



**MINISTER  
JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA**

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Our ref:8/8/3/1 MEXICO  
Enq: Mr HB van Heerden  
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Honourable Ms TR Modise  
Speaker of the National Assembly  
P.O.Box 15  
Cape Town  
8000



**Dear Madam Speaker**

**RATIFICATION OF THE EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN  
CRIMINAL MATTERS TREATIES BETWEEN THE REPUBLIC OF SOUTH AFRICA  
AND THE UNITED MEXICAN STATES IN TERMS OF SECTION 231(2) OF THE  
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT 108 OF 1996)**

I have the honour to request the National Assembly's approval that the Extradition and Mutual Legal Assistance in Criminal Matters Treaties between the Republic of South Africa and the United Mexican States be ratified in terms of Section 231(2) of the Constitution.

The ratification of the two Treaties between South Africa and the United Mexican States will send out a clear message to criminals that neither South Africa nor the United Mexican States will be safe havens for criminals. The conclusion of the Extradition Treaty is also a huge step in the fight against impunity. The Mutual Legal Assistance Treaty will improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through

cooperation and mutual legal assistance in criminal matters.

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. A similar provision exists in Section 27(1) of the International Cooperation in Criminal Matters Act, 1996 (act 75 of 1996).

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 of Justice and Correctional Services 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.

The State Law Advisers have indicated that the proposed Treaties are not in conflict with South Africa's domestic law and existing international obligations.

Former President Zuma on 6 December 2012 authorized former Minister Radebe to sign the Treaties on behalf of the Government of the Republic of South Africa. It was decided that the Treaties first be signed by the Mexican Attorney-General where after the Treaties will be returned to South Africa for the former Minister to sign. The Treaties were subsequently signed on 1 November 2013 and 24 March 2014, respectively. Due to the fact that there was a change in administration in Mexico soon after the signing of the Treaties, there were indications that the new administration would require certain amendments to the Treaties signed during the previous administration in order to regard them as valid and in force. The Department was

informed during November 2019 that Mexico would not require any amendments to the Treaties and that South Africa can proceed with the ratification of the Treaties.

Articles 24(1) of both the Extradition and Mutual Legal Assistance in Criminal Matters Treaties respectively state as follows:

(1) *"This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible".*

(2) *"This Treaty shall enter into force thirty (30) days after the date of the exchange of instruments of ratification and shall apply to any request submitted after it enters into force".*

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)."*

As soon as parliament has approved the ratification of the treaties, the Minister of Justice and Correctional Services will give notice thereof in the gazette in terms of Section 2(3) 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).

In the light of the above and in an attempt to fight all forms of transnational crime, I request the National Assembly to approve the ratification of the said Treaties.



**R LAMOLA, MP**  
**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

Date: 03/03/2020



**MINISTER  
JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA**

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Enq: Mr HB van Heerden  
Email: [hvanheerden@justice.gov.za](mailto:hvanheerden@justice.gov.za)

Honourable Mr A Masondo  
Chairperson of the National Council of Provinces  
P.O.Box 15  
Cape Town  
8000



**Dear Chairperson**

**RATIFICATION OF THE EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN  
CRIMINAL MATTERS TREATIES BETWEEN THE REPUBLIC OF SOUTH AFRICA  
AND THE UNITED MEXICAN STATES IN TERMS OF SECTION 231(2) OF THE  
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT 108 OF 1996)**

I have the honour to request the National Council of Province's approval that the Extradition and Mutual Legal Assistance in Criminal Matters Treaties between the Republic of South Africa and the United Mexican States be ratified in terms of Section 231(2) of the Constitution.

The ratification of the two Treaties between South Africa and the United Mexican States will send out a clear message to criminals that neither South Africa nor the United Mexican States will be safe havens for criminals. The conclusion of the Extradition Treaty is also a huge step in the fight against impunity. The Mutual Legal Assistance Treaty will improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through cooperation and mutual legal assistance in criminal matters.

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. A similar provision exists in Section 27(1) of the International Cooperation in Criminal Matters Act, 1996 (act 75 of 1996).

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In the light of the above and in an attempt to fight all forms of transnational crime, I request the National Council of Provinces to approve the ratification of the said Treaties.



