

Country:  Nigeria

Available languages: **English**

Keywords:  Treaties (Mutual legal assistance)

**Treaty Between The Government Of The United States Of America And The Federal Republic Of Nigeria On Mutual Legal Assistance In Criminal Matters**

*Signed at Washington on 13 September 1989*

*Entered into force on 14 January 2003*

The Government of the United States of America and the Government of the Federal Republic of Nigeria, hereinafter called the "Contracting Parties",

Desiring to improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through cooperation and mutual legal assistance in criminal matters,

Considering in particular the need to fight against illicit production of and trafficking in narcotic drugs and other controlled substances, and

Reaffirming the determination to enhance assistance in the fight against crime as set out in the Agreement on Procedures for Mutual Assistance in Law Enforcement Matters signed at Washington, November 2, 1987,

Have agreed as follows:

**Article I**

*Scope of Assistance*

1. The Contracting Parties shall, upon request and in accordance with the provisions of this Treaty, provide mutual assistance in connection with the investigation, prosecution, and prevention of crimes, and in proceedings related to criminal matters.
2. Such assistance shall include:
  - a) taking the testimony or statements of persons;
  - b) providing documents, records, and articles of evidence;
  - c) serving documents;
  - d) locating and identifying persons;
  - e) transferring persons in custody for testimony or other purposes;
  - f) executing requests for searches and seizures;
  - g) tracing, identifying, and immobilizing criminally obtained assets;

h) assisting in proceedings related to forfeiture, restitution, and collection of fines; and

i) any other form of assistance not prohibited by the laws of the Requested State.

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

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

## **Article II**

### *Central Authorities*

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by him. For the Federal Republic of Nigeria, the Central Authority shall be the Attorney General of the Federation or a person designated by him.

3. The Central Authorities shall communicate directly with each other for the purposes of this Treaty.

## **Article III**

### *Limitations on Assistance*

1. The Central Authority of the Requested State may deny assistance if:

a) a request is not in compliance with the provisions of this Treaty;

b) the request relates to a political offense;

c) the request relates to an offense under military law which would not be an offense under ordinary criminal law; or

d) the execution of the request would be contrary to the Constitution of the Requested State or would prejudice the security or other essential national interests of that State.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation or proceeding in that State, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

4. The Central Authority of the Requested State shall immediately inform the Central Authority of the Requesting State of the reasons for partial or total denial or postponement of assistance.

## **Article IV**

### *Form and Contents of Requests*

1. A request for assistance shall be in writing except that the Central Authority of the Requested State

may accept a request in another form in emergency situations. In any such case, the request shall be confirmed in writing as soon as practicable thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in English unless otherwise agreed.

2. The request shall include the following:

- a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates, including the identity of the agency or authority initiating the request;
- b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific crimes which relate to the matter, the stage reached in the proceedings, and any dates for further proceedings;
- c) a description of the evidence, information, or other assistance sought; and
- d) the purpose for which the evidence, information, or other assistance is sought.

3. When appropriate, a request shall also include:

- a) the identity and location of any person from whom evidence is sought;
- b) the identity and location of a person to be served, that person's relationship to the investigation, prosecution or proceeding, and the manner in which service is to be effected;
- c) information on the identity and whereabouts of a person to be located;
- d) a precise description of the place or person to be searched and of the articles to be seized;
- e) a description of the manner in which any testimony or statement is to be taken and recorded, including any special requirements of the law of the Requesting State as to the manner of taking evidence relevant to its admissibility in that State;
- f) a list of questions to be asked of a witness;
- g) a description of any particular procedure to be followed in executing the request;
- h) information as to the allowances and expenses to which a person appearing in the Requesting State in connection with or in relation to the request will be entitled; and
- i) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request or its apprehension of a person under its laws.

## **Article V**

### *Execution of Requests*

1. The Central Authority of the Requested State shall as expeditiously as practicable execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When necessary, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested State.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be

followed except insofar as it is prohibited by the laws of the Requested State.

4. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State on progress toward execution of the request.

5. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request.

6. Upon completion of a request the Requested State shall, unless otherwise agreed, return to the Requesting State the original request together with all information and evidence obtained, indicating the place and time of execution.

7. To the extent possible, all documents and records to be furnished pursuant to a request shall be complete and in unedited form. Upon application of the Requesting State, the Requested State shall make every effort to furnish original documents and records.

#### **Article VI**

##### *Confidentiality*

1. Neither a request (including its contents) nor the information and materials supplied in response thereto shall be disclosed by a Contracting Party to a third State except as authorized by the other Contracting Party.

2. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

3. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. In that case, the Requesting State shall use its best efforts to comply with the conditions.

