

Tabled 26 October 2006

OF TREATY SA/ARG 01

07101650 Security Council



TREATY
BETWEEN
THE REPUBLIC OF SOUTH AFRICA
AND
THE ARGENTINE REPUBLIC
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

THE REPUBLIC OF SOUTH AFRICA AND THE ARGENTINE REPUBLIC
(hereinafter referred to in the singular as "a Party" and in the plural as "the Parties");

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual legal assistance in criminal matters;

HAVE AGREED as follows:

ARTICLE 1
Obligation to Provide Mutual Legal Assistance

1. The Parties shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or is to be provided by a court or some other competent authority.
3. Criminal matters means, for the Republic of South Africa, both statutory and common law offences and, for the Argentine Republic, investigations, prosecutions or proceedings relating to any offence against its legislation.
4. Criminal matters also include investigations, prosecutions or proceedings relating to offences concerning taxation, customs duties, retirement schemes and foreign exchange.
5. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceedings in the Requesting State would constitute an offence under the laws of the Requested State. However, searches and seizures shall be conducted in accordance with the requirements of the law of the Requested State.
6. Assistance includes:
 - (a) locating and identifying persons and objects;
 - (b) serving documents, including those seeking the attendance of persons;
 - (c) providing information, documents and records;
 - (d) providing objects, including lending of exhibits;
 - (e) search and seizure;
 - (f) taking of evidence and obtaining statements;
 - (g) authorizing the presence of persons from the Requesting State to execute requests;

- (h) making detained persons available to give evidence or assist investigations;
- (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
- (j) taking measures to locate, restrain and seize the proceeds of crime; and
- (k) any other form of assistance not prohibited by the law of the Requested State.

ARTICLE 2 Execution of Requests

1. Requests for assistance shall be executed promptly in the manner specified by the Requesting State and in accordance with the law of the Requested State.
2. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
3. The Requested State shall not refuse to execute a request on the grounds of bank secrecy.

ARTICLE 3 Contents of Requests

1. In all cases, requests for assistance shall indicate:
 - (a) the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
 - (b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
 - (c) the purpose of the request and the nature of the assistance sought;
 - (d) the degree of confidentiality required and the reasons therefor; and
 - (e) any time within which the request should be executed.
2. In the following cases, requests for assistance shall specify:
 - (a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, the basis for belief that evidence or proceeds of crime may be found in the Requested State;
 - (b) in the case of requests to take evidence from a person, whether sworn

or affirmed statements are required and a description of the subject matter of the evidence or statement sought;

- (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State, the competent authority who will have custody of the exhibits in the Requesting State, the place to which the exhibits are to be removed, any tests to be conducted and the date by which the exhibits will be returned; and
- (d) in the case of making detained persons available, the competent authority 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.

3. If necessary, and where possible, requests for assistance shall include:

- (a) the identity, nationality and location of a person who is the subject of the investigation, prosecution or proceedings;
- (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.

4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.

5. A request shall be made in writing. In urgent circumstances, a request may be made but shall be confirmed in writing promptly thereafter.

ARTICLE 4 **Refusal or Postponement of Assistance**

1. Assistance may be refused if, in the opinion of the Requested State, the execution of the request would affect its sovereignty, security, public order or essential public interest. Assistance may also be refused when the legislation of the Requested State so provides.

2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in that State.

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

4. Before refusing a request for assistance or postponing the execution of a request, the Requested State shall consider whether the assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts those conditions the Requested State shall proceed with the request.

ARTICLE 5
Locating and Identifying Persons and Objects

The competent authorities of the Requested State shall endeavour to ascertain the location and identity of persons and objects specified in the request.

ARTICLE 6
Service of Documents

1. The Requested State shall serve any document transmitted for such purpose.
2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time, before the scheduled response or appearance.
3. The Requested State shall return a proof of service in the manner required by the Requesting State or in any other manner agreed to by the Parties.

ARTICLE 7
Provision of Information, Documents, Records and Objects

1. The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.
2. The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested State may provide certified true copies of documents or records, unless the Requesting State expressly requests originals.
4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible.
5. Insofar as not prohibited by the law of the Requested State, documents, records or objects shall be provided together with a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the said State.

ARTICLE 8
Search and Seizure

The competent authority that has executed a request for a search and seizure

shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, authenticity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.

