

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING**

No. R. 774

2 July 2004

EXTRADITION ACT, 1962 (ACT NO. 67 OF 1962)

**EXTRADITION TREATY BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE ARAB
REPUBLIC OF EGYPT**

I, Bridgette Sylvia Mabandla, Minister for Justice and Constitutional Development, hereby give notice in terms of section 2(3)*ter* of the Extradition Act, 1962 (Act No. 67 of 1962), that the Parliament of the Republic of South Africa has on 14 November 2002 agreed to the ratification of the Extradition Treaty between the Republic of South Africa and the Arab Republic of Egypt as set out in the Schedule.

**BRIDGETTE SYLVIA MABANDLA
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

SCHEDULE

EXTRADITION TREATY

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT

PREAMBLE

The Government of the Republic of South Africa and the Government of the Arab Republic of Egypt;

Desiring to provide for more effective cooperation between the two States in the fight against crime, and, for that purpose, to conclude a treaty for the extradition of offenders;

HAVE AGREED as follows:

ARTICLE 1 Obligation to Extradite

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty and subject to their respective domestic laws relating to extradition, persons whom the authorities in the Requesting State have charged with or convicted of an extraditable offence.

ARTICLE 2 Extraditable Offences

1. An offence shall be an extraditable offence if it is punishable under the laws in both States by deprivation of liberty for a period of at least one year or by a more severe penalty.
2. An offence shall also be an extraditable offence if it consists of attempting or conspiring to commit, or aiding, abetting, inducing, counselling or procuring the commission of, or being an accessory before or after the fact to, any offence contemplated in paragraph 1.
3. For the purposes of this Article, an offence shall be an extraditable offence whether or not the laws in the Requesting and Requested States place the offence within the same category of offences or describe the offence by the same terminology.
4. If an offence has been committed outside the territory of the Requesting State, extradition shall be granted where the laws in the Requested State provide for the punishment of an offence committed outside its territory in similar circumstances. Where the laws in the Requested State do not so provide, the competent authority of the Requested State may, in its discretion, grant extradition.

5. Extradition shall also be granted in respect of a person convicted of but not yet sentenced, or convicted of and sentenced for an offence as contemplated in this Article, for the purpose of sentence, or for enforcing such sentence or the remaining portion thereof, as the case may be.

6. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control, or other revenue matters, extradition may be granted notwithstanding that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the Requesting State.

7. If the request for extradition relates to more than one offence and extradition is granted for an extraditable offence, it shall also be granted for any other offence specified in the request even if the latter offence is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

ARTICLE 3

Treatment of Nationals

1. Neither State shall be bound to extradite its own nationals.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its prosecution authorities, subject to the law of the Requested State.

ARTICLE 4

Political and Military Offences

1. Extradition shall not be granted if the offence for which extradition is requested is a political offence.
2. For the purposes of this Treaty, the following offences shall not be considered political offences:
 - (a) a murder or other violent crime against a Head of State or Deputy Head of State of the Requesting or Requested State, or of or against a member of such person's family;
 - (b) an offence for which both the Requesting and Requested States have the obligation pursuant to a multilateral

international agreement to extradite the person sought or to submit the case to their respective competent authorities for decision as to prosecution;

- (c) murder;
- (d) terrorism offences;
- (e) an offence involving kidnapping, abduction or any form of unlawful detention, including the taking of a hostage; and
- (f) attempting or conspiring to commit, aiding, abetting, inducing, counselling or procuring the commission of, or being an accessory before or after the fact to such offences.

3. Notwithstanding the provisions of paragraph 2, extradition shall not be granted if the competent authority of the Requested State determines that there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality or political opinion.

4. The competent authority of the Requested State shall refuse extradition for offences under military law that are not offences under ordinary criminal law.

ARTICLE 5 **Other Grounds for Refusal**

1. Extradition may be refused if the Requested State has substantial grounds to believe that the probable sentence of the offence in the Requesting State is qualitatively different from the probable sentence given on the same offence in the courts of the Requested State.

2. Extradition may be refused unless the Requesting Party undertakes or gives such assurance as considered sufficient by the Requested Party that the person sought will not be -

- (a) detained without trial;
- (b) tortured in any way; and
- (c) treated or punished in a cruel, inhuman or degrading way.

