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**GOVERNMENT NOTICES
GOEWERMENTSKENNISGEWINGS**

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING**

No. R. 593

29 June 2001

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

**EXTRADITION TREATY BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE
UNITED STATES OF AMERICA**

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 the United States of America as set out in the Schedule. The exchange of the Instrument of Ratification to bring the Treaty into force took place on 25 June 2001.

P M MADUNA

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

SCHEDULE

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

Ek, Penuell Mpapa Maduna, Minister vir Justisie en Staatkundige 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 die Verenigde State van Amerika, soos in die Skedule uiteengesit, toegestem het. Die uitruil van die Instrument van Ratifikasie ten einde die verdrag in werking te stel het op 25 Junie 2001 plaasgevind.

P M MADUNA

MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING

SKEDULE

EXTRADITION TREATY

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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The Government of the Republic of South Africa and the Government of the United States of America;

Recalling the Treaty Relating to the Reciprocal Extradition of Criminals, signed at Washington December 18, 1947,

Noting that both the Government of the Republic of South Africa and the Government of the United States of America currently apply the terms of that Treaty, and

Desiring to provide for more effective cooperation between the two States in the fight against crime, and, for that purpose, to conclude a new treaty for the extradition of offenders;

Hereby agree as follows:

ARTICLE 1

Obligation to Extradite

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with or convicted of an extraditable offence.

ARTICLE 2

Extraditable Offences

1. An offence shall be an extraditable offence if it is punishable under the laws in both States by deprivation of liberty for a period of at least one year or by a more severe penalty.

2. An offence shall also be an extraditable offence if it consists of attempting or conspiring to commit, or aiding, abetting, inducing, counseling or procuring the commission of, or being an accessory before or after the fact to, any offence described in sub-article 1.

3. For the purposes of this Article, an offence shall be an extraditable offence whether or not the:

- (a) laws in the Requesting and Requested States place the offence within the same category of offences or describe the offence by the same terminology; or
- (b) offence is one for which United States federal law requires the showing of such matters as interstate transportation or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States Federal Court.

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

5. Extradition shall also be granted in respect of a person convicted of but not yet sentenced, or convicted of and sentenced for an offence as contemplated in this

Article, for the purpose of sentence, or for enforcing such sentence or the remaining portion thereof, as the case may be.

6. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control, or other revenue matters, 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, customs duty, or exchange regulation of the same kind as the law of the Requesting State.

7. If the request for extradition relates to more than one offence and extradition is granted for an extraditable offence, it shall also be granted for any other offence specified in the request even if the latter offence is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

ARTICLE 3

Nationality

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

ARTICLE 4

Political and Military Offences

1. Extradition shall not be granted if the offence for which extradition is requested is a political offence.

2. For the purposes of this Treaty, the following offences shall not be considered political offences:

- (a) a murder or other violent crime against a Head of State or Deputy Head of State of the Requesting or Requested State, or of or against a member of such person's family;
- (b) an offence for which both the Requesting and Requested States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their respective competent authorities for decision as to prosecution;
- (c) murder;

- (d) an offence involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage; and
- (e) attempting or conspiring to commit, aiding, abetting, inducing, counseling or procuring the commission of, or being an accessory before or after the fact to such offences.

3. Notwithstanding the terms of sub-article 2, extradition shall not be granted if the executive authority of the Requested State determines that there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality, or political opinion.

4. The executive authority of the Requested State shall refuse extradition for offences under military law that are not offences under ordinary criminal law.

ARTICLE 5

Capital Punishment

1. When the offence for which extradition is sought is punishable by death under the laws in the Requesting State, and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless the Requesting State provides assurances that the death penalty will not be imposed, or if imposed, will not be carried out.

2. In instances in which a Requesting State provides an assurance in accordance with this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

ARTICLE 6

Non Bis in Idem

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State of the offence for which extradition is requested.

