

Tabled 26 October 2006



19/10/06 OF TRTY SA/ARG 02
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EXTRADITION TREATY

BETWEEN

THE REPUBLIC OF SOUTH AFRICA

AND

THE ARGENTINE REPUBLIC

THE REPUBLIC OF SOUTH AFRICA AND THE ARGENTINE REPUBLIC, hereinafter referred in the singular as "a Party" and in the plural as "the Parties",

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

AFFIRMING their respect for each other's legal systems and judicial institutions;

HEREBY AGREE as follows:

ARTICLE 1 Obligation to Extradite

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

ARTICLE 2 Extraditable Offence

1. For the purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Parties, that is punishable by deprivation of liberty for a maximum period of more than one year or by a more severe punishment.
2. An extraditable offence includes an attempt or a conspiracy or unlawful association to commit, or participation in or instigation of the commission of any offence envisaged under paragraph 1 of this Article.
3. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting State for an extraditable offence, extradition shall be granted if a period of at least six months of the sentence remains to be served.
4. For the purpose of this Article, in determining whether conduct is an offence against the laws of both Parties it shall not matter:
 - (a) whether the laws of the Parties place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology; or
 - (b) whether, pursuant to the laws of the Parties, the elements of the offence differ, in which case the totality of the conduct alleged against the person whose extradition is sought shall be taken into account.

5. Where extradition of a person is sought for an offence against laws relating to taxation, customs duties, exchange control, or other revenue matters, extradition may not be refused on the ground that the laws of the Requested State do not impose the same kind of tax or duty or do not contain tax, customs duty or exchange regulations of the same kind as the laws of the

(b) If the alleged conduct would, if it had taken place in the Requested State at the time of making the request for extradition, have constituted an offence against the law of the Requested State.

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

9. If extradition has been granted for an extraditable offence, it shall also be granted for any other offence specified in the request, even if this offence is punishable by deprivation of liberty for a period of one year or less, provided that all other requirements for extradition are met.

- (d) offences against sexual integrity;
- (e) kidnapping, abduction, hostage-taking or extortion;
- (f) using explosives, incendiary elements, devices or substances in circumstances in which human life is likely to be endangered, or serious bodily harm or substantial property damage is likely to be caused; and
- (g) an attempt, a conspiracy or unlawful association, participation in or instigation of, the commission of any offence envisaged in this paragraph.

2. There are substantial grounds to believe that the request for extradition is made for the purpose of prosecuting or punishing a person by reason of that person's race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status, or that that person's position may be prejudiced for any of those reasons.

3. There are substantial grounds to believe that the person sought may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

4. The prosecution for the offence or penalty for which extradition is requested would be barred by prescription under the law of the Requesting State.

5. The offence for which extradition is requested is an offence exclusively under the military law and is not an offence under ordinary criminal law.

6. The person sought has been finally acquitted or convicted in the Requested State for the same offence for which extradition is requested.

ARTICLE 4 Death Penalty

The request for extradition shall be refused where the offence for which extradition is sought is punishable by the death penalty under the laws of the Requesting State, unless the Requesting State provides assurances that the death penalty shall not be imposed.

ARTICLE 5 Nationality

Extradition shall not be refused on the grounds of the nationality of the person sought.

ARTICLE 6
Discretionary Refusal of Extradition

Extradition may be refused in circumstances where:

1. The offence for which extradition is requested is already subject to the jurisdiction of the Requested State.
2. The person sought is being prosecuted by the Requested State for the offence for which extradition is requested.
3. 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 fully incompatible with humanitarian considerations.
4. The person sought has been acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

ARTICLE 7
Extradition Request and Required Documentation

1. A request for extradition shall be made in writing and be submitted through the diplomatic channels.
2. A request for extradition shall be supported by:
 - (a) information pertaining to the description, identity, location and nationality of the person sought and, if available, photographs and fingerprints of that person;
 - (b) a summary of the facts of the offence and a brief explanation of the procedural history of the case;
 - (c) the text of the law or laws describing the criminal conduct for which extradition is requested, and the applicable penalty;
 - (d) a statement that neither the prosecution nor the execution of the penalty is barred by limitation according to the laws of the Requesting State; and
 - (e) documents, statements or other information specified in paragraph 3 or paragraph 4 of this Article, whichever is applicable.
3. A request for the extradition of a person who is sought for prosecution shall also be supported by:

