Attorney-General may, on application, obtain the registration of the order by the High Court.

(3) If, on an application in terms of subsection (1) or (2), the High Court is satisfied from 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 regard to the registration of the order,

the High Court may register the order.

(4) If the Court is not satisfied as provided in subsection (3), it may adjourn the proceedings or make any other order which will enable the person concerned to make representations in regard 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 Proceeds of Crime Act * 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 Proceeds of Crime Act at the time of registration and requiring the payment to Tanzania 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 Proceeds of Crime Act * 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 Proceeds of Crime Act * 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 subsection (2) of section 39, 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 Attorney-General may apply to the High Court for the cancellation of any registration made in terms of this section.

(13) Without limiting the generality of subsection (12), the Attorney-General may apply for a cancellation in terms of that subsection if he 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 regard to the arrangements entered into between Tanzania 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 subsection (12), the High Court shall cancel the registration accordingly.

[PCh254s33]33. Requests for search and seizure warrants in respect of tainted property

(1) 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 Tanzania; and

(c) the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of search warrant under the Proceeds of Crime Act *, in relation to the tainted property,

the Attorney-General may, in writing, authorise a police officer to apply to a magistrate of the area concerned for the search warrant requested by the appropriate authority of the foreign country.

(2) The area shall be the area in which the tainted property, or some or all of the tainted property, is believed to be located.

[PCh254s34]34. 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 Tanzania; and

(c) the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of an interdict under the Proceeds of Crime Act *, against the property,

the Attorney-General may authorise an application to the High Court for the issue of the interdict requested by the appropriate authority of the foreign country.

[PCh254s35]35. Requests for information gathering orders

(1) In this section—

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

(a) a conspiracy to commit, or aid, abet, counsel or procure the commission of, the offence;

(b) an offence of receiving or assisting another person to escape punishment for, or disposing of the proceeds of the offence: or

(c) an attempt to commit that 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 Tanzania,

and the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of a production order or a search warrant under the Proceeds of Crime Act *, the Attorney-General may, in writing, authorise 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; or

(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 (i) or (ii);

(b) information about transactions conducted through an account with a financial institution in Tanzania is reasonably believed to be relevant to the proceedings or investigations; and

(c) the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of a monitoring order under the Proceeds of Crime Act *, directing the financial institution to give information to the Inspector-General of Police about transactions conducted through the account, the Attorney-General may, in writing, authorise a police officer to apply to a judge of the High Court for the order requested by the foreign country.

PART VII

MISCELLANEOUS PROVISIONS (ss 36-39)

[PCh254s36]36. Service of documents

(1) Where the appropriate authority of a foreign country requests the Attorney-General to arrange for the service in Tanzania of process relating to a criminal matter in the foreign country, the Attorney-General 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 Tanzania, service of such document may be proved by the affidavit of the person who served the document.

[PCh254s37]37. Evidence

A certificate by the Attorney-General stating that—

- (a) Tanzania or a specified foreign country is a party to a specified treaty;
- (b) a specified treaty entered into force for Tanzania 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 Tanzania 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.

[PCh254s38]38. Authentication of documents

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

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

- (a) signed or certified by a judge, magistrate or officer in or 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 law of Tanzania.

[PCh254s39]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 subsection (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;
- (iv) the immunity of persons and legal practitioners appearing before

magistrates and of witnesses;

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

(c) generally, the facilitating of communication between Tanzania and foreign countries for the purposes of this Act; and

(d) penalties, not exceeding a fine of one hundred thousand shillings, for any contravention of any regulation.