ARTICLE 6 **Non Bis in Idem**

1. Extradition shall not be granted when the person sought has been convicted or acquitted of the offence for which extradition is requested.

2. Extradition shall not be precluded by the fact that the competent authorities of the Requested State have decided either -
 - (a) not to prosecute the person sought for the acts or omissions for which extradition is requested;
 - (b) to discontinue any criminal proceedings which have been instituted against the person sought for those acts or omissions: Provided that such discontinuance does not have the effect of acquittal; or
 - (c) to investigate the person sought for the same acts or omissions.

ARTICLE 7

Temporary and Deferred Surrender

1. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State until such prosecution has been concluded or any such sentence has been served.
2.
 - (a) If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, that State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution.
 - (b) The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement between the Requesting and Requested State.

ARTICLE 8

Lapse of Time

Extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws in the Requesting State.

ARTICLE 9

Extradition Procedures and Required Documents

1. All requests for extradition shall be made in writing and shall be

submitted through the diplomatic channel.

2. All requests shall be supported by -
 - (a) information describing the facts of the offence(s) and the procedural history of the case;
 - (b) a statement or text of the law, if any, creating or relating to the offence(s) for which the extradition is requested;
 - (c) a statement or text of the relevant law prescribing maximum punishment for the offence(s);
 - (d) a statement or text of the law relating to lapse of time which shall be conclusive proof of that law;
 - (e) as accurate a description as possible of the person sought together with any other information which may help to establish that person's identity or nationality and probable location;
 - (f) the documents, statements or other information specified in paragraph 3 or 4, as the case may be.

3. In addition to the information, statements or documents referred to in paragraph 2, a request for extradition of a person who is sought for prosecution shall also be supported by -
 - (a) a copy of the warrant or order of arrest, if any, issued by a judge or other competent authority;
 - (b) a copy of the indictment, charge sheet or other charging document; and
 - (c) such information as would justify committal for extradition under the laws of the Requested State, but neither State is required to establish a *prima facie* case.

4. In addition to the information, statements or documents referred to in paragraph 2, a request relating to a person who has been convicted of the offence for which extradition is sought shall also be supported by -
 - (a) a copy of the judgment of conviction, or, if a copy is not available, a statement by a judicial officer or other competent authority that the person has been convicted or a copy of any record of conviction that reflects the charge and the conviction;
 - (b) information establishing that the person sought is the person to whom the finding of guilt refers;
 - (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out; and
 - (d) in the case of a person who has been convicted *in absentia*, the documents required by paragraph 3.

ARTICLE 10

Admissibility of Documents

Any document submitted in support of an extradition request shall be received and admitted as evidence in extradition proceedings if such document has been certified as a true copy of the original by a magistrate, judge or any other person authorized to do so and such document has been authenticated by a statement by –

- (a) if the Requested State is the Republic of South Africa, the Minister of Justice of the Arab Republic of Egypt; or
- (b) if the Requested State is the Arab Republic of Egypt, the Minister responsible for Justice of the Republic of South Africa, or

a person designated by such Minister under the seal of that Minister, identifying the person who has signed the document, including that person's position or title or in any other manner provided for in the law of the Requested State.

ARTICLE 11

Translation

Any document produced in relation to extradition proceedings in terms of this Treaty which is not in English shall be accompanied by a translation in English.

ARTICLE 12

Additional Information

1. If the competent authority of the Requested State considers that the information furnished in support of the request for extradition is not sufficient to enable the request for extradition to be granted, it shall notify the Requesting State in order to enable that State to furnish additional information.
2. The competent authority may fix a reasonable time limit for such information to be furnished.
3. Nothing shall prevent the competent authority of the Requested State from presenting to a court of that State information sought or obtained after submission of the request to the Court or after expiration of the time stipulated pursuant to paragraph 2.