2. Extradition shall not be precluded by the fact that the competent authorities of the Requested State have decided either:

- (a) not to prosecute the person sought for the acts or omissions for which extradition is requested;
- (b) to discontinue any criminal proceedings which have been instituted against the person sought for those acts or omissions, provided that such discontinuance does not have the effect of acquittal; or
- (c) to investigate the person sought for the same acts or omissions.

ARTICLE 7

Temporary and Deferred Surrender

1. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State until such prosecution has been concluded or any such sentence has been served.
2. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, that State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement between the Requesting and Requested States.

ARTICLE 8

Lapse of Time

Extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws in the Requesting State.

ARTICLE 9

Extradition Procedures and Required Documents

1. All requests for extradition shall be made in writing and shall be submitted through the diplomatic channel.
2. All requests shall be supported by:
 - (a) information describing the facts of the offence(s) and the procedural

- history of the case;
 - (b) a statement or text of the law, if any, creating or relating to the offence(s) for which the extradition is requested;
 - (c) a statement or text of the relevant law prescribing maximum punishment for the offence(s);
 - (d) a statement or text of the law relating to lapse of time which shall be conclusive;
 - (e) as accurate a description as possible of the person sought together with any other information which may help to establish that person's identity or nationality and probable location; and
 - (f) the documents, statements, or other information specified in sub-article 3 or 4, as the case may be.
3. In addition to the information, statements or documents referred to in sub-article 2, a request for extradition of a person who is sought for prosecution shall also be supported by:
- (a) a copy of the warrant or order of arrest, if any, issued by a judge or other competent authority;
 - (b) a copy of the indictment, charge sheet, or other charging document; and
 - (c) such information as would justify committal for extradition under the laws of the Requested State, but neither State is required to establish a prima facie case.
4. In addition to the information, statements or documents referred to in sub-article 2, a request relating to a person who has been convicted of the offence for which extradition is sought shall also be supported by:
- (a) a copy of the judgment of conviction, or, if a copy is not available, a statement by a judicial officer or other competent authority that the person has been convicted or a copy of any record of conviction that reflects the charge and the conviction;
 - (b) information establishing that the person sought is the person to whom the finding of guilt refers;
 - (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out; and
 - (d) in the case of a person who has been convicted in absentia, the documents required by sub-article 3.

ARTICLE 10

Admissibility of Documents

Any document referred to in Article 9 shall be received in evidence in any proceedings for extradition if:

1. In the case of a request from the United States, such document is:
 - (a) accompanied by a certificate according to the example set out in the Annex to this Treaty; or
 - (b) authenticated by the signature and seal of office of:
 - (i) the head of a South African diplomatic or consular mission or a person in the administrative or professional division of the public service serving at a South African diplomatic, consular, or trade office in the United States of America or a South African foreign service officer grade VII or an honorary South African consul general, vice-consul or trade commissioner; or
 - (ii) any government authority of the United States of America charged with the authentication of documents in terms of its domestic law; or
 - (iii) any notary public or other person in the United States of America who shall be shown by a certificate of any person referred to in subparagraphs (i) or (ii) or of any diplomatic or consular officer of the United States of America in the Republic of South Africa to be duly authorized to authenticate such document in terms of the domestic law of the United States of America.
2. In the case of a request from the Republic of South Africa, such document is certified by the principal diplomatic or principal consular officer of the United States resident in the Republic of South Africa, as provided by the extradition laws of the United States; or
3. Such document is certified or authenticated in any other manner acceptable by the laws in the Requested State.

ARTICLE 11

Translation

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

ARTICLE 12

Additional Information

1. If the executive authority of the Requested State considers that the information furnished in support of the request for extradition is not sufficient to enable the request for extradition to be granted, it shall notify the Requesting State in order to enable that State to furnish additional information.
2. The executive authority may fix a reasonable time limit for such information to be furnished.
3. Nothing shall prevent the executive authority of the Requested State from presenting to a court of that State information sought or obtained after submission of the request to the Court or after expiration of the time stipulated pursuant to sub-article 2.