#### **Article VII**

##### *Expenses*

The Requested State shall bear all expenses relating to the execution of the request, except for the fees of private experts, costs of translations and transcriptions, and allowances and expenses related to travel of persons pursuant to Articles 10 and 12 which shall be borne by the Requesting State, unless otherwise mutually decided in a particular case.

#### **Article VIII**

##### *Limitations on Use*

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

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

#### **Article IX**

##### *Obtaining Evidence in the Requested State*

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce documents, records, or articles of evidence.
2. Upon request, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.
3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the person whose testimony or evidence is being taken.
4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.
5. Documents, records, and articles of evidence produced in the Requested State pursuant to this Article or which are the subject of testimony taken under this Article may be authenticated by an attestation. In the case of the United States of America, documents authenticated in the manner indicated in Form A-1 appended to this Treaty shall be admissible in evidence in the United States of America as proof of the truth of the matters set forth therein. In the case of the Federal Republic of Nigeria, documents authenticated in the manner indicated in Form A-2 appended to this treaty shall be admissible in evidence in the Federal Republic of Nigeria as proof of the truth of the matters set forth therein.

#### **Article X**

##### *Obtaining Evidence in the Requesting State*

1. The Requested State, upon request that a person in that State appear and testify in connection with an investigation, prosecution or proceeding in the Requesting State, shall invite that person to appear and testify in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.
2. A person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, in the Requested State by reason of any acts or convictions which preceded his departure from the Requested State.
3. The safe conduct provided for in paragraph 2 of this Article shall cease either fifteen days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or if the person has left the Requesting State and voluntarily returned to it, whichever first occurs.

#### **Article XI**

##### *Records of Government Agencies*

1. The Requested State shall provide the Requesting State with copies of publicly available documents, records, or information in the possession of government departments and agencies in the Requested State.
2. The Requested State may provide copies of any documents, records, or information which are in the possession of a government department or agency in that State but which are not publicly available, to the same extent and under the same conditions as would be available to its own law enforcement or judicial authorities.

3. Official records produced pursuant to this Article may be authenticated by the official in charge of maintaining them. No further authentication shall be necessary. In the case of the United States of America, documents authenticated through use of Form B-1 appended to this Treaty shall be admissible in evidence in the United States of America; in the case of the Federal Republic of Nigeria, documents authenticated through use of Form B-2 appended to this Treaty shall be admissible in evidence in the Federal Republic of Nigeria.

## **Article XII**

### *Temporary Transfer of Persons in Custody*

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

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

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

4. For the purposes of this Article:

a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;

c) the receiving State shall not decline on the basis of nationality to return a person transferred nor require the sending State to initiate extradition proceedings for the return of the person transferred; and

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

## **Article XIII**

### *Identifying and Locating Persons*

1. The Requested State shall use its best efforts in identifying or locating persons specified in the request and believed to be within the Requested State.

2. The request shall indicate the purpose for which the information is requested and shall contain such information as is available to the Central Authority of the Requesting State as to the whereabouts of the person concerned and such other information as it possesses as may facilitate the identification of that person.

## **Article XIV**

### *Service of Documents*

1. The Requested State shall cause service of any document transmitted for that purpose by the Requesting State.

2. A request for service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted within a reasonable time before the scheduled appearance.

3. The Requested State shall return as proof of service a receipt signed by the person served or a declaration signed by the officer making service, specifying the form and date of service.

### **Article XV**

#### *Search and Seizure*

1. A request for the search, seizure, and delivery of any article to the Requesting State shall be executed if the request includes the information justifying such action under the laws of the Requested State and if it is carried out in accordance with the laws of that State.

2. Every official of the Requested State who has custody of a seized article shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the article, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

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

### **Article XVI**

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

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

### **Article XVII**

#### *Tracing, Seizing, and Forfeiture of Proceeds of Criminal Activities*

1. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of criminal activities, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions.

2. Such assistance shall include:

a) identifying, locating, and assessing the value of assets believed to be the proceeds or instrumentalities of criminal activities and to be within the Requested State;

b) seizing and forfeiting the proceeds and instrumentalities of criminal activities which are located in the Requested State;

c) invoking the procedures of the Requested State for the recognition, confirmation, and enforcement of an order for the forfeiture of the proceeds or instrumentalities of criminal activities made by a court or other competent authority in the Requesting State; and

d) taking measures to prevent any dealing in, transfer or disposal of, or the creation of any charge over assets, pending the determination of proceedings for the forfeiture of the proceeds and instrumentalities of criminal activities.

3. The request shall contain such information as is available to the Central Authority of the Requesting State concerning the location of the assets, the persons with possession or control of the property, and any other information which may be required to execute the request under the law of the Requested State.

4. The law of the Requested State shall apply to the disposition of proceeds and instrumentalities of

criminal activities and to the recognition, confirmation and enforcement of forfeiture orders as the result of a request under this Article. Either Party may transfer forfeited assets, or the proceeds of their sale, to the other Party, to the extent permitted by their respective laws, upon such terms as may be mutually agreed.