**R. LAMOLA, MP**  
**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

Date: 03/03/2020



**TREATY  
BETWEEN  
THE GOVERNMENT  
OF  
THE REPUBLIC OF SOUTH AFRICA  
AND  
THE GOVERNMENT  
OF  
THE UNITED MEXICAN STATES  
ON  
MUTUAL LEGAL ASSISTANCE IN CRIMINAL  
MATTERS**

## **PREAMBLE**

The Government of the Republic of South Africa and the Government of the United Mexican States (hereinafter referred to separately as a "Party" and jointly as the "Parties");

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

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

**HEREBY AGREE** as follows:

## **ARTICLE 1**

### **Scope of Application**

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 Party in respect of investigations, prosecutions or proceedings in the Requesting Party in a criminal matter, irrespective of whether the assistance is sought or is to be provided by a court or the prosecutorial authority.
3. Criminal matters means, for the Republic of South Africa, both statutory and common law offences and for the United Mexican States, investigations, prosecutions or proceedings relating to any offence against its legislation.
4. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting Party would constitute an offence under the laws of the Requested Party.



5. 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, conducted in accordance with the requirements of the law of the Requested Party;
- (f) taking of evidence and obtaining statements;
- (g) authorizing the presence of officials from the Requesting Party to execute requests;
- (h) voluntary transfer of persons in custody for the purpose of providing testimony or other purposes;
- (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
- (j) taking measures to locate, restrain and seize the proceeds and instrumentalities of crime; and
- (k) any other form of assistance not prohibited by the law of the Requested Party.

**ARTICLE 2**  
**Execution of Requests**

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

**ARTICLE 3**  
**Format and Transmission of Requests**

1. The legal assistance request shall be made in writing.
2. In urgent cases, copies of requests for assistance may be transmitted by any means capable of being reduced in writing provided that the original request is transmitted to the Requested Party as soon as possible.
3. The Requested Party may proceed to comply with a request referred to in paragraph 2 of Article 2 despite the fact that the original request has not yet been received by the Central Authority.

**ARTICLE 4**  
**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; and
- (d) any period of time within which the request should be executed.

2. In the case of requests that should be executed within a specified period, the Requesting Party shall specify the period of time and shall submit the request timeously to enable the Requested Party to comply with the request within the specified period.

3. (a) In the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds and instrumentalities of crime requests for assistance shall specify the basis for believing that evidence or proceeds and instrumentalities of crime may be found in the Requested Party.

(b) In the case of requests to take evidence from a person requests for assistance shall specify whether sworn or affirmed statements are required and include a description of the subject matter of the evidence or statement sought.

4. To the extent 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 Party wishes to be followed;

- (c) in the case of lending of exhibits, the current location of the exhibits in the Requested Party, the competent authority who will have custody of the exhibits in the Requesting Party, 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.
5. If the Requested Party considers that the information is not sufficient to enable the request to be executed, it may request additional information.

## ARTICLE 5

### Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested Party, the execution of the request would affect its sovereignty, security, public order or essential public interest. Assistance may also be refused when the law of the Requested Party so provides.
2. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
3. The Requested Party shall promptly inform the Requesting Party of a decision of the Requested Party 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 Party shall consider whether the assistance may be provided subject to such conditions as it deems necessary. If the Requesting Party accepts those conditions the Requested Party shall proceed with the request.

5. The sole purpose of this Treaty is to provide legal assistance between the Parties. The provisions of this Treaty shall not be invoked by any individual or by any authority acting on behalf of or for the benefit of an individual to obtain, suppress or exclude evidence or hinder the execution of any request.

#### ARTICLE 6

##### Locating and Identifying Persons and Objects

The competent authorities of the Requested Party shall endeavor to locate and identify persons and objects specified in the request in accordance with the provisions of its law.

#### ARTICLE 7

##### Service of Documents

1. The Requested Party shall serve any document transmitted for such purpose.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting Party within a reasonable time before the scheduled response or appearance.
3. The Requested Party shall return a proof of service in the manner required by the Requesting Party to the extent consistent with the law of the Requested Party.

#### ARTICLE 8

##### Provision of Information, Documents, Records and Objects

1. The Requested Party shall provide copies of publicly available information, documents and records of government departments and agencies.

2. The Requested Party 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 Party may provide certified true copies of documents or records, unless the Requesting Party expressly requests originals.
4. Original documents, records or objects provided to the Requesting Party shall be returned to the Requested Party as soon as possible.
5. Insofar as not prohibited by the law of the Requested Party, documents, records or objects shall be provided together with a form or accompanied by such certification as may be specified by the Requesting Party in order to make them admissible according to the law of the said Party.

