

No. R. 34

21 January 2005

**EXTRADITION ACT, 1962 (ACT NO. 67 OF 1962)****EXTRADITION TREATY BETWEEN THE REPUBLIC OF SOUTH AFRICA AND  
THE PEOPLE'S REPUBLIC OF CHINA**

I, Brigitte 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 11 November 2002 agreed to the ratification of the Extradition Treaty between the Republic of South Africa and the People's Republic of China 'as set out in the Schedule. The said Treaty entered into force on 17 November 2004.

Mrs B S Mabandla  
Minister for Justice and Constitutional Development

**SCHEDULE**

**TREATY**

**BETWEEN**

**THE REPUBLIC OF SOUTH AFRICA**

**AND**

**THE PEOPLE'S REPUBLIC OF CHINA**

**ON**

**EXTRADITION**

**THE REPUBLIC OF SOUTH AFRICA AND THE PEOPLE'S REPUBLIC OF CHINA**  
(hereinafter referred to as "the Contracting States");

**DESIRING** to make more effective their co-operation in the prevention and suppression of crime by concluding a Treaty on Extradition;

**AFFIRMING** their mutual respect for sovereignty and equality and mutual benefit and respect for each other's legal systems and judicial institutions;

**HAVE AGREED** as follows:

#### **ARTICLE 1**

##### **Obligation to Extradite**

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty and at the request of the other Contracting State, persons who are wanted for prosecution or imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

#### **ARTICLE 2**

##### **Extraditable Offences**

1. For the purpose of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting States that is punishable by imprisonment for a period of at least one **year** or by a more severe penalty.
2. Where the request for extradition relates to a person sentenced by a court of the Requesting State for an extraditable offence, extradition for the purpose of enforcing the sentence shall be granted if a period of at least six months of the sentence remains to be served.
3. For the purpose of this Article, in determining whether conduct is **an** offence against the laws of the Requested State, it shall not matter whether the laws of the Contracting States

place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology or stipulate the same constituent elements of the offence.

4. An offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction. Where such conduct occurred outside the territory of the Requesting State, it shall set out its legal provisions establishing its jurisdiction.

5. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:

- (a) it was an offence in the Requesting State at the time of the conduct constituting the offence; and
- (b) the conduct alleged would, if it had taken place in the Requested State at the time of the making of the request for extradition, have constituted an offence against the laws of the Requested State.

6. If the request for extradition relates to a sentence of both imprisonment and a pecuniary sanction, the Requested State may grant extradition for the enforcement of both the imprisonment and the pecuniary sanction.

7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting States, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

### **ARTICLE 3**

#### **Mandatory Refusal of Extradition**

Extradition shall be refused where:

- (a) the offence for which extradition is requested is considered by the Requested State to be a political offence;
- (b) the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin,

political opinion, sex, or status or that that person's position may be prejudiced for any of those reasons;

- (c) the person whose extradition is requested has, under the laws of the Requesting State, become immune from prosecution or punishment because of lapse of time, pardon or amnesty;
- (d) the offence for which extradition is requested only constitutes a military offence; or
- (e) the person sought has been finally acquitted or convicted or is otherwise exempted from further prosecution for the same offence for which extradition is requested.

#### **ARTICLE 4**

##### **Discretionary Refusal of Extradition**

Extradition may be refused where:

- (a) the offence for which extradition is requested is subject to the jurisdiction of the Requested State and the person sought is being prosecuted or will be prosecuted in that State;
- (b) the probable penalty that may be imposed in the Requesting State is in conflict with the fundamental principles of the laws of the Requested State;
- (c) in exceptional cases, the Requested State, while also taking into account the seriousness of the offence and the interests of the Requesting State, considers that because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

#### **ARTICLE 5**

##### **Nationality**

1. A Contracting State shall have the right to refuse 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 prosecuting authorities.

**ARTICLE 6**  
**Presentation of Reauests**

1. Requests for provisional arrest or extradition shall be made:
  - (a) in the case of the Republic of South Africa, to the Minister for Justice and Constitutional Development; and
  - (b) in the case of the People's Republic of China, to the Ministry of Foreign Affairs.
  
2.
  - (a) Requests for extradition shall be made in writing and communicated directly between the authorities of the Contracting States mentioned in paragraph 1 of this Article, however, use of the diplomatic channel shall not be excluded.
  - (b) Requests for provisional arrest shall be communicated as outlined in subparagraph (a) of this paragraph or through the facilities of the International Criminal Police Organization (INTERPOL) or through other channels agreed upon by both Contracting States.

