



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 7132

Regulasiekoerant

Vol. 434

Pretoria, 1 August
Augustus 2001

No. 22542



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GOVERNMENT NOTICE GOEWERMENSKENNISGEWING

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT DEPARTEMENT VAN JUSTISIE EN STAATKUDIGE ONTWIKKELING

No. R. 719

1 August 2001

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

EXTRADITION TREATY BETWEEN THE REPUBLIC OF SOUTH AFRICA AND AUSTRALIA

I, Penuell Mpapa Maduna, 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 3 November 2000 agreed to the ratification of the Extradition Treaty between the Republic of South Africa and Australia as set out in the Schedule. The Treaty will enter into force on 1 August 2001.

P M MADUNA

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

SCHEDULE

No. R. 719

1 Augustus 2001

WET OP UITLEWERING, 1962 (WET NO. 67 VAN 1962)**UITLEWERINGSVERDRAG TUSSEN DIE REPUBLIEK VAN SUID-AFRIKA EN AUSTRALIË**

Ek, Penuell Mpapa Maduna, Minister vir Justisie en Staatskundige Ontwikkeling gee, ingevolge artikel 2(3) *ter* van die Wet op Uitlewering, 1962 (Wet No. 67 van 1962), hiermee kennis dat die Parlement van die Republiek van Suid-Afrika op 3 November 2000 tot die bekragtiging van die Uitleweringsverdrag tussen die Republiek van Suid-Afrika en Australië, soos in die Skedule uiteengesit, toegestem het. Die Verdrag sal inwerking tree op 1 Augustus 2001.

P M MADUNA
MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING

SKEDULE

TREATY ON EXTRADITION

BETWEEN

THE REPUBLIC OF SOUTH AFRICA

AND

AUSTRALIA

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF SOUTH AFRICA AND AUSTRALIA

THE REPUBLIC OF SOUTH AFRICA AND AUSTRALIA

DESIRING to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty on extradition,

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, any 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 OFFENCES

1. For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting States by imprisonment for a maximum period of at least one year or by a more severe

penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.

2. For the purposes of this Article in determining whether an offence is an offence against the law of both Contracting States –

- (a) it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology; and
- (b) the totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting States, the constituent elements of the offence differ.

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

4. Where the offence has been committed outside the territory of the Requesting State, extradition shall be granted where the law of the Requested State provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested State does not so provide the Requested State may, in its discretion, grant extradition.

5. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is sought was committed, provided that:

- (a) it was an offence in the Requesting State at the time of the acts or omissions constituting the offence; and
- (b) the acts or omissions alleged would, if they had taken place in the

territory of the Requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.

ARTICLE 3

EXCEPTIONS TO EXTRADITION

1. Extradition shall not be granted in any of the following circumstances:
 - (a) if the offence for which extradition is sought is a political offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of that person's family nor an offence against the law relating to genocide;
 - (b) if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
 - (c) if the offence for which extradition is sought is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting States;
 - (d) if the final judgement has been passed in the Requested State or in a third state in respect of the offence for which the person's extradition is sought;
 - (e) if a person whose extradition is sought has, according to the law of either Contracting State, become immune from prosecution or punishment by reason of lapse of time; or
 - (f) if the person, on being extradited to the Requesting State, would be liable to be tried or sentenced in that State by a court or tribunal:
 - (i) that has been specially established for the purpose of trying the person's case; or

- (ii) that is only occasionally, or under exceptional circumstances, authorised to try persons accused of the offence for which extradition is sought.

2. Extradition may be refused in any of the following circumstances:

- (a) if the person whose extradition is sought is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other State so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken;
- (b) if the competent authorities of the Requested State have decided to refrain from prosecuting the person for the offence in respect of which extradition is sought;
- (c) if the offence with which the person sought is accused or convicted, or any other offence for which that person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State unless that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;
- (d) if the offence for which extradition is sought is regarded under the law of the Requested State as having been committed in whole or in part within that State;
- (e) if a prosecution in respect of the offence for which extradition is sought is pending in the Requested State against the person whose extradition is sought;
- (f) if the offence for which extradition is sought is an offence which carries a punishment of the kind referred to in Article 7 of the International Covenant on Civil and Political Rights;
- (g) if the Requested State, while also taking into account the nature of

the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is sought, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment; or

- (h) if, by reason of the trivial nature of the request, or the period of time since the person whose extradition is sought is alleged to have committed the offence or since he or she came to be at large, as the case may be, or because the accusation against the person accused is not made in good faith or in the interest of justice, it would be, having regard to all circumstances, unjust or oppressive to extradite that person.

3. This Article shall not affect any obligations which have been or shall in future be assumed by the Contracting States under any multilateral Convention.

ARTICLE 4

POSTPONEMENT OF EXTRADITION

The Requested State may postpone the extradition of a person in order to proceed against that person, or so that that person may serve a sentence, for an offence other than an offence constituted by an act or omission for which extradition is sought. In such case the Requested State shall advise the Requesting State accordingly.

ARTICLE 5

EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 6.