- (a) a copy of the warrant of arrest or detention for the person sought, issued by an appropriate authority;
- (b) a copy of the charging document, if any, against the person sought; and
- (c) a certificate issued by the competent or prosecutory authority in charge of the prosecution of the case, containing a summary of the available evidence and stating that the evidence at its disposal is sufficient under the law of the Requesting State to warrant the prosecution of the person sought.

4. A request for the extradition of a person who has been found guilty of, or sentenced for an offence for which extradition is requested shall be made pursuant to the requirements provided for in paragraph 2 and also be supported by:

- (a) a copy of the judgement of conviction or, if such copy is not available, a statement by a judicial authority that the person sought has been found guilty;
- (b) if the person sought has been sentenced, a certificate stating that the sentence has not been fully served and the extent to which it has not been served; and
- (c) information establishing that the person sought is the one to whom the finding of guilt and, if applicable, sentence refers.

ARTICLE 8 Admissibility of Documents

Any document, including a translation, accompanying an extradition request shall be received and admitted as evidence in any extradition proceedings if:

- (a) it is signed or certified by a competent authority of the Requesting State; or
- (b) it is certified or authenticated in any other way accepted by the laws of the Requested State.

ARTICLE 9 Translation

All documents submitted in accordance with this Treaty shall be translated into an official language of the Requested State.

ARTICLE 10
Additional Information

If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, it may request that additional information be furnished by the Requesting State within a specified term.

ARTICLE 11
Simplified Extradition

1. If the person sought consents to his/her extradition to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.
2. Such consent shall be expressly communicated to the competent authority of the Requested State.

ARTICLE 12
Provisional Arrest

1. In case of urgency, the Requesting State may apply through the diplomatic channels or the International Criminal Police Organization (INTERPOL) for the provisional arrest of the person sought. Alternatively, the application may be transmitted directly between the Ministry of Foreign Affairs, International Trade and Worship of the Argentine Republic and the Department of Justice and Constitutional Development of the Republic of South Africa.

The application may be transmitted by post, telegraph or by any other means affording a record in writing.

2. An application for provisional arrest shall include the following:
 - (a) information pertaining to the description, identity, location and nationality of the person sought and, if available, photographs and fingerprints of that person;
 - (b) a statement that a request for extradition will follow;
 - (c) a description of the nature of the offence and applicable penalty, with a brief summary of the facts of the case, including the date and place of commission of the offence;
 - (d) mention of the law or laws relevant to the criminal conduct;
 - (e) a statement attesting to the existence of a warrant of arrest or a conviction in respect of the person sought; and

(f) an explanation of the reasons for the urgency of the request.

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 request for extradition and supporting documents pursuant to Article 7 within sixty (60) days after the arrest. The competent authorities of the Requested State, to the extent permitted by the law of the State, may extend that term with regard to the reception of the documents. However, the person sought may be released at any time, in accordance with the laws of the Requested State.

5. The fact that the person sought has been discharged from custody in accordance with paragraph 4 of this Article does not preclude subsequent arrest and extradition if a request for extradition is received at a later date.

ARTICLE 13 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 Requested State shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:

- (a) the seriousness of the offences;
- (b) the date and place of commission of each offence;
- (c) the dates on which the requests were received from the Requesting States;
- (d) the nationality of the person sought;
- (e) the usual place of residence of the person;
- (f) whether the requests were made pursuant to an extradition treaty;
- (g) the interests of the respective States;
- (h) the nationality of the victim; and
- (i) the possibility of further extradition between the Requesting States.

ARTICLE 14
Decision and Surrender

1. The Requested State shall, 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. Copies of relevant judicial decisions shall be provided by the Requested State on request.
2. If extradition is granted, the Parties shall agree on the time and place for the surrender of the person sought. If such person is not removed from the territory of the Requested State within thirty (30) calendar days from the time of notification referred to in paragraph 1 of this Article, or within such longer period as may be provided for by the law of that State, the person may be discharged from custody and the Requested State may refuse a subsequent extradition request by the Requesting State in respect of the same offence.
3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The Parties shall mutually decide a new date for the surrender of the person concerned.