5. If the Central Authority of one Party becomes aware of proceeds or instrumentalities of criminal activities which are located in the territory of the other Party and may be forfeitable or otherwise subject to seizure under the laws of that Party, it may so inform the Central Authority of the other Party. If that other Party has jurisdiction in this regard it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Party on the action taken.

### **Article XVIII**

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

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

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

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

### **Article XIX**

#### *Other Treaties and Domestic Laws*

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

### **Article XX**

#### *Consultation*

1. The Parties agree to consult as appropriate to develop other specific agreements or arrangements, formal or informal, on mutual legal assistance.

2. The Parties may agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

### **Article XXI**

#### *Amendment*

This Treaty may be amended by agreement in writing between the Parties. Amendments shall enter into force in accordance with the procedures set forth in Article 22 of this Treaty.

### **Article XXII**

#### *Ratification and Entry Into Force*

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

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

### **Article XXIII**

#### *Termination*

Either Party may terminate this Treaty at any time by giving written notice to the other Party. The termination shall be effective six months after the date of receipt of such notice by the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments for this purpose, have signed this Treaty. DONE at Washington, in two originals this 13th day of September, 1989.

FOR THE UNITED STATES OF AMERICA:

FOR THE FEDERAL REPUBLIC OF NIGERIA:

### **Form A-1**

#### *Certificate of Authenticity of Business Records*

I, \_\_\_\_ (Name) attest on penalty of criminal punishment for false statement or false attestation that I am employed by \_\_\_\_ (Name of business from which documents are sought) and that my official title is \_\_\_\_ (Official title).

I further state that each of the records attached hereto is the original or a duplicate of the original records in the custody of \_\_\_\_ (Name of business from which documents are sought).

I further state that:

- a) Such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- b) Such records were kept in the course of a regularly conducted business activity;
- c) The business activity made such records as a regular practice; and
- d) If such record is not the original, such record is a duplicate of the original.

\_\_\_\_ Signature \_\_\_\_ Date

Sworn to or affirmed before me, \_\_\_\_ (Name), a \_\_\_\_ (Notary Public, judicial officer, etc.), this \_\_\_\_ day of \_\_\_\_, 19\_\_.

### **FORM A - 2**

#### *CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS*

I, ....(Name) hereby say on oath that I am employed by ....(Name of Business from which documents are produced) My official title is ....(Official Title) I further state that each of the records attached hereto is the original or a duplicate of the original of records in the custody of ....(Name of Business from which documents are produced) I further state that:-

- A) Such records were made, at or near the time of the occurrence of the matters set forth, by (or from

information transmitted by) a person with knowledge of those matters;

B) Such records were kept in the course of a regularly conducted business activity;

C) The business activity made the records as a regular practice; and

D) If such record is not the original, such record is a duplicate of the original.

....Signature ....Date

Sworn to or affirmed before me, ....(Name) a ....(Notary public, judicial officer, etc.) this .... day of .... 19..

### **Form B-1**

#### *Attestation of Authenticity of Foreign Public Documents*

I, \_\_\_\_ (Name), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of \_\_\_\_ (Country) is authorized by law of \_\_\_\_ (Country) is \_\_\_\_ (official title) and that in that position I am authorized by law of the \_\_\_\_ (Country) to attest that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in \_\_\_\_ (Name of office or agency), which is a government office or agency of the Government of \_\_\_\_ (Country). Description of documents:

\_\_\_\_ (Signature)

\_\_\_\_ (Title)

\_\_\_\_ (Date)

### **FORM B - 2**

#### *ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS*

I, ....(Name) hereby say on oath that my position with the Government of ....(Country) is ....(Official Title) and that in that position I am authorized by the law of ....(Country) to attest that the documents attached and described below are true and accurate copies of original official records which are recorded or filed in ....(Name of Office or Agency) which is a government office or agency of the Government of ....(Country)

Description of Documents:

....(Signature)

....(Title)

....(Date)

### **Form C**

#### *Attestation with Respect to Seized Articles*

I, \_\_\_\_ (Name), attest on penalty of criminal punishment for false statement or attestation that my position with the Government of \_\_\_\_ (Country) is \_\_\_\_ (Title). I received custody of the articles listed below from \_\_\_\_ (Name of person) on \_\_\_\_ (Date), at \_\_\_\_ (Place). I relinquished custody of the articles listed below to \_\_\_\_ (Name of person) on \_\_\_\_ (Date), at \_\_\_\_ (Place) in the same condition as when I received them (or, if different, as noted below.)

Description of articles:

Changes in condition while in my custody:

Official Seal

\_\_\_\_ (Signature)

\_\_\_\_ (Title)

\_\_\_\_ (Place)

\_\_\_\_ (Date)

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