ARTICLE 13 Provisional Arrest

1. In case of urgency, the Requesting State may, for the purpose of extradition, request the provisional arrest of the person sought pending presentation of the documents in support of the extradition request. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the respective Ministries responsible for Justice. The facilities of the International Criminal Police Organization (INTERPOL) may also be used to transmit such a request. The application may also be transmitted by post, telegraph, telefax or any other means affording a record in writing.
2. The application for provisional arrest shall contain -
 - (a) a description of the person sought;
 - (b) the location of the person sought, if known;
 - (c) a description of the offence(s);
 - (d) a concise statement of the acts or omissions alleged to constitute the offence(s);
 - (e) a description of the punishment that can be imposed or has been imposed for the offence(s);
 - (f) a statement that a document referred to in Article 9(3)(a) or Article 9(4)(a), as the case may be, exists; and
 - (g) a statement that the documents supporting the extradition request for the person sought will follow within the time specified in this Treaty.
3. Prompt attention shall be given to such application and the Requesting State shall be notified as soon as possible of the decision regarding its application for provisional arrest and, if applicable, the reasons for any inability to proceed with the application.
4. A person who is provisionally arrested may be discharged from custody upon the expiration of forty (40) days from the date of provisional arrest pursuant to this Treaty if the competent authority of the Requested State has not received the documents required in Article 9. For this purpose, receipt of said documents by the Embassy of the Requested State in the Requesting State shall constitute receipt by the competent authority of the Requested State.
5. The release from custody of a person pursuant to paragraph 4 shall not prejudice the subsequent re-arrest and extradition of that person if the documents required in Article 9 are delivered at a later date.

ARTICLE 14

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State through the diplomatic channel of its decision on the request for extradition.
2. Reasons shall be given by the Requested State for any complete or partial refusal of a request for extradition. The Requested State shall provide copies of pertinent judicial decisions upon request.
3. If the request for extradition is granted, the relevant authorities of the Requesting and Requested States shall agree on the date and place for the surrender of the person sought.
4. If the person sought is not removed from the territory of the Requested State within 15 days of the appointed date, that person may be discharged from custody. In all cases the person to be extradited shall be released after 30 days of the appointed date and the Requested State, in its discretion, may subsequently refuse extradition for the same offence.
5. If circumstances beyond its control prevent either the Requesting State or the Requested State from respectively surrendering or receiving the person sought, the State so prevented shall notify the other accordingly and seek to agree on a new date and if required, a new place for such surrender.

ARTICLE 15

Concurrent Requests

1. Where requests are received from two or more States for the extradition of the same person, either for the same offence or for different offences, the competent authority of the Requested State shall determine to which of those States, if any, the person is to be extradited and shall notify the Requesting State of its decision.
2. In determining to which State the person is to be extradited, the Requested State shall consider all relevant factors, including but not limited to -
 - (a) whether the requests were made pursuant to an extradition treaty;
 - (b) the relative seriousness of the offences, should those requests

- relate to different offences;
- (c) the time and place of commission of each offence;
 - (d) the respective dates on which the requests were received from the respective States;
 - (e) the interests of the respective States;
 - (f) the nationality of both the victim and the offender; and
 - (g) the possibility of any subsequent extradition between the respective States.

ARTICLE 16

Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may seize and surrender to the Requesting State all property, including articles and documents, that may be found in the Requested State and that has been acquired as a result of the offence or is connected thereto or may be required as evidence, if extradition is granted.
2. The property referred to in paragraph 1 may be surrendered to the Requesting State, if the latter so requests, even if the extradition cannot be carried out due to the death, disappearance or escape of the person sought.
3. Where the said property is liable to seizure or confiscation within the jurisdiction of the Requested State, the latter may, upon satisfactory assurance from the Requesting State that the property will be returned within a fixed period of time or as soon as practicable, temporarily surrender that property to the Requesting State. The Requested State may also defer the surrender of such property if it is required in connection with pending criminal proceedings in the jurisdiction of the Requested State.
4. Any rights which the Requested State or third parties may have to such property shall be duly respected in accordance with the law in the Requested State.

