

HAGUE CONVENTION OF 18 MARCH 1970

THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

Swaziland is not a party to this convention thus does not apply it. However, Swaziland has entered into bilateral agreements with different neighbouring states such as Mozambique and South Africa for purposes of taking of evidence abroad. By legislation, Criminal Matters (Mutual Assistance) Act, 2001, the Minister for Justice or an authorised officer is designated as the central authority for receiving and forwarding requests to obtain evidence for use in criminal as well as other matters.

We have attempted to answer the questions so far as it relates to the above.

QUESTIONNAIRE

1. Do you have at your disposal recent precedents delivered pursuant to the 1970 Convention and which would be relevant for the Special Commission ? If SO, can you provide them to us? Insofar as the text of the ruling is drafted in a language other than English or French, a summary in the English or French language of the facts and grounds for the ruling would be very helpful.

No recent precedents have been delivered pursuant to the Convention.

2. Do you have at your disposal statistics relating to the number of requests to obtain evidence addressed to your State from different States Party to the Convention ?

No statistics are kept on the number of requests.

3. Have you encountered practical difficulties connected with application of the Convention?

The Convention has not been applied in Swaziland.

4. In light of the terminology used in the Practical Handbook for the Service Convention (see provisional

version of the new Practical Handbook, Prel. Doc. No 1, (I. -5. -6», do you have at your disposal precedents determining whether the Convention is considered as "mandatory" by your State ? Do you have at your disposal case-law determining whether the Convention is considered as "exclusive" by your State?

No.

If your State has stated a reservation under Article 23 of the Convention, has that reservation been asserted to deny performance of requests to obtain evidence from abroad ? If SO, what was the procedure applied in such case?

Swaziland has not applied Article 23 of the Convention.
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6. At the Special Commission of 1989, it was recommended that priority be granted to the procedures provided for under the Convention for their requests to obtain evidence located abroad, and that States having made or proposing to make the reservation under Article 23 should limit its scope. Do you consider this recommendation to have been helpful? Has it been applied in practice?

The recommendation has not been applied by Swaziland.
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7. The Permanent Bureau has been faced on several occasions with the issue whether the Convention applies to arbitration proceedings. This issue was discussed at the Special Commission in May 1985, but the Commission had considered at the time that there was no need to adopt a Protocol in this respect. For its part, the 1989 Special Commission stated that the law of certain countries provided for legal assistance to obtain evidence in arbitration matters, in which case the Convention might be used in order to seek evidence abroad.

The position advised by the Permanent Bureau is that the benefit of the Convention may extend to arbitration proceedings insofar as the arbitration panel sends its request to obtain evidence abroad to a judicial authority of its State, which will then assume forwarding to the State addressed of the request to obtain evidence: as the arbitration panel cannot be treated as a judicial authority for the purposes of the Convention, it cannot itself forward the request to obtain evidence directly to the State addressed.

Have you had occasion to deal with such requests to obtain evidence in the course of arbitration proceedings?

Swaziland had occasion to request to obtain evidence in arbitration proceedings.

Do you share the view of the Permanent Bureau?

Yes.

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8. What is the average time elapsing between receipt of the request to obtain evidence and its performance?

Where a request is made by our State, the average time of its performance is two weeks and where the request is received from other States, the average is three to five months.

9. Do you allow the representatives of a requesting Court to take part in the execution pursuant to Article 8 of the Convention?

This article has not been applied.

10. Do your central authorities accept to receive requests by electronic means to obtain evidence from abroad?

Yes, the central authority accepts requests by electronic means.

11. Have your authorities received or forwarded requests to obtain evidence requiring the use of new information technology? If SO, were these requests fulfilled?

Not yet.

12. Would you consider it useful to have a recommendation adopted for the promotion of the use of modern communication technologies? Do you consider that development of a new instrument ought to be considered in order to deal more specifically with these issues?

Yes. Modern communication technologies enhances and speeds up communication. Development of a new instrument ought to be considered.