ARTICLE 9
Taking Evidence and Obtaining Statements
in the Requested State

1. A person requested to testify and produce documents, records or objects in the Requested State shall be compelled, if necessary, to appear and testify and produce such documents, records or objects, in accordance with the law of the Requested State.
2. The Requested State shall authorize the presence of persons, specified in the request, during the execution thereof and shall allow them to pose questions in accordance with the legislation of the Requested State.
3. The persons present at the execution of a request shall be permitted to make a verbatim record of the proceedings. The use of technical means to make such a verbatim record shall be permitted.
4. To the extent permitted by its law, the Requested State shall execute a request for the taking of evidence and obtaining statements from the Requested State to the Requesting State via video, satellite or other technological means.

ARTICLE 10
Transfer of Detained Persons to Give Evidence
or Assist in Investigations

1. Upon request of the Requesting State, a person imprisoned, serving a sentence or awaiting trial in the Requested State may be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person freely and voluntarily consents thereto.
2. When a person transferred must be kept in custody under the law of the Requested State, the Requesting State shall hold the person in custody and shall return the person in custody at the conclusion of the execution of the request.
3. When the sentence imposed expires, or when the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, such person shall be released from custody and be treated as a person present in the Requesting State pursuant to a request seeking such person's attendance.

ARTICLE 11
Providing Evidence or Assisting in Investigations
in the Requesting State

1. When the Requesting State requests the appearance in its territory of a person to provide evidence or assist in investigations in the Requesting State, the Requested State shall subpoena the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the expenses and the amount to be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person in question.
2. A person shall not be subjected to any sanction or compulsory measure in the Requested or Requesting State, for failing to appear in the Requesting State.

ARTICLE 12
Safe Conduct

1. Subject to Article 10(2), a person present in the Requesting State in response to a request made by such State shall not be prosecuted, detained or subjected to any other restriction of personal liberty in such State for any acts or omissions preceding such person's departure from the Requested State, nor shall such person be obliged to give evidence in any proceeding other than that to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left within thirty (30) days after receiving official notification that the person's attendance is no longer required or where, having left it, has voluntarily returned.

ARTICLE 13
Proceeds of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. When, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as permitted by its law and under the conditions of its law to restrain, seize and where appropriate, destroy such proceeds.
3. Proceeds seized pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed.

ARTICLE 14
Restitution and Fines

The Requested State shall, to the extent permitted by its law, provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

ARTICLE 15
Central Authorities

1. For the purposes of this Treaty each State shall appoint a Central Authority to receive assistance requests. The Central Authorities will communicate with each other directly, and will forward the requests for assistance to the competent authority in their respective States.
2. When exchanging their ratification instruments each one of the Parties shall notify the other of the appointment of the Central Authority.
3. The Central Authority may be changed at any time by a Party who must promptly notify the other Party of any such change.

ARTICLE 16
Confidentiality

1. The Requesting State may require that the request, its content, supporting documents and any action taken pursuant to the request remain confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.
2. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be kept confidential, and only disclosed or used subject to such terms and conditions as may be specified.

ARTICLE 17
Limitation of Use

The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request, without the prior consent of the Central Authority of the Requested State.

ARTICLE 18
Authentication

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, except as specified in Article 7, or as required by the Requesting State.

ARTICLE 19
Language

Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State.

ARTICLE 20
Expenses

1. The Requested State shall meet the costs of executing the request for assistance, except for costs stated below, which shall be for the account of the Requesting State:

- (a) expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State and any expenses payable to that person while in the Requesting State pursuant to a request under Articles 10 or 11 of this Treaty;
- (b) the expenses and fees of experts either in the Requested State or the Requesting State;
- (c) the expenses of translation, interpretation and transcription; and
- (d) the expenses associated with the taking of evidence and statements from the Requested State to the Requesting State via video, satellite or other technological means.

2. When the execution of the request requires expenses of an extraordinary nature, the Parties shall consult each other to determine the terms and conditions under which the requested assistance can be provided.

ARTICLE 21
Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either Party from granting assistance to the other Party through the provisions of other applicable international agreements, or through the provisions of its domestic law. The Parties may also provide assistance pursuant to any bilateral arrangement, agreement or

1. This Treaty shall be subject to ratification. The exchange of the instruments of ratification shall occur as soon as possible.

2. This Treaty shall enter into force on the day after the date of the exchange of instruments of ratification.

3. This Treaty shall apply to any request presented after its entry into force even if the relevant acts or omissions occurred before that date.

through the diplomatic channel. The termination shall be effected by mutual consent.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Treaty in the English and Spanish languages.

N. C. M. M.
FOR THE REPUBLIC OF
SOUTH AFRICA

[Signature]
FOR THE ARGENTINE
REPUBLIC