**ARTICLE 7**  
**Documents to be Submitted**

1. The following documents shall be submitted in support of a request for extradition:
  - (a) in all cases:
    - (i) the name of the requesting authority;
    - (ii) information about the person sought including, but not limited to, his or her name, age, sex, nationality, occupation or location that may help to identify and trace that person;
    - (iii) a statement prepared by a competent authority, which describes briefly the conduct constituting the offence for which the extradition is requested, indicating the place and the date of the commission of the offence and which provides a description or a copy of the text of the legal provisions describing the offence and applicable penalty;
    - (iv) a copy of the text of the relevant legal provisions establishing criminal jurisdiction over the offence where the offence occurred outside the territory of the Requesting State; and

- (v) a copy of the text of the relevant legal provisions concerning any time limit on the prosecution of the offence in question.
- (b) in the case of a person sought for prosecution for an offence:
  - (i) the original or a certified true copy of the order of arrest or of any document having the same force and effect, issued by a competent authority of the Requesting State;
  - (ii) a copy of the indictment, charge sheet or other charging document, if any; and
  - (iii) a document issued by a competent authority in charge of the prosecution of the case containing a summary of the available evidence and a statement certifying that the evidence is sufficient under the laws of the Requesting State to warrant the prosecution of the person sought.
- (c) in the case of a person who has been convicted:
  - (i) a statement by a competent authority describing the conduct for which the person was convicted and a certified copy of the document that records the conviction and, where applicable, sentence of the person; and
  - (ii) if a portion of the sentence has already been served, a statement by a competent authority specifying the portion of the sentence which remains to be served.

2. Any document submitted in accordance with this Treaty shall be in an official language of the Requested State or be accompanied by a certified translation into an official language of that State.

### **ARTICLE 8**

#### **Authentication of Supporting Documents**

Where the laws of the Requested State require authentication, documents shall be authenticated by:

- (a) in the case of the Republic of South Africa, the Minister responsible for Justice or a person designated by him or her under his or her signature; and
- (b) in the case of the People's Republic of China, a person duly designated by the Ministry of Foreign Affairs to be responsible for the authentication of documents,

identifying the person who has signed the document, including that person's position or title.

**ARTICLE 9**  
**Additional Information**

If the Requested State considers that the information furnished in support of a request for extradition is not sufficient, that State may request that additional information be furnished within thirty (30) days. Where duly requested by the Requesting State, that time limit may be extended for fifteen (15) days. If the Requesting State fails to submit the required information within any stipulated time, it may be deemed to have renounced its request. However, in that event the Requesting State shall not be precluded from making a fresh request for extradition for the same offence.

**ARTICLE 10**  
**Consent**

Subject to its laws, a Requested State may extradite to a Requesting State a person sought, who consents thereto.

**ARTICLE 11**  
**Provisional Arrest**

1. In case of urgency, the competent authorities of the Requesting State may apply by any means which allows for a written record for the provisional arrest of the person sought.
2. An application for provisional arrest shall include the following:
  - (a) the name of the requesting authority;
  - (b) information about the person sought including, but not limited to, his or her name, age, sex, nationality, occupation or location that may help to identify and trace that person;
  - (c) a statement that a request for extradition will follow;
  - (d) a description of the offence and applicable penalty, with a brief summary of the facts of the case, including the date and place of the commission of the offence;

- (e) a statement attesting to the existence of a warrant of arrest or a conviction to which this Treaty applies and details thereof; and
- (f) any other information which would justify provisional arrest in the Requested State.

3. The Requested State shall promptly inform the Requesting State of the measures taken pursuant to the application for provisional arrest.

4. Provisional arrest shall be terminated if the Requested State has not received the documents referred to in Article 7 through the channel provided for in Article 6 within forty-five (45) days after the arrest. The competent authorities of the Requested State, insofar as is permitted by the laws of that State, may extend that period with regard to the reception of such documents.

5. The expiry of the forty-five (45) day period, and of any extension thereto, does not preclude subsequent arrest and extradition if a request for extradition is subsequently received.

#### **ARTICLE 12**

#### **Concurrent Requests**

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 Requested State shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

#### **ARTICLE 13**

#### **Decision and Notification**

The Requested State shall deal with the request for extradition in accordance with the procedures provided for in its laws and as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State. Reasons shall be given for any complete or partial refusal of an extradition request.

**ARTICLE 14****Surrender**

1. Where extradition is granted, the Requested State shall surrender the person in accordance with arrangements agreed to between the competent authorities of the Contracting States.

2. The Requesting State shall receive the person within such reasonable period as the Requested State specifies and, if the person is not received by the Requesting State within that period, the Requested State may refuse to extradite that person for the same offence, unless otherwise provided for.

3. If circumstances beyond its control prevent a Contracting State from surrendering or receiving the person to be extradited, it shall notify the other Contracting State. The Contracting States shall decide upon a new date of surrender and the provisions of paragraph 2 of this Article shall apply.

4. At the time of the surrender of the person, the Requested State shall inform the Requesting State of the total period of time the person had been detained with a view to his or her extradition.

**ARTICLE 15****Postponed or Temporary Surrender**

1. Where the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.

2. Insofar as is permitted by its laws, where a person referred to in paragraph 1 of this Article has been found extraditable, the Requested State may temporarily surrender the person sought for the purpose of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting States. 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. A person who is returned to the

Requested State following a temporary surrender shall be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty.

**ARTICLE 16**  
**Surrender of Property**

1. The Requested State shall, insofar as its laws permit and at the request of the Requesting State, seize property, reasonably suspected to be involved in the commission of the offence or required for the proof of the offence for which the extradition of the person is requested. The Requested State shall surrender the property to the Requesting State when extradition is granted.