2. The request for extradition shall be accompanied:

- (a) if the person is accused of an offence – by a warrant for the arrest or a certified copy of the warrant for the arrest of the person, a statement of each offence for which extradition is sought, a statement of the acts or omissions which are alleged against the person in respect of each offence and, where the request emanates from Australia, a certificate issued by the authority in charge of the prosecution stating that the authority has sufficient evidence at its disposal to warrant the prosecution of the person concerned;
- (b) if the person has been convicted of an offence – by such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out as well as a statement of the acts or omissions for which the person has been convicted;
- (c) if the person has been convicted of an offence but no sentence has been imposed – by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence, as well as a statement of the acts or omissions for which the person has been convicted;
- (d) in all cases by the text of the relevant provision of the law, if any, creating the offence or a statement of the relevant law as to the offence including any law relating to the limitation of proceedings, as the case may be, and in either case, a statement of the punishment that can be imposed for the offence; and
- (e) in all cases by as accurate a description as possible of the person claimed together with any other information which may help to establish that person's identity and nationality.

3. To the extent permitted by the law of the Requested State, extradition may be granted of a person pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraph 1 and paragraph 2 of this Article have not been complied with provided that the person claimed consents to an order for extradition being made.

4. Any document produced in relation to extradition proceedings in terms of

this Treaty which is not in English shall be accompanied by a certified translation into English.

5. A document is certified for the purposes of this Article if it purports to be certified by a Judge, Magistrate or other officer in or of the Requesting State.

ARTICLE 6

AUTHENTICATION OF SUPPORTING DOCUMENTS

1. A document that, in accordance with Article 5, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested State.

2. A document is authenticated for the purposes of this Treaty if:

- (a) it purports to be signed or certified by a Judge, Magistrate or other officer in or of the Requesting State to be an original document or to be a true copy or translation thereof as the case may be; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal of the Requesting State or of a minister of state, or of a Department or officer of the Government, of the Requesting State.

ARTICLE 7

ADDITIONAL INFORMATION

1. 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, that State may request that additional information be furnished within such time as it specifies.

2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not

received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2, the Requested State shall notify the Requesting State as soon as practicable.

ARTICLE 8

PROVISIONAL ARREST

1. In case of urgency, a Contracting State may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 5 authorising the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the Requested State, a concise statement of the acts or omissions alleged to constitute the offence.

3. On receipt of such application the Requested State shall take the necessary steps to secure the arrest of the person claimed and the Requesting State shall be promptly notified of the result of its request.

4. A person arrested upon such an application may be set at liberty upon the expiration of 45 days from the date of that person's arrest if a request for extradition, supported by the documents specified in Article 5, has not been received.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

ARTICLE 9

CONFLICTING REQUESTS

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting 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) if the requests relate to different offences – the relative seriousness of the offences;
 - (b) the time and place of commission of each offence;
 - (c) the respective dates of the requests;
 - (d) the nationality of the person; and
 - (e) the ordinary place of residence of the person.

ARTICLE 10

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 through the diplomatic channel.
2. Where extradition is granted, the Requested State shall surrender the person from a point of departure in its territory convenient to the Requesting State.
3. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the Requested State specifies

and, if the person is not removed within that period, the Requested State may refuse to extradite that person for the same offence.

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

ARTICLE 11

SURRENDER OF PROPERTY

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.

2. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition cannot be carried out.

3. Where the law of the Requested State or the rights of third parties so require, any articles so surrendered shall be returned to the Requested State free of charge if that State so requests.

ARTICLE 12

RULE OF SPECIALITY

1. Subject to paragraph 3 of this Article, a person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of their personal liberty, in the territory of the Requesting State for any offence committed before that person's extradition other than:

- (a) an offence 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 based, provided that that offence does not carry a penalty which is more severe than that which could be imposed for the offence for which extradition was sought; or

- (b) any other extraditable offence in respect of which the Requested State consents.

2. A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in Article 5.

3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the territory of the Requesting State after leaving it.

ARTICLE 13

SURRENDER TO A THIRD STATE

1. Where a person has been surrendered to the Requesting State by the Requested State, the first-mentioned 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 Requesting State and has not done so within 45 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 sub-paragraph (1)(a) of this Article, the Requested State may request the production of the documents mentioned in Article 5.

ARTICLE 14**TRANSIT**

1. Where a person is to be extradited to a Contracting State from a third state through the territory of the other Contracting State, the Contracting State to which the person is to be extradited shall request the other Contracting State to permit the transit of that person through its territory.
2. Upon receipt of such a request the Requested Contracting State shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so.
3. Permission for the transit of a person shall, subject to the law of the Requested Contracting State, include permission for the person to be held in custody during transit.
4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting State in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.
5. The Contracting State to which the person is being extradited shall reimburse the other Contracting State for any expense incurred by that other Contracting State in connection with the transit.

ARTICLE 15**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 otherwise represent the interest of the Requesting State.
2. The Requested State shall bear the expenses incurred in its territory 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 bear the expenses incurred in conveying the person from the territory of the Requested State.

ARTICLE 16

ENTRY INTO FORCE, APPLICATION AND TERMINATION

1. This Treaty shall enter into force thirty days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.
3. This Treaty shall apply to requests for extradition made after its entry into force regardless of the date of commission of an offence, the date of conviction for an offence or the date on which a sentence was imposed for an offence set out in a request.

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

DONE at Canberra on the 9th day of December, One thousand, nine hundred and ninety-eight.

A Erwin
(Minister of Trade and Industry)

**FOR THE REPUBLIC OF
SOUTH AFRICA**

A Vanstone
(Minister for Justice and Customs)

FOR AUSTRALIA

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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

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