ARTICLE 13

Provisional Arrest

1. In case of urgency, the Requesting State may, for the purpose of extradition, request the provisional arrest of the person sought pending presentation of the documents in support of the extradition request. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Republic of South Africa Department of Justice and the United States Department of Justice. The facilities of the International Criminal Police Organization (INTERPOL) also may be used to transmit such a request. The application may also be transmitted by post, telegraph, telefax or any other means affording a record in writing.
2. The application for provisional arrest shall contain:
 - (a) a description of the person sought;
 - (b) the location of the person sought, if known;
 - (c) a description of the offence(s);
 - (d) a concise statement of the acts or omissions alleged to constitute the offence(s);

- (e) a description of the punishment that can be imposed or has been imposed for the offence(s);
- (f) a statement that a document referred to in Article 9(3)(a) or Article 9(4)(a), as the case may be, exists; and
- (g) a statement that the documents supporting the extradition request for the person sought will follow within the time specified in this Treaty.

3. Prompt attention shall be given to such application and the Requesting State shall be notified as soon as possible of the decision regarding its application for provisional arrest and, if applicable, the reasons for any inability to proceed with the application.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the documents required in Article 9. For this purpose, receipt of said documents by the Embassy of the Requested State in the Requesting State shall constitute receipt by the executive authority of the Requested State.

5. The release from custody of a person pursuant to sub-article 4 shall not prejudice the subsequent re-arrest and extradition of that person if the documents required in Article 9 are delivered at a later date.

ARTICLE 14

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State of its decision on the request for extradition.

2. Reasons shall be given by the Requested State for any complete or partial refusal of a request for extradition. The Requested State shall provide copies of pertinent judicial decisions upon request.

3. If the request for extradition is granted, the relevant authorities of the Requesting and Requested States shall agree on the date and place for the surrender of the person sought.

4. If the person sought is not removed from the territory of the Requested State within the time period prescribed by the law of that State, that person may be discharged from custody, and the Requested State, in its discretion, may subsequently refuse extradition for the same offence.

5. If circumstances beyond its control prevent either the Requesting State or the Requested State from respectively surrendering or receiving the person sought, the State so prevented shall notify the other accordingly and seek to agree on a new date for such surrender.

ARTICLE 15

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 executive authority of the Requested State shall determine to which of those States, if any, the person is to be extradited and shall notify the Requesting State of its decision.

2. In determining to which State the person is to be extradited, the Requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to an extradition treaty;
- (b) the relative seriousness of the offences, should those requests relate to different offences;
- (c) the time and place of commission of each offence;
- (d) the respective dates on which the requests were received from the respective States;
- (e) the interests of the respective States;
- (f) the nationality of the victim; and
- (g) the possibility of any subsequent extradition between the respective States.

ARTICLE 16

Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may seize and surrender to the Requesting State all property, including articles and documents, that may be found in the Requested State and that has been acquired as a result of

the offence or is connected thereto or may be required as evidence, if extradition is granted.

2. The property referred to in sub-article 1 may be surrendered to the Requesting State, if the latter so requests, even if the extradition cannot be carried out due to the death, disappearance, or escape of the person sought.

3. Where the said property is liable to seizure or confiscation within the jurisdiction of the Requested State, the latter may, upon satisfactory assurances from the Requesting State that the property will be returned within a fixed period of time or as soon as practicable, temporarily surrender that property to the Requesting State. The Requested State may also defer the surrender of such property if it is required in connection with pending criminal proceedings in the jurisdiction of the Requested State.

4. Any rights which the Requested State or third parties may have to such property shall be duly respected in accordance with the law in the Requested State.

ARTICLE 17

Rule of Specialty

1. A person extradited under this Treaty shall not be detained, tried, or punished in the Requesting State for any offence committed before his or her extradition other than an offence:

- (a) 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 granted or is a lesser included offence;
- (b) for which the executive authority of the Requested State consents to the person's detention, trial or punishment. For the purpose of this paragraph:
 - (i) the Requested State may require the submission of the documentation referred to in Article 9; and
 - (ii) the person extradited may be detained by the Requesting State for sixty (60) days or for such longer period of time as the Requested State may authorize, pending the processing of the request.

