

FOREIGN COURTS EVIDENCE ACT 80 OF 1962

(English text signed by the State President)

[Assented To: 22 June 1962]

[Commencement Date: 1 April 1968]

as amended by:

Proclamation No. R71 of 29 March 1968
 Second General Law Amendment Act 94 of 1974
 Proclamation No. R197 of 2 September 1977
 Proclamation No. R106 of 5 May 1978
 Proclamation No. R309 of 28 December 1979
 Proclamation No. R173 of 4 November 1983
 Proclamation No. R31 of 9 March 1984
 Transfer of Powers and Duties of the State President Act 97 of 1986
 Government Notice No. R606/ GG 15602/ 25-03-1994
 Government Notice No. R1266/ GG 16622/ 25-08-1995
 Justice Laws Rationalisation Act 18 of 1996
 General Law Amendment Act 49 of 1996
 International Co-operation in Criminal Matters Act 75 of 1996

ACT

To provide for the obtaining of the evidence of persons in the Republic by courts of law outside the Republic and for other incidental matters.

ARRANGEMENT OF SECTIONS

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1. Definitions

In this Act, unless the context otherwise indicates -

“**magistrate**” includes an additional magistrate and an assistant magistrate;
 [Definition of “magistrate” amended by s. 1 of Act 49/96]

“**Republic**”
 [Definition of “Republic” deleted by s. 1 of Act 49/96]

2. **Supreme Court may order examination of witness in Republic in connection with civil proceedings pending in foreign court**

- (1) If upon an application in any provincial or local division of the Supreme Court of South Africa, it appears to the court or any judge that a court of law of competent jurisdiction outside the Republic, before which any civil proceedings are pending, is desirous of obtaining the evidence in relation to such proceedings of any witness within the jurisdiction of such division, the court or judge hearing the application may grant an order for the examination of such witness before a person named in such order.
- (2) Such an order shall not be granted if it appears to the court or judge that the evidence required is the furnishing of information in contravention of the provisions of section 1 of the Protection of Businesses Act, 1978 (Act No. 19 of 1978).
 [S. 2 amended by s. 38 of Act 94/74 and s. 4 of Act 18/96 and substituted by s. 36 of Act 75/96]

3. **Magistrate to take examination of witness in Republic in connection with civil proceedings pending in certain courts in certain territories**

Any magistrate shall, upon request of any judicial officer performing the functions of a magistrate in any territory mentioned in the First Schedule, take the examination of any witness within his area of jurisdiction, in connection with any civil proceedings pending in the court of such judicial officer.

4. **Examination of witnesses**

- (1) Any person required to take an examination under [section two](#) or [three](#) shall cause any person whose evidence is required, to be summoned to appear and give evidence or produce any book, document or object before him and upon his appearance shall administer an oath or affirmation to him and take his evidence upon interrogatories or otherwise as ordered or requested, as if he were a witness in a magistrate’s court in proceedings similar to those in connection with which his evidence is required.
- (2) Any person so to be summoned shall be summoned in the same manner as a person may be subpoenaed to appear before such a court in such proceedings.
- (3)
 [Sub-s. (3) deleted by s. 36 of Act 75/96]
- (4) Upon completion of the examination the person taking it shall transmit to the registrar of the court which granted the order for the examination or to the judicial officer who requested it, the evidence certified by him as correct, together with a certificate showing the amount paid to the witness in respect of the expenses of his appearance, the cost of the issue and service of the process for summoning the witness to appear and any other costs incurred in respect of the examination.

5. **Rights and privileges of witnesses**

- (1) Any person required to give evidence at an examination under [section four](#) shall be entitled to payment of such expenses and fees as are payable to witnesses in a magistrate's court in proceedings similar to those in connection with which his evidence is required.
- (2) In connection with the giving of evidence or the production of any book, document or object at such an examination, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book, document or object in a magistrate's court in such proceedings, shall apply.

[\(Section 6: Decided cases\)](#)

6. Offences by witnesses

- (1) Any person summoned to appear and give evidence or produce any book, document or object before any person taking an examination who, without sufficient cause, fails to attend at the time and place specified or to remain in attendance until the conclusion of the examination or until he is excused by the person taking the examination from further attendance, or refuses to be sworn or to make affirmation as a witness, or having been sworn or having made affirmation, fails to answer fully and satisfactorily any question put to him, or fails to produce any book, document or object in his possession or custody or under his control, which he was summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or to imprisonment for a period not exceeding three months.
- (2) Any person who after having been sworn or having made affirmation, gives false evidence before a person taking an examination, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

[\(Section 7: Decided cases\)](#)

7. Attendance of witnesses in certain territories

[\(Section 7\(1\): Decided cases\)](#)

- (1) Whenever a subpoena purporting to be issued by the proper officer of a competent court of law in any territory mentioned in the Second Schedule for the attendance in any civil proceedings before that court of any person, is received from such officer by any magistrate within whose area of jurisdiction such person resides or is, such magistrate shall, if he or she is satisfied that the subpoena was lawfully issued, endorse it for service upon such person, whereupon it may be served as if it were a subpoena issued in the court of such magistrate in proceedings similar to those in connection with which it was issued.

[Sub-s. (1) substituted by s. 36 of Act 75/96]

- (2) Upon service of the subpoena on any person an amount sufficient to cover reasonable expenses to be incurred by him in proceeding to and returning from the court named in the subpoena and during his detention at the place where his evidence is to be given, shall be tendered to him.