2. The property mentioned in paragraph 1 of this Article shall be surrendered even if extradition, having been granted, cannot be carried out owing to the death, disappearance or escape of the person sought.

3. Where the property referred to in paragraphs 1 and 2 of this Article is required in the Requested State in connection with civil or criminal proceedings, the Requested State may temporarily retain it until the conclusion of such proceedings or surrender it on condition that it be returned.

4. Any rights that the Requested State or third parties may have acquired in the property shall be preserved. Where these rights exist, the property shall, at the request of the Requested State, be returned without charge to the Requested State as soon as possible after the conclusion of the proceedings.

**ARTICLE 17**  
**Rule of Specialty**

1. A person who has been extradited shall not be prosecuted, sentenced or detained for any offence committed prior to the surrender other than that for which that person was extradited, nor shall the person's liberty be restricted for any other reason, except where:

- (a) the Requested State consents;

- (b) the person, having had an opportunity to leave the Requesting State, has not done so within thirty (30) days of final discharge. However, this period shall not include the time, for reasons beyond his or her control, that person was unable to leave the territory of the Requesting State; or
  - (c) that person has voluntarily returned to the Requesting State after having left it.
2. A request for the consent of the Requested State under paragraph 1 of this Article shall, if required by the Requested State, be accompanied by the relevant documents required by Article 7 as well as a record of any statement made by the person extradited in respect of the offence concerned.
3. If the charge for which the person was extradited is subsequently changed, that person may be prosecuted or sentenced provided the offence under its revised description is:
- (a) based on substantially the same facts contained in the extradition request and its supporting documents; and
  - (b) punishable by the same maximum penalty as, or a lesser maximum penalty than that for the offence for which the person was extradited.

### **ARTICLE 18**

#### **Reextradition to a Third State**

1. Where a person has been surrendered to the Requesting State, that State shall not extradite the person to any third State for an offence committed before that person's surrender except where:
- (a) the Requested State consents;
  - (b) the person, having had an opportunity to leave the Requesting State, has not done so within thirty (30) days of final discharge. However, this period shall not include the time, for reasons beyond his or her control, that person was unable to leave the territory of the Requesting State; or
  - (c) that person has voluntarily returned to the Requesting State after having left it.
2. The Requested State may request from the Requesting State the production of the documents submitted to it by the third State in relation to any consent sought pursuant to subparagraph 1(a) of this Article.

**ARTICLE 19****Transit**

1. Insofar as is permitted by its laws, transit through the territory of one of the Contracting States shall be granted upon a request by the other Contracting State. The request for transit may be submitted by any means affording a record in writing.
2. No authorization for transit shall be necessary when air travel is used and no landing is scheduled in the territory of the Transit State. In the case of an unscheduled landing, the Transit State may require the request for transit provided for in paragraph 1. Insofar as is permitted by its laws, the Transit State shall detain the person in transit until the transit is carried out, provided that the necessary request is received as soon as possible after the unscheduled landing.

**ARTICLE 20****Expenses**

1. The Requested State shall make all necessary arrangements for, and meet the expense of, any proceedings arising out of a request for extradition.
2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person sought and in the maintenance in custody of the person until surrender to the Requesting State and the expenses associated with the seizure of property referred to in Article 16.
3. The Requesting State shall bear the expenses incurred in conveying the person extradited and transporting any property seized from the Requested State to the Requesting State.

**ARTICLE 21****Notification of Result**

The Requesting State shall promptly provide the Requested State with information on the

outcome of the criminal proceedings or the enforcement of sentence against the person extradited or concerning the re-extradition of that person to a third State.

#### **ARTICLE 22**

#### **Consultation**

The Department for Justice and Constitutional Development of the Republic of South Africa and the Ministry of Foreign Affairs of the People's Republic of China or persons designated by the respective Department or Ministry, may consult with each other directly in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

#### **ARTICLE 23**

#### **Settlement of Disputes**

Any dispute between the *two* Contracting States arising from the implementation or interpretation of this Treaty shall be settled by consultation through diplomatic channels.

#### **ARTICLE 24**

#### **Entry into Force, Amendment and Termination**

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at a place to be determined by the Contracting States. This Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
2. This Treaty applies to any request submitted after its entry into force even if the relevant offence was committed before such entry into force.
3. This Treaty may be amended by mutual consent.
4. Either Contracting State may, by notice in writing through the diplomatic channel, terminate this Treaty at any time. The termination shall take effect on the one hundred and

eightieth day after the date on which it is notified to the other Contracting State. Termination shall not affect the processing of any extradition request received prior to such termination.

**IN WITNESS WHEREOF** the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

**DONE** in duplicate at Beijing, on this 10<sup>th</sup> day of December 2001, in the English and Chinese languages, each language version being equally authentic.

Dr P M Maduna  
Minister for Justice and Constitutional  
Development  
**For The Republic of South Africa**

Mr Zhang Fusen  
Minister of Justice of the People's  
Republic of China  
**For The People's Republic of China**