#### ARTICLE 9 Chain of Custody

The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting Party 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 10 Taking Evidence and Obtaining Statements in the Requested Party

1. A person requested to testify and produce documents, records or objects in the Requested Party shall be compelled, if necessary, to appear and testify and produce such documents, records or objects, in accordance with the law of the Requested Party.

2. The Requested Party shall authorize the presence of officials of the Requesting Party, specified in the request, during the execution thereof and shall allow them to pose questions to the extent permitted by the law of the Requested Party.

3. The officials 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 Party shall execute a request for the taking of evidence and obtaining statements from the Requested Party to the Requesting Party via video, satellite or other technological means.

#### ARTICLE 11

##### Transfer of Detained Persons to Give Evidence or Assist in Investigations

1. Upon request of the Requesting Party, a person imprisoned, serving a sentence or awaiting trial in the Requested Party may be temporarily transferred to the Requesting Party to assist in 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 Party, the Requesting Party 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 Party advises the Requesting Party 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 Party pursuant to a request seeking such person's attendance.

## ARTICLE 12

### Providing Evidence or Assisting in Investigations in the Requesting Party

1. When the Requesting Party requests the attendance in its territory of a person to provide evidence or assist in investigations in the Requesting Party, the Requested Party shall invite the person to voluntarily appear before the appropriate authority in the Requesting Party. The Requesting Party shall indicate the expenses and the amount to be paid. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party 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 Party, for failing to appear in the Requesting Party.

## ARTICLE 13

### Safe Conduct

1. Subject to Article 11, a person present in the Requesting Party in response to a request made by such Party shall not be prosecuted, detained or subjected to any other restriction of personal liberty in such Party for any acts or omissions preceding such person's departure from the Requested Party, 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 Party, 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 14**  
**Proceeds and Instrumentalities of Crime**

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds and instrumentalities of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
2. When, pursuant to paragraph 1, suspected proceeds and instrumentalities of crime are found, the Requested Party shall take such measures as permitted by its law and under the conditions of its law to restrain, seize and where appropriate, destroy such instrumentalities.
3. Proceeds seized pursuant to this Treaty shall be shared between the Requested and the Requesting Parties on a 50/50 basis after the costs of the Requested Party have been defrayed unless otherwise agreed.

**ARTICLE 15**  
**Central Authorities**

1. For the purposes of this Treaty each Party shall appoint a Central Authority to receive requests for assistance. For the Republic of South Africa, the Central Authority shall be the Director-General: Department of Justice and Constitutional Development and for the United Mexican States, the Central Authority shall be the Office of the Attorney-General of the Republic.
2. 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 Party 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 Party shall so inform the Requesting Party prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

2. The Requested Party may require, after consultation with the Requesting Party, 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 Party 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 Party.

#### ARTICLE 18

##### Authentication

Documents, records or objects transmitted pursuant to this Treaty shall not require any form of authentication, unless specifically requested. If so requested, documents shall be authenticated:

- (a) in the case of the Republic of South Africa, by the Minister of Justice and Constitutional Development or a person designated by him or her under his or her signature.
- (b) in the case of the United Mexican States, by the person responsible for authentication within the Office of the Attorney-General of the Republic.

## ARTICLE 19

### Translation

Requests and supporting documents shall be accompanied by a translation, in the case where the Republic of South Africa is the Requested Party, into one of its official languages, and in the case where the United Mexican States is the Requested Party, into Spanish.

## ARTICLE 20

### Expenses

1. The Requested Party shall meet the costs of executing the request for assistance, except for costs stated below, which shall be borne by the Requesting Party:
  - (a) expenses associated with conveying any person to or from the territory of the Requested Party at the request of the Requesting Party and any expenses payable to that person while in the Requesting Party pursuant to a request under Articles 11 or 12 of this Treaty;
  - (b) expenses and fees of private experts, including translators, interpreters and transcribers hired for the purpose of executing the request either in the Requested Party or the Requesting Party; and
  - (c) expenses associated with the taking of evidence and statements from the Requested Party to the Requesting Party 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 practice which may be applicable.

**ARTICLE 22**  
**Consultation**

The Department of Justice and Constitutional Development of the Republic of South Africa and the Office of the Attorney-General of the Republic of the United Mexican States may consult with each other directly in connection with the processing of requests.

**ARTICLE 23**  
**Settlement of Disputes**

Any dispute between the Parties arising out of the interpretation, application or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiations through the diplomatic channel.

**ARTICLE 24**  
**Ratification, Entry into Force, Amendment and Termination**

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

2. This Treaty shall enter into force thirty (30) days after the date of the exchange of instruments of ratification and shall apply to any request submitted after it enters into force.