ARTICLE 17

Rule of Specialty

1. A person extradited under this Treaty shall not be detained, tried or punished in the Requesting State for any offence committed before his or her extradition other than an offence -

- (a) for which extradition was granted or any other extraditable offence of which the person could be convicted upon proof of the facts upon which the request for extradition was granted, or is a lesser included offence;
 - (b) for which the competent authority of the Requested State consents to the person's detention, trial, or punishment. For the purpose of this paragraph-
 - (i) the Requested State may require the submission of the documentation referred to in Article 9; and
 - (ii) the person extradited may be detained by the Requesting State for sixty (60) days, or for such longer period of time as the Requested State may authorize, pending the processing of the request.
2. Paragraph 1 of this Article shall not apply if-
- (a) the person extradited leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
 - (b) the person extradited has had an opportunity to leave the territory of the Requesting State and has not done so within thirty (30) days of final discharge in respect of the offence for which that person was extradited.

ARTICLE 18

Legal Characterisation

If the legal characterization of the action subject to the crime has been modified during the proceedings taken against the surrendered person, he may not be charged or prosecuted unless the elements constituting the crime, according to their modified characterization allow extradition.

ARTICLE 19

Surrender to a Third State

1. Where a person has been surrendered to the Requesting State by the Requested State, the Requesting State shall not surrender that person to any third State for an offence committed before that person's surrender unless –
- (a) the Requested State consents to that surrender; or
 - (b) the person has had an opportunity to leave the territory of the Requesting State and has not done so within 30 days of final discharge in respect of the offence for which that person was surrendered by the Requested State or has returned to the

territory of the Requesting State after leaving it.

2. Before acceding to a request pursuant to paragraph 1, the Requested State may request relevant information.

ARTICLE 20 **Waiver**

If the person sought, formally consents, by way of affidavit or otherwise, to be surrendered to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.

ARTICLE 21 **Transit**

1. Either State may authorize transportation through its territory of a person surrendered to the other State by a third State.
2. A request for transit shall be transmitted through the diplomatic channel or directly between the respective Ministries responsible of Justice. In cases of urgency, the facilities of the International Criminal Police Organization (INTERPOL) may also be used to transmit such a request.
3. The State requested to grant transit may refuse to comply when the person concerned is its national.
4. The request for transit shall contain -
 - (a) a description of the person together with any information that may help to establish his or her identity and nationality; and
 - (b) a brief statement of the facts of the case, and a list of the offences for which the person was surrendered by the third State.
5. Permission for the transit of a person shall, subject to the law of the Requested State, include permission for the person to be held in custody during transit. If transportation is not continued within a reasonable time, the competent authority of the State in whose territory the person is being held may direct that the person be released.

6. Authorization is not required when air transportation is used by one State and no landing is scheduled on the territory of the other State. If an unscheduled landing does occur, the State in whose territory such landing occurs may require a request for transit pursuant to paragraph 2, and it may detain the person until the request for transit is received and the transit is effected, provided that such request is received within 96 hours of the unscheduled landing.

7. If the State asked to permit the transit is also requesting the extradition of the said person, the transit may be postponed with the consent of the Requesting State until the judiciary of such State finalizes the prosecution of that person.

ARTICLE 22

Representation and Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall advise, assist, and otherwise represent the interests of the Requesting State.

2. The Requested State shall bear the expenses incurred in its territory or jurisdiction in the arrest and detention of the person whose extradition is sought until that person is surrendered to a person nominated by the Requesting State.

3. The Requesting State shall pay all the expenses incurred in the translation of extradition documents and in conveying the person from the territory of the Requested State.

4. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination or surrender of persons under this Treaty.

ARTICLE 23

Consultation

The Ministries responsible for Justice or persons designated by such Ministries may consult with each other directly or through the facilities of the International Criminal Police Organization (INTERPOL) in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

ARTICLE 24
Application

This Treaty shall apply to extraditable offences committed before, on or after the date upon which this Treaty enters into force.

ARTICLE 25
Ratification, Entry into Force, and Termination

1. This Treaty shall be subject to ratification and the instrument of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force upon the exchange of the instruments of ratification.
3. Either State may terminate this Treaty at any time by giving written notice to the other State, through the diplomatic channel and the termination shall be effective six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty in the English and Arabic languages, both being equally authentic.

DONE at Cairo in duplicate, this 22nd day of October, 2001.

Dr N C Dlamini Zuma
Minister of Foreign Affairs
**FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH
AFRICA**

Mr A M el Sayed
Minister of Foreign Affairs
**FOR THE GOVERNMENT OF
THE ARAB REPUBLIC OF
EGYPT**