ARTICLE 15
Temporary or Deferred Surrender

1. Where the person sought is being prosecuted or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.
2. To the extent permitted by its law, 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 any criminal proceedings to the Requesting State in accordance with conditions to be determined between the Parties. 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 such proceedings. 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.
3. The postponement by the Requested State of extradition proceedings or surrender shall, for purposes of this Treaty, suspend the course of prescription in the judicial proceedings in the Requesting State with respect to the offence or offences that gave rise to the request for extradition.

ARTICLE 16
Seizure and Surrender of Property

1. To the extent permitted by its law, the Requested State may seize and surrender to the Requesting State any property, documents and evidence connected with the offence in respect of which extradition is granted. Such items shall be surrendered even if extradition, having been granted, cannot be carried out owing to death, disappearance or escape of the person sought.

2. The Requested State may condition the surrender of the property and evidence upon the giving of satisfactory assurances by the Requesting State as to the return to the Requested State of the items as soon as practicable. The Requested State may also defer the surrender of such property and evidence should they be required in criminal proceedings in that State.

3. The rights of third persons to such property and evidence shall be duly respected. Where such rights exist, the property, documents or evidence shall be returned without charge to the Requested State as soon as possible after the trial.

ARTICLE 17
Rule of Specialty

1. A person extradited under this Treaty shall not be tried, punished or detained in the Requesting State for any offence committed prior to the surrender other than that for which that person was extradited except:

- (a) for the offence for which extradition was granted, or for an offence differently described or a lesser offence which is based on substantially the same facts on which extradition was granted provided such offence is extraditable;
- (b) for an offence committed by that person after his/her surrender;
- (c) for an offence for which the competent authority of the Requested State consents to that person's detention, trial or service of the sentence;
- (d) where the person extradited consents before a judicial authority in the Requesting State.

For the purposes of subparagraph (c) and (d):

- (i) the Requested State may require the submission of the documents specified in Article 7; and
- (ii) the person surrendered may be detained by the Requesting State for a period of sixty (60) calendar days, or for such longer period as the Requested State may authorize, pending the processing of the request.

2. A person surrendered under this Treaty may not be extradited to a third State for an offence committed by that person prior to his/her surrender unless the surrendering State consents thereto. The State which surrendered the person may request the production of the documents referred to in Article 7.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial or serving of sentence of a person surrendered, or the extradition of that person to a third State, if that person:

- (a) leaves the territory of the Requesting State after the extradition and voluntarily returns to it; or
- (b) having had the opportunity to leave the territory of the Requesting State, has not done so within thirty (30) calendar days from the day that person was free to leave.

ARTICLE 18 Transit

1. Either Party may authorize the transit through its territory of a person surrendered to the other Party by a third State.

2. A request for transit shall be transmitted through the diplomatic channels. In cases of urgency, such request may also be transmitted through the International Criminal Police Organization (INTERPOL).

3. The request for transit may be transmitted by any means affording a record in writing and shall contain:

- (a) a description of the person together with any other information that may help to establish the person's identity and nationality; and
- (b) a brief statement of the facts of the case mentioning the offence or offences for which that person was surrendered by the third State.

4. Permission for the transit of a person surrendered shall, subject to the law of the Requested State, include permission for that person to be held in custody during transit. If transportation is not resumed within a reasonable time, the competent authority of the State in whose territory the person is being held in custody may direct that the person be released.

5. Authorization is not required in the case of transportation by air if no landing is scheduled on the territory of the other Party. Should an unscheduled landing occur, the Party in whose territory it occurs may require a request for transit pursuant to paragraphs 2 and 3 of this Article and may detain the person until the request is received and the transit effected, provided that such request be received within ninety-six (96) hours of the unscheduled landing.

ARTICLE 19 Expenses

1. The Requested State shall take all the necessary steps among its authorities for any proceedings arising out of a request for extradition and shall bear the expenses.
2. The Requesting State shall:
 - (a) bear the expenses related to the translation of documents; and
 - (b) bear the expenses incurred in conveying the person extradited from the territory of the Requested State.