3. This Treaty may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel. These amendments shall enter into force thirty (30) days after the date on which the Parties have notified each other that they have complied with their domestic law requirements for entry into force.

4. Either Party may terminate this Treaty by written notice to the other Party submitted through the diplomatic channel. The termination shall take effect six (6) months after the date on which it was notified to the other Party. The termination of the Treaty shall not affect the execution of requests submitted prior to the date on which termination was notified.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Treaty in two originals in the English and Spanish languages, all texts being equally authentic.

DONE at Mexico City on this 1<sup>st</sup> day of November 2013, and at the city of PRETORIA on this 24<sup>TH</sup> day of MARCH ~~2013~~ 2014.

J. Radz  
FOR THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH  
AFRICA

[Signature]  
FOR THE GOVERNMENT OF  
THE UNITED MEXICAN  
STATES



**TREATY  
BETWEEN  
THE GOVERNMENT  
OF  
THE REPUBLIC OF SOUTH AFRICA  
AND  
THE GOVERNMENT  
OF  
THE UNITED MEXICAN STATES  
ON  
EXTRADITION**

## **PREAMBLE**

The Government of the Republic of South Africa and the Government of the United Mexican States (hereinafter referred to separately as a "Party" and jointly as the "Parties");

DESIRING to improve the effectiveness of their co-operation in the prevention and prosecution 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 Party 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 period of one (1) year or more.
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 Party for an extraditable offence, extradition shall be granted if a period of at least six (6) 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 Party 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 Requesting Party.

6. An offence is extraditable whether or not the conduct on which the Requesting Party bases its request occurred in the territory over which it has jurisdiction. However, where the law of the Requested Party does not provide for jurisdiction over an offence in similar circumstances, the Requested Party may, in its discretion, refuse extradition on this basis.

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

8. 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 (1) year or less, provided that all other requirements for extradition are met.

### ARTICLE 3

#### Mandatory Refusal of Extradition

Extradition shall be refused in the following circumstances:

1. Where the offence for which extradition is requested is considered to be a political offence. For the purpose of this paragraph however, an attack on or intentional crime against the physical integrity of a Head of State or a member of that person's family, does not constitute a political offence.
2. Where 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, political opinion, sex, sexual orientation, age, mental or physical disability or status, or that the person's position may be prejudiced for any of those reasons.
3. Where there are substantial grounds to believe that the person sought may be subjected to torture, cruel, inhuman or degrading treatment or punishment.
4. Where the prosecution for the offence or penalty for which extradition is requested would be barred by prescription under the law of the Requesting Party.
5. Where the offence for which extradition is requested is an offence exclusively under military law and is not an offence under ordinary criminal law.
6. Where the person sought has been finally acquitted or convicted in the Requested Party for the same offence for which extradition is requested.

#### ARTICLE 4

##### Death Penalty and Other Grounds for Refusal

Extradition shall be refused if the offence for which it is requested is punishable with the death penalty or any other penalties prohibited by the laws of the Requested Party, unless the Requesting Party provides assurances that these penalties shall not be imposed, and if imposed not executed.

#### 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 the following circumstances:

1. Where the offence for which extradition is requested is already subject to the jurisdiction of the Requested Party.
2. Where the person sought is being prosecuted by the Requested Party for an offence based on the same facts as the offence for which extradition is requested.
3. Where the Requested Party, while also taking into account the seriousness of the offence and the interests of the Requesting Party, considers that because of the personal circumstances of the person sought, the extradition would be fully incompatible with humanitarian considerations.

4. Where the person sought has been acquitted or convicted in a third State for an offence, based on the same facts as the 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 prescription according to the laws of the Requesting Party; 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 certified copy of the warrant of arrest or detention for the person sought, issued by an appropriate authority;
- (b) a certified copy of the charging document, if any, against the person sought;
- (c) a certificate issued by the competent or prosecuting 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 Party 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 comply with paragraph 2 and shall also be supported by:

- (a) a certified copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person sought has been found guilty; and
- (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.

## ARTICLE 8

### Admissibility of Documents

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

- (a) in the case of the Republic of South Africa, the Minister of Justice and Constitutional Development or a person designated by him or her under his or her signature; and

- (b) in the case of the United Mexican States, the person responsible for authentication within the Office of the Attorney-General of the Republic.

