

No. R. 775

2 July 2004

**INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT, 1996
(ACT NO. 75 OF 1996)**

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS 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 27(2) of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), that the Parliament of the Republic of South Africa has on 14 November 2002 agreed to the ratification of the Mutual Legal Assistance in Criminal Matters 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

AGREEMENT BETWEEN THE GOVERNMENT OF

THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT

ON

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

PREAMBLE

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

DESIRING to extend to each other the widest measure of co-operation in criminal matters;

HAVE AGREED as follows:

ARTICLE 1 **Definitions**

For the purposes of this agreement, "central authority" means -

- (a) for the Republic of South Africa, the Director-General: Justice and Constitutional Development;
- (b) for the Arab Republic of Egypt, the General Department of International and Cultural Cooperation, Ministry of Justice;

"competent authority" means any person or authority responsible for matters related to the investigation or prosecution of offences;

"offence" means:

- (a) in relation to the Republic of South Africa, any offence against the law of the said Republic; and
- (b) in relation to the Arab Republic of Egypt any offence against the law of the said Republic;

"request" means a request made under this agreement;

"Requested State" means the State to which a request is made; and

"Requesting State" means the State that has made a request.

ARTICLE 2 **Scope of Application**

1. The Parties shall provide, in accordance with the provisions of this agreement, mutual assistance in all matters relating to the investigation,

prosecution and prevention of offences, and in legal proceedings in criminal matters.

2. Mutual assistance shall include -
 - (a) exchanging information and objects;
 - (b) locating or identifying persons, objects and sites;
 - (c) taking of evidence, obtaining the testimony or statements of persons;
 - (d) executing requests for searches and seizures;
 - (e) providing documents, records and articles of evidence;
 - (f) serving of documents;
 - (g) transferring persons for testimony or to assist in investigations;
 - (h) executing pecuniary sentences and compensatory orders; and
 - (i) measures to locate, restrain and forfeit the proceeds of crime.

3. This agreement is solely for mutual legal assistance between the Parties and the provisions of this agreement shall not give rise to a right on the part of a private party to obtain or exclude any evidence, or to impede the execution of a request.

4. This agreement shall apply to requests made pursuant to it whether or not the offences concerned occurred prior to this agreement entering into force.

ARTICLE 3 **Other Assistance**

The Parties, including their competent authorities, may provide and continue to provide assistance pursuant to other agreements, arrangements or practices, and this agreement shall not derogate from obligations subsisting between the Parties pursuant to such agreements, arrangements or practices.

ARTICLE 4 **Requests**

1. Requests and responses thereto may be transmitted directly between the central authorities.

2. Requests shall be made in writing. In urgent circumstances and where allowed by the domestic law of the Requested State, or where otherwise permitted by the Requested State in its sole discretion, requests may be made orally but shall be confirmed in writing within ten (10) days thereafter.

ARTICLE 5

Contents of Requests for Evidence

1. In all cases requests for assistance shall include –
 - (a) a statement certifying the nature of the proceedings instituted or the nature and purpose of the investigations in the Requesting State;
 - (b) the name of the competent authority conducting the investigation or proceedings to which the request relates;
 - (c) a summary of the relevant facts and laws including particulars of the offence in respect of which the request is made;
 - (d) a statement of the purpose for which the request is made and the nature of the assistance sought;
 - (e) the need, if any, for confidentiality and the reasons therefor; and
 - (f) any time limit within which compliance with the request is desired.

2. Requests for assistance shall also contain the following information:
 - (a) Where possible, the identity, nationality and location of the person or persons who are the subject of the request;
 - (b) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;
 - (c) in the case of requests for documents, records or articles to be produced, a description thereof or of the desired contents thereof;
 - (d) in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested State;
 - (e) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are

- required and a description of the subject matter of the evidence or statement sought;
- (f) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;
 - (g) in the case of making detained persons available, the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return;
 - (h) in the case of requests for restraint or forfeiture of proceeds of crime, where possible:
 - (i) a detailed description of the proceeds including their location;
 - (ii) a statement describing the basis for belief that the moneys or property are the proceeds of crime;
 - (iii) a statement describing the evidence that would be available for proceedings in the Requested State; and
 - (i) in the case of requests for assistance in recovering a fine or compensation, a certified copy of the document evidencing a sentence or order and a statement that the sentence or order is final and that the sentence or order cannot be satisfied in full in the Requesting State.

3. The Requested State shall not refuse to execute the request solely because it does not include all of the information described in paragraphs 1 and 2 if it can otherwise be executed according to the law of the Requested State.