2. Sub-article 1 of this Article shall not apply if:
 - (a) the person extradited leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
 - (b) the person extradited has had an opportunity to leave the territory of the Requesting State and has not done so within fifteen (15) days of final discharge in respect of the offence for which that person was extradited.

ARTICLE 18

Surrender to a Third State or an International Tribunal

1. Where a person has been surrendered to the Requesting State by the Requested State, the Requesting State shall not surrender that person to any third State or an international tribunal 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 territory of the Requesting State and has not done so within fifteen (15) 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-article 1, the Requested State may request relevant information.

ARTICLE 19

Waiver

If the person sought consents to be surrendered to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.

ARTICLE 20

Transit

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

2. A request for transit shall be transmitted through the diplomatic channel or directly between the Department of Justice of the Republic of South Africa and the United States Department of Justice. In cases of urgency, the facilities of the International Criminal Police Organization (INTERPOL) may also be used to transmit such a request.
3. The request for transit shall contain:
 - (a) a description of the person together with any information that may help to establish his or her identity and nationality; and
 - (b) a brief statement of the facts of the case, and a list of the offences for which the person was surrendered by the third State.
4. Permission for the transit of a person shall, subject to the law of the Requested State, include permission for the person to be held in custody during transit. If transportation is not continued within a reasonable time, the executive authority of the State in whose territory the person is being held may direct that the person be released.
5. Authorization is not required when air transportation is used by one State and no landing is scheduled on the territory of the other State. If an unscheduled landing does occur, the State in whose territory such landing occurs may require a request for transit pursuant to sub-article 2, and it may detain the person until the request for transit is received and the transit is effected, provided that such request is received within 96 hours of the unscheduled landing.

ARTICLE 21

Representation and 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 advise, assist, appear in court on behalf of, and otherwise represent the interests of the Requesting State.
2. The Requested State shall bear the expenses incurred in its territory or jurisdiction 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 pay all the expenses incurred in the translation of extradition documents and in conveying the person from the territory of the Requested State.
4. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons under this Treaty.

ARTICLE 22

Consultation

The Department of Justice of the Republic of South Africa and the United States Department of Justice or persons designated by the respective Departments of Justice may consult with each other directly or through the facilities of the International Criminal Police Organization (INTERPOL) in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

ARTICLE 23

Application

This Treaty shall apply to any offence contemplated in Article 2, whether committed before, on, or after the date upon which this Treaty enters into force. Nothing in this Treaty shall be deemed to require or authorize any action by the Requested State that is contrary to the constitution of that State.

ARTICLE 24

Ratification, Entry into Force, 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 upon the exchange of the instruments of ratification.
3. Upon the entry into force of this Treaty, the Treaty Relating to the Reciprocal Extradition of Criminals, signed at Washington December 18, 1947,

shall cease to have any effect. Nevertheless, the prior Treaty shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force, except that Article 19 of this Treaty shall be applicable to such proceedings.

Articles 17 and 18 of this Treaty shall apply to persons found extraditable under the prior Treaty.

4. Either State may terminate this Treaty at any time by giving written notice to the other State, and the termination shall be effective six months after the date of such notice.

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

DONE at Washington in duplicate, this sixteenth day of September, 1999.