#### ARTICLE 9

##### Translation

Requests and supporting documents shall be accompanied by a translation, in the case where the Republic of South Africa is the Requested Party, into one of its official languages, and in the case where the United Mexican States is the Requested Party, into Spanish.

#### ARTICLE 10

##### Additional Information

If the Requested Party 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 Party.

#### ARTICLE 11

##### Simplified Extradition

1. If the person sought consents to his or her extradition to the Requesting Party, the Requested Party 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 Party.

**ARTICLE 12**  
**Provisional Arrest**

1. In case of urgency, the Requesting Party may request in writing, through the diplomatic channels, the provisional arrest of the person sought.
2. An application for provisional arrest shall include:
  - (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 Party shall promptly inform the Requesting Party of the measures taken pursuant to the application for provisional arrest.
4. Provisional arrest shall be terminated if the Requested Party has not received the request for extradition and supporting documents pursuant to Article 7 within sixty (60) days after the arrest.
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 Party 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 Party 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 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 States.

## **ARTICLE 14**

### **Decision and Surrender**

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party. 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 Party 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 Party within sixty (60) days from the time of communication referred to in paragraph 1 of this Article, or within such longer period as may be provided for by the law of that Party, the person may be discharged from custody and the Requested Party may refuse a subsequent extradition request by the Requesting Party in respect of the same facts for which extradition was granted.
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 on a new date for the surrender of the person concerned.

## **ARTICLE 15**

### **Temporary and Deferred Surrender**

1. Where the person sought is being prosecuted or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party 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 Party shall inform the Requesting Party 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 Party may



temporarily surrender the person sought for the purpose of any criminal proceedings to the Requesting Party in accordance with conditions to be determined between the Parties. The person so surrendered shall be kept in custody in the Requesting Party and shall be returned to the Requested Party after the conclusion of such proceedings. A person who is returned to the Requested Party following a temporary surrender shall be finally surrendered to the Requesting Party to serve any sentence imposed, in accordance with the provisions of this Treaty.

3. The postponement by the Requested Party of extradition proceedings or surrender shall, for purposes of this Treaty, suspend the course of prescription in the judicial proceedings in the Requesting Party 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 Party may seize and surrender to the Requesting Party any property, documents and evidence carried by the person at the time of his or her arrest for purposes of extradition and connected with the offence for which extradition is requested. Such items shall be surrendered even if extradition, having been granted, cannot be carried out owing to death or escape of the person sought.

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

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 Party as soon as possible after the trial.

## ARTICLE 17

### Rule of Specialty and Re-Extradition to a Third Party

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

- (a) the Requested Party consents;
- (b) an offence has been committed by that person after his or her surrender;
- (c) the person, having had an opportunity to leave the Requesting Party, has not done so within thirty (30) days of final discharge. However, the period shall not include the time, for reasons beyond his or her control, that person was unable to leave the territory of the Requesting Party; or
- (d) that person has voluntarily returned to the Requesting Party after having left it.

2. A request for consent under paragraph 1 of this Article shall, if required by the Requested Party, be accompanied by the relevant documents referred to in 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.

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

5. 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 Party after the extradition and voluntarily returns to it; or
- (b) having had the opportunity to leave the territory of the Requesting Party, has not done so within thirty (30) 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 made in writing and submitted through the diplomatic channels, 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.

3. Permission for the transit of a person surrendered shall, subject to the law of the Requested Party, 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 Requested Party for transit may direct that the person be released.

4. Authorization is not required in the case of transportation by air if no landing is scheduled in 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 is received within ninety-six (96) hours of the unscheduled landing.

#### ARTICLE 19

##### Expenses

1. The Requested Party shall take all the necessary steps relating to any proceedings arising out of a request for extradition and shall bear the expenses incurred.

2. The Requesting Party shall bear the expenses:

- (a) related to the translation of documents; and
- (b) incurred in conveying the person extradited from the territory of the Requested Party.

#### ARTICLE 20

##### Representation

The Requested Party shall, through its competent authorities, represent the interests of the Requesting Party in any proceedings relating to a request for

extradition. It shall also advise and assist the Requesting Party in matters pertaining to such request.

#### **ARTICLE 21**

##### **Consultation**

The Department of Justice and Constitutional Development of the Republic of South Africa and the Office of the Attorney-General of the Republic of the United Mexican States may consult with each other directly in connection with the processing of individual cases.

#### **ARTICLE 22**

##### **Settlement of Disputes**

Any dispute between the Parties arising out of the interpretation, application or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiations through the diplomatic channels.