4. If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional details be furnished.

ARTICLE 6

Refusal or Postponement of Assistance

1. Assistance may be refused when, in the opinion of the Requested State, the execution of the request would impair its sovereignty, national security, public order or other essential public interests or for any reason provided by its law including its system of fundamental or human rights.

2. Assistance may be refused if -
 - (a) the request relates to an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, constitute an offence;
 - (b) the Requesting State cannot grant similar assistance to the Requested State;
 - (c) provision of the assistance sought could prejudice an investigation or proceedings in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State;
 - (d) the request is not made in conformity with this agreement;
 - (e) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons; or
 - (f) the act is an offence under military law, which is not also an offence under ordinary criminal law.

3. The Requested State may postpone assistance if execution of the request would interfere with any ongoing proceedings or investigations in that State.

4. Before assistance is denied or postponed, the Requested State shall, through its central authority -
 - (a) forthwith inform the Requesting State of the reason why it is considering the denial or postponement of the request; and
 - (b) consult with the Requesting State to determine whether assistance may be given subject to such terms and conditions as the Requested State deems necessary.

5. The Requesting State that accepts assistance subject to the terms and conditions contemplated in paragraph 4(b), shall comply with such terms and conditions.

6. If the central authority of the Requested State denies or postpones assistance it shall inform the central authority of the Requesting State of the reasons for denial or postponement, as the case may be.

ARTICLE 7

Execution of Requests

1. A request shall forthwith be executed in accordance with the law of the Requested State and, where allowed by the law of the Requested State, in accordance with the directions stated in the request.
2. Where a request can be complied with but not in accordance with the directions stated therein, the Requested State shall so inform the Requesting State which shall then determine and indicate whether the request should nevertheless be executed.
3. Where required by the Requested State, the Requesting State shall, after completion of the proceedings, return to the Requested State any material provided by the Requested State in fulfillment of the request.

ARTICLE 8

Confidentiality and Restricting Use of Evidence and Information

1. The Requested State shall keep confidential a request, its contents, supporting documents and any action taken pursuant to the request, except –
 - (a) to the extent necessary to execute the request;
 - (b) where the disclosure is specifically authorized by the Requesting State in accordance with that State's terms and conditions; or
 - (c) where the Requested State is obliged to disclose in terms of its laws.
2. Where the request cannot be executed without breaching requirements of confidentiality stated in the request, the Requested State shall so inform the Requesting State which shall then determine and indicate whether the request should nevertheless be executed.
3. The Requested State may, after consultation with the Requesting State, require that information or evidence furnished be kept confidential or be disclosed or used only subject to the terms and conditions it may specify.
4. The Requesting State shall not use information or evidence for any use or purpose other than stated in the request whereby the information or

evidence was sought, without the prior consent of the Requested State.

ARTICLE 9

Taking of Evidence in the Requested State

1. Where, pursuant to a request for assistance, a person is to give evidence in the Requested State for the purpose of proceedings in the Requesting State -
 - (a) the parties to those proceedings, their legal representatives or representatives of the Requesting State may, subject to the laws of the Requested State, appear and question the person giving evidence, whether or not interrogatories upon which the evidence of that person is to be taken are submitted; and
 - (b) the Requesting State may specify any particular questions to be put to that person.

2. A person who is required to give evidence in the Requested State pursuant to a request may decline to give evidence where -
 - (a) the law of that State would permit or require that person to decline to give evidence; or
 - (b) the law of the Requesting State would permit or require that person to decline to give evidence.

3. If a person claims that there is a right or obligation to decline to give evidence under the law of the Requesting State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the Requesting State as evidence of the existence or non-existence of that right or obligation.

4. Where the certificate contemplated in paragraph 3 indicates that the person could in criminal proceedings in the Requesting State be compelled to give the evidence in question, that evidence shall be taken.

ARTICLE 10

Availability of Consenting Prisoners to Give Evidence or Assist Investigations

1. A person, in custody, in the Requested State, whose presence is requested in the Requesting State for the purposes of this agreement shall, to the extent permissible under the laws of the Parties, be

transferred for that purpose, provided the person in custody consents and the Requested State has no reasonable basis to deny the request.

2. The Requesting State shall have the authority and duty to keep the person in custody at all times and return the person to the custody of the Requested State at the conclusion of the proceedings in relation to which the transfer to the Requesting State was sought or at such earlier time as the person's presence is no longer required.

3. The person transferred shall receive credit for service of the sentence imposed in the Requested State for time served in custody of the Requesting State.

4. (a) Where the sentence imposed on a person transferred under this Article expires while the person is in the Requesting State, that person shall be released and thereafter treated as a person referred to in Article 11.
- (b) The Requested State shall at the time of transfer of a person indicate to the Requesting State when the sentence imposed on that person expires.