Dr P M Maduna
(Minister for Justice and
Constitutional Development)
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH
AFRICA

Mrs J Reno
(Attorney-General)

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA

ANNEX

APPOSTILLE

(Convention de la Haye du 5 Octobre 1961)

1. Country

This public document

2. has been signed by

3. acting in the capacity of

4. bears the seal/stamp of

Certified

5. at

6. the (date)

7. by

8. No.

9. Seal/stamp:

10. Signature:

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No. R. 594

29 June 2001

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

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATY BETWEEN THE REPUBLIC OF
SOUTH AFRICA AND THE UNITED STATES OF AMERICA)**

I, Penuell Mpapa Maduna, Minister for Justice and Constitutional Development, hereby give notice in terms of section 27(2) of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), that the Parliament of the Republic of South Africa has on 3 November 2000 agreed to the ratification of the Mutual Legal Assistance in Criminal Matters Treaty between the Republic of South Africa and the United States of America as set out in the Schedule. The exchange of the Instrument of Ratification to bring the Treaty into force took place on 25 June 2001.

P M MADUNA

MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

SCHEDULE

**WET OP INTERNASIONALE SAMEWERKING IN STRAFREGTELIKE
AANGELEENTHEDE, 1996 (WET NO. 75 VAN 1996)**

**VERDRAG RAKENDE WEDERKERIGE REGSAMEWERKING IN STRAFREGTELIKE
AANGELEENTHEDE TUSSEN DIE REPUBLIEK VAN SUID-AFRIKA EN DIE
VERENIGDE STATE VAN AMERIKA**

Ek, Penuell Mpapa Maduna, Minister vir Justisie en Staatkundige Ontwikkeling gee, ingevolge artikel 27(2) van die Wet op Internasionale Samewerking in Strafregtelike Aangeleenthede, 1996 (Wet No. 75 van 1996), hiermee kennis dat die Parlement van die Republiek van Suid-Afrika op 3 November 2000 tot die bekragtiging van die Verdrag rakende Wederkerige Samewerking in Strafregtelike Aangeleenthede tussen die Republiek van Suid-Afrika en die Verenigde State van Amerika, soos in die Skedule uiteengesit, toegestem het. Die uitruil van die Instrument van Ratifikasie ten einde die verdrag in werking te stel het op 25 Junie 2001 plaasgevind.

P M MADUNA

MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING

SKEDULE

TREATY BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

ON

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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Article 22	Ratification, Entry Into Force, and Termination

The Government of the Republic of South Africa and the Government of the United States of America,

Desiring to 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,

Hereby agree as follows:

ARTICLE 1

Scope of Assistance

1. The Contracting States shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, and prevention of offences, and in proceedings related to criminal matters.

2. Assistance shall include:

- (a) taking the testimony or statements of persons;
- (b) providing documents, records, and articles of evidence;
- (c) locating or identifying persons;
- (d) serving documents;
- (e) transferring persons in custody for testimony or other purposes;
- (f) executing requests for searches and seizures;
- (g) assisting in proceedings related to restraint or immobilization and confiscation or forfeiture of assets or property; compensation or restitution; recovery or collection of fines; and
- (h) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offence under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the States. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 2

Central Authorities

1. Each Contracting State shall designate a Central Authority to make and

receive requests pursuant to this Treaty.

2. For the Government of the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For the Government of the Republic of South Africa, the Central Authority shall be the Director-General: Department of Justice or a person designated by the Director-General.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty. Such communication may, in exceptional circumstances, be effected through their diplomatic channels or through INTERPOL.

ARTICLE 3

Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:
 - (a) the request relates to a political offence;
 - (b) the request relates to an offence under military law which would not be an offence under ordinary criminal law;
 - (c) the execution of the request would prejudice the national security or any other essential interests of the Requested State; or
 - (d) the request is not made in conformity with the Treaty.
2. For the purposes of paragraph 1(a) of this Article, the following offences shall not be considered political offences:
 - (a) a murder or other violent crime against a Head of State or Deputy Head of State of the Requesting or Requested State, or of or against a member of such person's family;
 - (b) an offence for which both the Requesting or Requested State have an obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their respective competent authorities for decision as to prosecution;

- (c) murder;
- (d) an offence involving kidnapping, abduction, or any other form of unlawful detention, including the taking of hostages; and
- (e) attempting or conspiring to commit, aiding, abetting, inducing, counseling or procuring commission of, or being an accessory before or after the fact to such offences.

3. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

4. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of that decision and the reasons therefor.

ARTICLE 4

Form and Contents of Requests

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in emergency situations. In any such case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in English.

2. The request shall include the following:

- (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offences which relate to the matter;
- (c) a description of the evidence, information, or other assistance

- sought; and
- (d) a statement of the purpose for which the evidence, information, or other assistance is sought.
3. To the extent necessary and possible, a request shall also include:
- (a) information on the identity and location of any person from whom evidence is sought;
 - (b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
 - (c) information on the identity and whereabouts of a person to be located;
 - (d) a precise description of the place or person to be searched and of the articles to be seized;
 - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
 - (f) a list of questions to be asked of a witness;
 - (g) a description of any particular procedure to be followed in executing the request;
 - (h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled;
 - (i) any requirements for confidentiality and the reasons therefor;
 - (j) a court order, if any, or a certified copy thereof, which is to be enforced and a statement that such order is final; and
 - (k) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

ARTICLE 5

Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State have

authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State, including the terms of this Treaty. However, the method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.

4. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined to be necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.

6. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress in executing the request.

7. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If the request cannot successfully be executed in whole or in part, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons therefor.

ARTICLE 6

Authentication or Certification

1. Upon request by the United States, information or evidence furnished to the United States shall be authenticated or certified in the following manner:

- (a) Information or evidence provided pursuant to Articles 9, 10 or 16 shall be authenticated or certified in the manner indicated in Form A for Article 9, Form B for Article 10 or Form E for Article 16, appended to this Treaty, or in such other manner as the Central Authority requests; and
- (b) The absence or non-existence of evidence requested pursuant to Article 9 or 10 shall be certified in the manner indicated in Form C for Article 9 or Form D for Article 10, appended to this Treaty.
- (c) The following shall be admissible in the United States as proof of the truth of the matters set forth therein:
 - (i) records authenticated by Form A or B or certified by Form E; and
 - (ii) Forms C or D, certifying the absence of such records.

2. (a) Upon request by the Republic of South Africa, documents or articles of evidence furnished to the Republic of South Africa shall be authenticated or certified by attestation, affidavit, or other affirmation covering or recording the required or requested subject matter. The substantive form of the said attestation, affidavit or declaration will be communicated by the Central Authority of the Republic of South Africa to its counterpart in the United States from time to time.
- (b) Despite the provisions of subparagraph (a), in the case of court records or records of judicial proceedings, it shall be sufficient if a copy of such records is certified as a true copy of the original recorded by the relevant judicial officer or another competent authority in the United States.

- (c) All documents referred to in this paragraph must be accompanied by a certificate according to the example set out in Form F to this Treaty.
- (d) Despite the provisions of sub-paragraph (c), any document referred to therein, may be authenticated or certified in the manner in which foreign documents are authenticated or certified to enable them to be produced in any court in the Republic of South Africa.
- (e) In the case of documents contemplated in Article 10 of this Treaty it shall be sufficient if such documents or certified copies thereof are authenticated or certified in accordance with sub-paragraphs (c) or (d).

ARTICLE 7

Costs

1. The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 11, 12 and 13, which costs, fees, allowances, and expenses shall be paid by the Requesting State.
2. If, during the execution of a request, it becomes apparent that fulfillment of the request will entail expenses of an extraordinary nature, the Central Authorities shall consult to determine the terms and conditions under which execution may continue.

ARTICLE 8

Limitations on Use

1. The Central Authority of the Requested State may require that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State.

In such cases, the Requesting State shall comply with the requirement.

2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.
3. Nothing in this Article shall preclude the use or disclosure of information or evidence to the extent that there is an obligation to do so under the Constitution of the Requesting State in criminal proceedings. The Requesting State shall notify the Requested State in advance of any such proposed disclosure.
4. Information or evidence which has been made public in the Requesting State in accordance with paragraph 1 or 2 may thereafter be used for any purpose.