#### **ARTICLE 23**

##### **Confidentiality of Information**

To the extent permitted by their laws and considering their laws relating to access of information, the Parties undertake to treat all the information derived from the application of this Treaty as confidential.

#### **ARTICLE 24**

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

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

2. This Treaty shall enter into force thirty (30) days 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. This Treaty may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel. These amendments shall enter into force thirty (30) days after the date on which the Parties have notified each other that they have complied with their domestic law requirements for entry into force.

5. Either Party may terminate this Treaty by written notice to the other Party submitted through the diplomatic channel. The termination shall take effect six (6) months after the date on which it was notified to the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Treaty in two originals in the English and Spanish languages, all texts being equally authentic.

DONE at Mexico City on this 1<sup>st</sup> day of NOVEMBER 2013, and at the city of PRETORIA on this 24<sup>TH</sup> day of MARCH ~~2013-2014~~

J. Radt  
FOR THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH  
AFRICA

[Signature]  
FOR THE GOVERNMENT OF  
THE UNITED MEXICAN  
STATES

## **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 UNITED MEXICAN STATES IN TERMS OF SECTION 231(2) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**

#### **1. PURPOSE**

The purpose of this memorandum is to provide 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. 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 of Justice and Correctional Services 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 Former President Zuma authorized former Minister Radebe to sign the Treaties on behalf of the Government of the Republic of South Africa.

2.5 Articles 24(1) of both the Extradition and Mutual Legal Assistance in Criminal Matters Treaties respectively state as follows:

*(1) "This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible".*

*(2) "This Treaty shall enter into force thirty (30) days after the date of the exchange of instruments of ratification and shall apply to any request submitted after it enters into force".*

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)."*

### **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.



**RATIFICATION OF THE EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATIES BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE UNITED MEXICAN STATES IN TERMS OF SECTION 231(2) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**

**MADAM SPEAKER / CHAIRPERSON**

I have the honour to request Parliament's approval that the Extradition and Mutual Legal Assistance in Criminal Matters Treaties between the Republic of South Africa and the United Mexican States be ratified in terms of Section 231 of the Constitution.

The ratification of the two Treaties between South Africa and the United Mexican States will send out a clear message to criminals that neither South Africa nor the United Mexican States will be safe havens for criminals. The conclusion of the Extradition Treaty is also a huge step in the fight against impunity. The Mutual Legal Assistance Treaty will improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through cooperation and mutual legal assistance in criminal matters.

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. A similar provision exists in Section 27(1) of the International Cooperation in Criminal Matters Act, 1996 (Act 75 of 1996).

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 of Justice and Correctional Services 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.

The State Law Advisers have indicated that the Treaties are not in conflict with South Africa's domestic law and existing international obligations.

Former President Zuma on 6 December 2012 authorized former Minister Radebe to sign the Treaties on behalf of the Government of the Republic of South Africa. It was decided that the Treaties first be signed by the Mexican Attorney-General where after the Treaties will be returned to South Africa for the former Minister to sign. The Treaties were subsequently signed on 1 November 2013 and 24 March 2014, respectively. Due to the fact that there was a change in administration in Mexico soon after the signing of the Treaties, there were indications that the new administration would require certain amendments to the Treaties signed during the previous administration in order to regard them as valid and in force. The Department was informed during November 2019 that Mexico would not require any amendments to the Treaties and that South Africa can proceed with the ratification of the Treaties.

Articles 24(1) of both the Extradition and Mutual Legal Assistance in Criminal Matters Treaties respectively state as follows:

- (1) *"This treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible".*
- (2) *"This Treaty shall enter into force thirty (30) days after the date of the exchange of instruments of ratification and shall apply to any request submitted after it enters into force".*

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)".*

As soon as Parliament has approved the ratification of the Treaties, the Minister of Justice and Correctional Services will give notice thereof in the Gazette in terms of Section 2(3) 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).

In the light of the above and in an attempt to fight all forms of transnational crime, I request you to approve the ratification of the said Treaties.

I thank you.

## **NATIONAL ASSEMBLY**

### **RESOLUTION**

The National Assembly approves the ratification of the Mutual Legal Assistance in Criminal Matters Treaty between the Republic of South Africa and the United Mexican States in terms of section 231(2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).

## **NATIONAL COUNCIL OF PROVINCES**

### **RESOLUTION**

The National Council of Provinces approves the ratification of the Mutual Legal Assistance in Criminal Matters Treaty between the Republic of South Africa and the United Mexican States in terms of section 231(2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).