ARTICLE 20 Representation

1. The Requested State shall, through its competent authorities, represent the interests of the Requesting State in any proceedings relating to a request for extradition. It shall also advise and assist the Requesting State in matters pertaining to such request.
2. In addition, and to the extent permitted by the law of the Requested State, the Requesting State may appoint a legal representative with legal capacity to participate in the proceedings.

ARTICLE 21 Consultation

The Ministry of Foreign Affairs, International Trade and Worship of the Argentine Republic and the Department of Justice and Constitutional Development of the Republic of South Africa, may consult with each other directly in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

ARTICLE 22 Ratification, Entry into Force and Termination

1. This Treaty shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force on the day after the date of the exchange of instruments of ratification and shall apply to any extradition request submitted after it enters into force.

3. This Treaty shall apply to any offence contemplated in Article 2 committed before or after this Treaty enters into force.

4. Exchange of notes between the Parties through the diplomatic channel.

5. Either Party may terminate this Treaty by written notice to the other.

IN WITNESS WHEREOF the undersigned, being duly authorised by their English and Spanish languages, both texts being equally authentic.

DONE at ... *PRAGUE* ... on the ... *20* ... day of ... *JANUARY* ... in the year 2007.

NATIONAL ASSEMBLY AND NATIONAL COUNCIL OF PROVINCES

RATIFICATION OF THE EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATIES BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE ARGENTINE REPUBLIC IN TERMS OF SECTION 231(2) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT NO 108 OF 1996)

1. PURPOSE

The purpose of this memorandum is to provide the background and to seek Parliament's approval to ratify the abovementioned Treaties in terms of section 231(2) of the Constitution.

2. BACKGROUND

2.1 The Extradition Act, 1962 (Act 67 of 1962) *inter alia*, provides in section 2(1)(a) that the President may on such conditions as he may deem fit but subject to the provisions of the Act, enter into an agreement with any foreign state, other than a designated state, providing for the surrender on a reciprocal basis of persons accused or convicted of the commission within the jurisdiction of the Republic or such state or any territory under the sovereignty or protection of such state, of an extraditable offence or offences specified in such agreement and may likewise agree to any amendment or revocation of such agreement. A similar provision exists in section 27(1) of the International Cooperation in Criminal Matters Act, 1996 (Act 75 of 1996).

2.2 Section 2(3)(a) of the Extradition Act, 1962 (Act 67 of 1962) subsequently states that no such agreement or any amendment thereof shall be of any force or effect until the ratification of, or amendment of such agreement, or designation has been agreed to by Parliament. Section 27(2) of the International Cooperation in Criminal Matters Act, 1996 (Act 75 of 1996) equally states that the Minister for Justice and Constitutional Development shall as soon as practical after

Parliament has agreed to the ratification, or accession to, or amendment, or revocation of an agreement referred to in section 27(1), give notice thereof in the Gazette.

- 2.3 The State Law Advisers have indicated that the proposed Treaties are not in conflict with South Africa's domestic law and existing international obligations.
- 2.4 The President approved on 26 February 2007 that the Minister of Foreign Affairs sign the Treaties with the Argentine Republic on behalf of the Government.
- 2.5 In terms of article 22(2) of the Extradition Treaty and article 23(2) of the Mutual Legal Assistance in Criminal Matters Treaty, the respective Treaties shall enter into force on the day after the date of the exchange of instruments of ratification.
- 2.6 Section 231(2) of the Constitution provides as follows:
"An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3)."
- 2.7 As soon as Parliament has approved the ratification of the Treaties, the Minister for Justice and Constitutional Development will give notice thereof in the Gazette in terms of section 2(3)ter of the Extradition Act, 1962 (Act 67 of 1962) and section 27(2) of the International Cooperation in Criminal Matters Act, 1996 (Act 75 of 1996).

3. RECOMMENDATION

In the light of the above and also to indicate to the rest of the world that South Africa will not be a safe haven for criminals, it is recommended that Parliament approve the ratification of the said Treaties.