ARTICLE 9

Testimony or Evidence in the Requested State

1. A person in the Requested State from whom testimony or evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.
2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.
3. The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question, directly or indirectly, the person giving the testimony or evidence.
4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the testimony or

evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

ARTICLE 10

Official Records

1. The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of organs of State and government departments and agencies in the Requested State.

2. The Requested State may provide copies of any documents, records, or information which are in the possession of an organ of State or a government department or agency in that State, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may in its discretion deny a request pursuant to this paragraph entirely or in part.

ARTICLE 11

Testimony in the Requesting State

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requesting State shall indicate the extent to which the expenses will 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.

2. The Central Authority of the Requesting State may, in its discretion, determine that a person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded his departure from the Requested State.

3. The safe conduct provided for by this Article shall cease seven days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The Central Authority of the Requesting State may, in its discretion, extend this period for up to fifteen days if it determines that there is good cause to do so.

ARTICLE 12

Transfer of Persons in Custody

A person in the custody of either State whose presence for purposes of assistance under this Treaty is sought may be transferred from the custody of one State to the custody of the other State for that purpose provided that:

- (a) the person concerned and both Central Authorities to this Treaty agree thereto; and
- (b) any terms or conditions set by the State that will transfer such person for the purposes of this Article will be adhered to by the receiving State, including:
 - (i) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;
 - (ii) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
 - (iii) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and
 - (iv) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

ARTICLE 13**Transit of Persons in Custody**

1. The Requested State may authorize the transit through its territory of a person held in custody by a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in an investigation, prosecution or proceeding.
2. Where such transit is authorized, the Requested State shall have the authority and the obligation to keep the person in custody during transit in accordance with the laws of the Requested State, including the terms of this Treaty.

ARTICLE 14**Location or Identification of Persons or Items**

The Requested State shall use its best efforts to ascertain the location or identity of persons or items specified in the request.

ARTICLE 15**Service of Documents**

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.
2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State a reasonable time before the scheduled appearance.

3. The Requested State shall return a proof of service in the manner specified in the request.

ARTICLE 16

Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.
2. Upon request, every official who has custody of a seized item shall certify the continuity of custody, the identity of the item, and the integrity of its condition.
3. The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

ARTICLE 17

Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents, records, or articles of evidence furnished to it in execution of a request under this Treaty, as soon as possible.

ARTICLE 18

Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting State becomes aware of proceeds of crimes or instrumentalities or objects used in the commission of

crimes that are located in the other State and may be forfeitable or otherwise subject to seizure under the laws of that State, it may so inform the Central Authority of the other State. If that other State has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other State on the action taken.

2. The Contracting States shall assist each other to the extent permitted by their respective laws in proceedings relating to:

- (a) restraint or immobilization of proceeds of crimes and instrumentalities or objects used in the commission of crimes;
- (b) confiscation or forfeiture of proceeds of crimes and instrumentalities or objects used in the commission of crimes;
- (c) recovery or collection of fines imposed by courts as sentences in criminal proceedings; and
- (d) compensation or restitution to victims of crime.

3. The State that has custody over proceeds of crimes and instrumentalities or objects used in the commission of crimes shall dispose thereof in accordance with its laws. Either State may transfer all or part of such assets or property, or the proceeds of the sale thereof, to the other State, to the extent permitted under the transferring State's laws and upon such terms as it deems appropriate.

ARTICLE 19

Compatibility with Other Treaties

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

ARTICLE 20**Consultation**

The Central Authorities shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. They may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 21**Application**

This Treaty shall apply to any assistance contemplated in Article 1, whether the acts were committed before, on, or after the date upon which this Treaty enters into force. Nothing in this Treaty shall be deemed to require or authorize any action by the Requested State that is contrary to the constitution of that State.

ARTICLE 22**Ratification, Entry Into Force, 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 upon the exchange of instruments of ratification.
3. Either State may terminate this Treaty by means of written notice to the other State through the diplomatic channel. Termination shall take effect six months following the date of notification.