[\(Section 7\(3\): Decided cases\)](#)

- (3) Any person subpoenaed under this section who, without sufficient cause, fails to attend at the time and place specified in the subpoena, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or to imprisonment for a period not exceeding three months.
- (4) Any magistrate's court in whose area of jurisdiction the subpoena has been served or the

person subpoenaed resides, shall have jurisdiction to try such person for a contravention of the provisions of subsection (3).

(5) The return of the person who under subsection (1), is authorized to serve a subpoena showing that service was duly effected, together with a certificate under the hand and seal of the person presiding at the court from which the subpoena was issued, showing that the person subpoenaed failed, without establishing sufficient cause, to attend as required when called upon, shall, for purposes of subsection (3), be deemed sufficient proof of such person's failure to attend.

8. Witnesses from certain territories attending court in Republic not to be arrested for certain matters

No person subpoenaed in any territory mentioned in the Second Schedule to appear before a court in the Republic, and who by virtue of any provision of any law of such territory is required so to appear, shall while attending such court be liable to be arrested upon any civil or criminal warrant for any debt due or offence committed in the Republic before appearing before such court.

9. Certain fees not to be recovered in certain cases

No fees other than disbursements shall be recovered from any court outside the Republic in respect of the issue or service of any process for the purposes of this Act, unless the Minister of Justice otherwise directs or unless the process relates to or has been issued or served in pursuance of an order under [section two](#).

10. Minister of Justice may amend First or Second Schedule

The Minister of Justice may by notice in the *Gazette* amend the First or Second Schedule by the exclusion therefrom of any territory or the inclusion therein of any territory in Africa.

[S. 10 amended by ss. 46 and 47 of Act 97/86]

11. Rules

Any power to make rules for any court of law, shall be deemed to include the power to make rules for giving effect to the provisions of [sections two](#) and [three](#) of this Act in the Republic.

[S. 11 substituted by s. 4 of Act 18/96]

12.

[S. 12 repealed by s. 1 of Act 49/96 and by s. 36 of Act 75/96]

13. Repeal and amendment of laws

(1) The laws specified in the Third Schedule are hereby repealed to the extent set out in the fourth column thereof.

(2) The Schedule to the Fugitive Offenders and Neighbouring Territories Evidence Proclamation, 1920 (Proclamation No. 26 of 1920 of the territory of South-West Africa) is hereby amended by the deletion of all the words after the words "South Africa".

14. Short title and date of commencement

This Act shall be called the Foreign Courts Evidence Act, 1962, and shall come into operation upon a date to be fixed by the State President by proclamation in the *Gazette*.

First Schedule

The Kingdom of Lesotho.
 The Republic of Botswana.
 The Kingdom of Swaziland.
 The Republic of Malawi.
 The Republic of Namibia.
 The Republic of Zimbabwe.

[First Schedule amended by Proc. R71/68, Proc. R197/77, Proc. R106/78, Proc. R309/79 and Proc. R173/1983, substituted by Proc. R31/84 and amended by GN R606/94, GN R1266/95 and s. 4 of Act 18/96]

Second Schedule

The Kingdom of Lesotho.
 The Republic of Botswana.
 The Kingdom of Swaziland.
 The Republic of Malawi.
 The Republic of Namibia.
 The Republic of Zimbabwe.

[Second Schedule amended by Proc. R71/68, Proc. R197/77, Proc. R106/78, Proc. R309/79 and Proc. R173/1983, substituted by Proc. R31/84 and amended by GN R606/94, GN R1266/95 and s. 4 of Act 18/96]

Third Schedule

LAWS REPEALED

Country or Province	No. and Year of Law	Title or Subject Matter	Extent of Repeal
United Kingdom	1806 to 1895.	Evidence Acts, 1806 to 1895.	In so far as they apply in the Republic in relation to the obtaining of the evidence of persons in the Republic by courts or tribunals outside the Republic.
„	1870 to 1906.	Extradition Acts, 1870 to 1906.	Section twenty-four of the Extradition Act, 1870, and section five of the Extradition Act, 1873, in so far as they apply in the Republic.
„	44 and 45 Vict. C.69 (1881).	Fugitive Offenders Act, 1881.	Section fifteen in so far as it applies in the Republic.
Cape	Act No. 12 of 1886.	Neighbouring States and Colonies Witnesses Compulsory Attendance Act, 1886.	In so far as it has not been repealed.
„	Act No. 13 of 1889.	Neighbouring States and Colonies Witnesses Interrogatories Act, 1899.	In so far as it has not been repealed
Natal	Act No. 29 of 1899.	Neighbouring Colonies and States Witnesses Interrogatories Act, 1899	The whole
„	Act No. 12 of 1906.	Witnesses Attendance Act, 1906.	In so far as it has not been repealed.

Orange Free State	Chapter VII of the Law Book.	Compelling witnesses resident in this State to appear in courts outside this State.	The whole.
„	Ordinance No. 15 of 1905.	Neighbouring Colonies Witnesses Interrogatories Ordinance, 1905.	In so far as it has not been repealed.
Transvaal	Ordinance No. 2 of 1906.	Neighbouring Colonies Evidence Ordinance, 1906.	In so far as it has not been repealed.