

No. 80, 1962.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

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.

(English text signed by the State President.)
(Assented to 22nd June, 1962.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. In this Act, unless the context otherwise indicates— Definitions.

“magistrate” includes an additional magistrate and an assistant magistrate and, in relation to the area in the territory of South-West Africa beyond the Police Zone, as defined in section *three* of the Prohibited Areas Proclamation, 1928 (Proclamation No. 26 of 1928 of that territory), a native commissioner, an assistant native commissioner and any officer in charge of native affairs;

“Republic” includes the territory of South-West Africa.

2. (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 or criminal 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, who, in the case of criminal proceedings, shall be a magistrate.

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

(2) Such an order shall not be granted if it appears to the court or judge that the evidence required is in connection with criminal proceedings of a political character or that the witness is an accused person in the proceedings concerned.

3. 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.

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

4. (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.

Examination of witnesses.

(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) If at any time it appears to the person taking the examination that the evidence required is in connection with criminal proceedings of a political character or that the witness is an accused person in the proceedings concerned, he shall not proceed with the examination.

(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. (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.

Rights and privileges of witnesses.

(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.

6. (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.

Offences by witnesses.

(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.

7. (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 or criminal 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 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.

Attendance of witnesses in certain territories.

(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.

(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 sub-section (3).

(5) The return of the person who under sub-section (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 sub-section (3), be deemed sufficient proof of such person's failure to attend.

8. 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.

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

9. 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*. Certain fees not to be recovered in certain cases.

10. The State President may by proclamation 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. State President may amend First or Second Schedule.

11. (1) Any powers to make rules under the Supreme Court Act, 1959 (Act No. 59 of 1959), shall be deemed to include the power to make rules for giving effect to the provisions of section *two* of this Act. Rules.

(2) Any powers to make rules under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall be deemed to include the power to make rules for giving effect to the provisions of section *three* of this Act in the Republic, excluding the territory of South-West Africa.

(3) Any powers to make rules under the Magistrates' Courts Proclamation, 1935 (Proclamation No. 31 of 1935 of the said territory), shall be deemed to include the power to make rules for giving effect to the provisions of section *three* of this Act in the said territory.

12. This Act shall apply also in the territory of South-West Africa, including that portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of that territory, and the Eastern Caprivi Zipfel referred to in sub-section (3) of section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951). Application of Act to South-West Africa.

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

(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. 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*. Short title and date of commencement.

First Schedule.

Basutoland.
The Bechuanaland Protectorate.
The Federation of Rhodesia and Nyasaland.
The Swaziland Protectorate.

Second Schedule.

Basutoland.
The Bechuanaland Protectorate.
The Federation of Rhodesia and Nyasaland.
The Swaziland Protectorate.

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.
Do.	1870 to 1906.	Extradition Acts, 1870 to 1906.	Section <i>twenty-four</i> of the Extradition Act, 1870, and section <i>five</i> of the Extradition Act, 1873, in so far as they apply in the Republic.
Do.	44 and 45. Vict. C.69 (1881).	Fugitive Offenders Act, 1881.	Section <i>fifteen</i> 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.
Do.	Act No. 13 of 1899.	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.
Do.	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.
Do.	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.