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

DONE at Washington, in duplicate, this sixteenth day of September, 1999.

Dr P M Maduna
(Minister for Justice and
Constitutional Development)
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH
AFRICA

Mrs J Reno
(Attorney-General)
FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA

FORM A**CERTIFICATE OF AUTHENTICITY OF BUSINESS RECORDS**

I,, attest on penalty of
(name)

criminal punishment for false statement or false attestation that I am employed by

..... and that my official title is
(name of business from which documents are sought)

.....

I further state that each of the records attached hereto is the original or a duplicate of
the original records in the custody of
(name of business from which documents are sought)

I further state that:

- (A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;
- (B) such records were kept in the course of a regularly conducted business activity;
- (C) the business activity made such records as a regular practice; and
- (D) if such record is not the original, such record is a duplicate of the original.

.....
(signature)

.....
(date)

Sworn to or affirmed before me
(name)

a this
(notary public, judicial officer, etc.)

..... day of
(day) (month) (year)

FORM B**ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS**

I,, attest on penalty of criminal
(name)
punishment for false statement or attestation that my position with the Government
of is
(country) (official title)
and that in that position I am authorized by the law of
(country)
to attest that the documents attached and described below are true and accurate
copies of original official records that are recorded or filed in
(name of office or agency)
which is a government office or agency of
(country)

Description of Documents:

.....
(signature)
.....
(title)
.....
(date)

FORM C**CERTIFICATION OF ABSENCE OR NON-EXISTENCE OF BUSINESS RECORDS**

I,, having been advised as a witness
(name)

that a false attestation subjects me to a penalty of criminal punishment, attest as follows:

I am employed by/associated with
(name of business from which documents are sought)
in the position of
(business position or title)
and by reason of my position am authorized and qualified to make this attestation.

As a result of my employment/association with the above-named business, I am familiar with the business records it maintains. The business maintains business records that:

- (A) are made, at or near the time of the occurrence of the matters set forth therein by, or from information transmitted by, a person with knowledge of those matters;
- (B) are kept in the course of a regularly conducted business activity; and
- (C) are made by the business as a regular practice.

Among the records so maintained are records of individuals and entities that have accounts or otherwise transact business with the above-named business. I have made or caused to be made a diligent search of those records. No records have been found reflecting any business activity between the business and the following individuals and entities:

If the business had maintained an account on behalf of or had participated in a transaction with any of the foregoing individuals or entities, its business records would reflect that fact.

.....
(date of execution)

.....
(place of execution)

.....
(signature)

FORM D**CERTIFICATION OF ABSENCE OR NON-EXISTENCE OF OFFICIAL RECORDS**

I,, certify as follows:
(name)

1. is a government office or agency
(name of public authority)
of and is authorized by law to maintain
(country)
official records setting forth matters that are authorized by law to be reported
and recorded or filed;
2. records of the type described below set forth matters that are authorized by
law to be reported and recorded or filed, and such matters regularly are
recorded or filed by the above-named public authority;
3. my position with the above-named public authority is;
(official title)
4. in my official capacity I have made, or caused to be made, a diligent search of
the above-named public authority's records for the records described below;
and
5. no such records have been found to exist therein.

Description of records:

.....
(signature)

.....
(date)

(Official Seal or Stamp)

FORM E**ATTESTATION WITH RESPECT TO SEIZED ARTICLES**

I, , attest on penalty of criminal
(name)

punishment for false statements or attestation that my position with the Government

of is
(country) (official title)

I received the articles listed below from

on , at
(date) (place)

in the following condition:

Description of Article:

Changes in Condition while in my custody:

Official Seal

.....
(signature)

.....
(title)

.....
(date)

APPOSTILLE

(Convention de la Haye du 5 Octobre 1961)

1. Country
- This public document
2. has been signed by
3. acting in the capacity of
4. bears the seal/stamp of

5. at

6. the (date)

7. by

8. No.

9. Seal/stamp: 10. Signature:

[illegible]

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531