5. The transfer of the person in custody may be refused if the presence of that person is necessary in criminal proceedings pending in the territory of the Requested State.

ARTICLE 11

Availability of Other Consenting Persons to Give Evidence or Assist Investigations in the Requesting State

1. A request may be made for assistance in facilitating the availability of a person to assist in an investigation, or to appear as a witness in proceedings in relation to an offence committed in the Requesting State, except where that person is the subject of the investigation or the person charged with the offence.

2. The Requested State shall, if satisfied that appropriate arrangements for that person's safety will be made by the Requesting State, request the person to consent to assisting in the investigation or to appearing as a witness in proceedings and shall take all steps necessary to facilitate the request.

ARTICLE 12

Safe conduct

1. Subject to paragraph 2 of this Article, where a person is in the Requesting State pursuant to a request made under Articles 10 or 11 –
 - (a) that person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the Requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the Requested State;
 - (b) that person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceedings or investigations to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if that person, being free to leave, has not left the Requesting State within a period of twenty (20) consecutive days, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person appearing before an authority in a Requesting State pursuant to a request under Articles 10 or 11 shall not be subject to prosecution based on such testimony except that, that person shall be subject to the law of that State in relation to contempt of court and perjury.

4. A person who does not give the consent as envisaged in Articles 9 or 10 shall not by reason thereof, be liable to any penalty or be submitted to any coercive measure notwithstanding any contrary statement in the request.

ARTICLE 13

Search and Seizure

1. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or things seized and the circumstances of the seizure.

2. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized documents, records or things which may be delivered to the Requesting State.

ARTICLE 14

Proceeds of Crime

1. Upon request, the Requested State shall endeavour to locate any property or assets of a person against whom a forfeiture or confiscation order, pecuniary penalty order, substituted property order, fine in lieu of such order, or any other order having a similar effect, has been made or may be made by a court in the Requesting State in relation to criminal conduct.
2. Where pursuant to paragraph 1, property or assets are located, the Requested State may assist with or initiate such proceedings as are permitted by its law to prevent any dealing in, transfer or disposal thereof, pending a final determination in respect of that property or those assets in any proceedings before a court of the Requesting or Requested State.
3. The Requested State shall give effect to the extent possible under its law to an order mentioned in paragraph 1 made by a court of the Requesting State or initiate appropriate proceedings in relation to the property or assets found in the Requested State.
4. In the application of this Article the rights of *bona fide* third parties shall be respected.

ARTICLE 15

Service of Documents

1. The Requested State shall commit its best efforts to effect service of any document transmitted to it for the purpose of service.
2. A request to effect service of summonses shall be made to the Requested State not less than ninety (90) days before the date on which the appearance of a person is required. In urgent cases, the Requested State may waive the time requirement.
3. The Requested State shall return a proof of service in the manner required by the Requesting State.

ARTICLE 16

Publicly Available and Official Documents

1. The Requested State shall provide copies of documents and

records that are available to the public.

2. The Requested State may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as would be available to its own law enforcement and judicial authorities.

ARTICLE 17

Authentication

Any document submitted in support of a request shall be received by the Requested State 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 authenticated in any other manner provided for in the law of the Requested State.

ARTICLE 18

Representation

Subject to Article 19, the Requested State shall in accordance with its laws make all necessary arrangements for the representation of the interests of the Requesting State in any proceedings arising out of a request for assistance.

ARTICLE 19

Costs

1. The Requested State shall assume all ordinary expenses of fulfilling the request for assistance, except that the Requesting State shall bear –
- (a) the expenses associated with conveying any person to or from the territory of the Requested State, and any fees, allowances or expenses payable to that person while in the Requesting State

- pursuant to a request under Articles 10 or 11;
- (b) the expenses associated with conveying custodial or escorting officers; and
 - (c) fees of experts.

2. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfill the request or that the request involves any of the assistance set out in Article 14 of this agreement, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

ARTICLE 20

Consultation

1. The Parties shall consult promptly, at the request of either, concerning the interpretation and the application of this agreement.

2. The Parties may also develop such practical measures as may be necessary to facilitate the implementation of this agreement.

ARTICLE 21

Translation

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

ARTICLE 22

Ratification, Entry into force and Termination

1. This agreement shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

2. This agreement shall enter into force upon the exchange of the instruments of ratification.

3. Either State may terminate this agreement at any time by giving written notice to the other State, through the diplomatic channels. The termination shall be effective six months after the date of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this agreement.

DONE in duplicate, in the English and Arabic languages, each language version being equally authentic, at Cairo 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**