

# UNDCP MODEL FOREIGN EVIDENCE BILL,2000

Bill No ..... of 2000

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To be presented by the Minister of Justice

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## MEMORANDUM OF OBJECTS AND REASONS

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*The object of this bill is to provide for the admissibility in [name of State] of evidence obtained from a foreign State.*

ATTORNEY-GENERAL

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An Act to provide for the manner and form in which evidence obtained from outside [name of State] may be admissible in proceedings in [name of State], and for related purposes.

**ENACTED** by the President and Parliament of [name of State]

### 1. Short title, Extent and Commencement

- (a) This Act may be called the "Foreign Evidence Act, 2000".
- (b) It shall extend throughout [name of State].
- (c) It shall come into force [at once].

### 2. Interpretation

In this Act, unless the context otherwise requires:

- (a) "authorized officer" means:
  - (i) the [Attorney-General]; or
  - (ii) a person appointed by the [Attorney-General], by notice

published in **[the Gazette]**, as an authorized officer for the purposes of this Act;

- (b) "civil proceeding" means a proceeding other than a criminal proceeding;
- (c) "criminal proceeding" includes:
  - (i) a prosecution for an offence;
  - (ii) a proceeding for the sentencing of a person convicted of an offence;
- (d) "foreign law" means a law (whether written or unwritten) of, or in force in a foreign State;
- (e) "foreign material" means:
  - (i) the testimony of a person that:
    - (A) was obtained as a result of a request of a kind referred to in **section 4 of the [Mutual Assistance in Criminal Matters Act, 2000]**;
    - (B) complies with the requirements of **section 4** of this Act;
  - (ii) any exhibit annexed to any such testimony;
  - (iii) any part of any such testimony or exhibit;
- (f) "foreign State" means:
  - (i) any country other than **[name of State]**; and
  - (ii) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to evidence;
- (g) "international criminal tribunal" means any court or tribunal listed in the Schedule to the **Mutual Assistance in Criminal Matters Act, 2000**;
- (h) "international criminal tribunal offence" means any offence for which an international criminal tribunal has power to prosecute a person;
- (i) "related civil proceedings", in relation to a criminal proceeding, means any civil proceedings arising from the same subject matter from which the criminal proceeding arose;
- (j) "**[name of State]** court" means:
  - (i) the **[Court of Appeal]**;
  - (ii) the **[High Court]**;

- (iii) a magistrates court; or
  - (iv) a person or body authorized by a **[name of State]** law, or by consent of parties, to hear, receive and examine evidence;
- (k) "**[name of State]** law" means a law (whether written or unwritten) of or in force in **[name of State]**.

### 3. Application of this Act

This Act applies to:

- (a) a proceeding before a **[name of State]** court that is:
  - (i) a criminal proceeding in relation to **[name of State]** law of; or
  - (ii) a related civil proceeding;
- (b) testimony obtained as a result of a request made by or on behalf of the **[Attorney-General]** to a foreign State or international criminal tribunal for the testimony of a person pursuant to the **[Mutual Assistance in Criminal Matters Act, 2000]**; and
- (c) any exhibit annexed to any such testimony.

### 4. Requirements for testimony

- (1) The testimony must be taken before a court or international criminal tribunal:
  - (a) on oath or affirmation; or
  - (b) under such caution or admonition as would be accepted by the court or international criminal tribunal concerned, for the purposes of giving testimony in proceedings before it.
- (2) The testimony may be taken *in camera*.

### 5. Form of testimony

- (1) The testimony may be recorded:
    - (a) in writing;
    - (b) on audio tape;
    - (c) on video tape; or
    - (d) by any other electronic or mechanical means,
- or may be taken by means of technology that permits the virtual presence of the person in **[name of State]**.

- (2) The writing need not:
  - (a) be in the form of an affidavit; or
  - (b) constitute a transcript of a proceeding in a foreign court or international criminal tribunal.
- (3) Where the testimony has been made by means of video or other means which permits the virtual presence of the person in **[name of State]**, that testimony shall be deemed to have been given in **[name of State]**.
- (4) The testimony must be endorsed with, or accompanied by, a certificate to the effect that:
  - (a) it is an accurate record of the evidence given; and
  - (b) it was taken in a manner specified in **section 4**.
- (5) The certificate must purport to:
  - (a) be signed or certified by a judge, magistrate or court officer of the foreign State or international criminal tribunal to which the request was made; and
  - (b) bear an official or public seal of:
    - (i) the foreign State or international criminal tribunal; or
    - (ii) an authority of the foreign State responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer in or of the Government.

## **6. Foreign material may be adduced as evidence**

- (1) Subject to **subsection (2)**, foreign material may be adduced as evidence in a proceeding to which this Act applies.
- (2) The foreign material will be excluded from evidence if:
  - (a) it appears to the court's satisfaction, at the hearing of the proceeding, that the person who gave the testimony concerned is present in **[name of State]** and is able to testify at the hearing;
  - (b) the evidence would not have been admissible had it been adduced from the person at the hearing; or
  - (c) it appears to the court that the interests of justice would not be served by admitting the evidence.
- (3) In reaching a decision pursuant to **subsection (2) (c)**, the court shall take into account:
  - (a) the extent to which the foreign material provides evidence that would not otherwise be available;
  - (b) the probative value of the foreign material with respect to any issue that is likely to be determined in the proceeding;

- (c) the extent to which statements contained in the material could, at the time they were made, be challenged by questioning the persons who made them;
- (d) whether exclusion of the material would cause undue expense or delay; and
- (e) whether exclusion of the foreign evidence would prejudice:
  - (i) the defence in criminal proceeding; or
  - (ii) any party to related civil proceedings.

**7. Proof of service of documents abroad**

The service of documents in a foreign State may be proved by affidavit of the person who served it.

**8. Certificates relating to foreign material**

- (1) An authorized officer may certify that specified foreign material was obtained as a result of a request made to a foreign State or international criminal tribunal by or on behalf of the Minister.
- (2) It is presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

**9. Operation of other laws**

This Act does not limit the ways in which a matter may be proved, or evidence may be adduced under any other **[name of State]** law.



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