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

No. R. 224

18 March 2005

**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 FRENCH REPUBLIC**

I, Brigitte Sylvia Mabandla, 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 11 November 2002 agreed to the ratification of the Mutual Legal Assistance in Criminal Matters Treaty between the Republic of South Africa and the French Republic as set out in the Schedule. The said Treaty entered into force on 1 March 2004.

Mrs B S Mabandla
Minister for Justice and Constitutional Development

SCHEDULE

The Government of the Republic of South Africa and the Government of the French Republic;
Desiring to enter into an Agreement on Mutual Legal Assistance in Criminal Matters;
Have agreed as follows:

ARTICLE 1

Scope of Application

1. The two States undertake to provide to each other, in accordance with the provisions of this Agreement, the widest measure of mutual legal assistance in any proceedings related to any offence, the punishment of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the Requesting State.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings in the Requesting State in a criminal matter.
3. This Agreement does not apply to arrests, the execution of sentences or offences under military law which are not offences under ordinary criminal law.

ARTICLE 2

Contents of Requests

1. Requests for assistance shall indicate -
 - (a) the authority making the request;
 - (b) the purpose of the request and the nature of the assistance sought;
 - (c) if necessary, the identity, nationality and location of a person to whom the request relates; and
 - (d) in the case of service of process, the name and address of the person upon whom service is to be effected or such information as would enable that person's identification and location to be established.
2. Requests shall also contain a statement of the applicable law and a summary of the facts where they seek to have investigations carried out or evidence gathered.
3. Requests may also contain any information that the Requesting State considers useful to the Requested State to execute the request.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.

ARTICLE 3

Transmission of Requests

1. Requests for assistance shall be in writing
2. Requests and responses thereto shall be transmitted to and received by, in the case of the Republic of South Africa the Department of Justice and Constitutional Development and, in the case of the French Republic the Ministry of Justice.

3. In urgent cases, copies of the requests for assistance may be transmitted by any means using any form capable of being reduced in writing, including through the channel of the International Criminal Police Organisation (Interpol). The Requesting State must transmit the original of such request to the Requested State as soon as possible.

ARTICLE 4

Limitation on Compliance

1. Assistance may be refused -
 - (a) if the request for assistance concerns an offence which the Requested State considers either as a political offence or an offence connected with a political offence.
 - (b) if, in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order or its other essential interests.
2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.
3. If the Requested State does not comply in whole or in part, or postpones execution of a request, it shall promptly inform the Requesting State and provide reasons therefor.

ARTICLE 5

Execution of Requests

1. Requests for assistance shall be executed in accordance with the law of the Requested State and, in so far as not precluded by that law, in accordance with the terms specified by the Requesting State.
2. The Requested State shall not refuse to execute a request on the ground of bank secrecy.
3. The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
4. If the appropriate authorities of the Requested State so consent, the authorities of the Requesting State or persons specified in the request may be permitted to be present at its execution. To the extent permitted by the law of the Requested State the authorities of the Requesting State or persons specified in the request, may examine the witnesses or experts or cause them to be examined.
5. The Requesting State may require that the evidence of witnesses or experts be taken under oath.
6. In the case of a request for search and seizure, the authority that has executed such request shall provide such information relating to the description of the items seized, the circumstances of the seizure of the items, as may be required by the Requesting State.

ARTICLE 6

Provision of Documents, Records or Objects

1. The Requested State may provide certified copies (including certified photocopies) of documents or records, unless the Requesting State expressly requests originals. In the event of the latter, the request shall be complied with to the extent possible.
2. Original documents, records or objects provided by the Requested State shall be returned to it as soon as possible unless the Requested State waives such return.

ARTICLE 7
Service of Process

1. The Requested State shall effect service of process transmitted to it for this purpose by the Requesting State in accordance with its law.
2. If the Requesting State expressly so requests, service shall be effected by the Requested State in the manner required by the Requesting State, to the extent consistent with the law of the Requested State.
3. The Requested State shall return a proof of service in the manner required by the Requesting State to the extent consistent with the law of the Requested State.

ARTICLE 8
Appearance of Witnesses or Experts in the Requesting State

1. If the Requesting State considers that the personal appearance before the competent authorities of a witness or expert is particularly necessary, it shall mention that in its request for service of the subpoena and the Requested State shall inform the witness or expert accordingly. The Requested State shall advise the Requesting State of the response of the witness or expert. In such a case, the request or the subpoena shall indicate the approximate allowances and the traveling and subsistence expenses applicable.
2. A witness or expert who fails to answer a subpoena to appear, emanating from the Requesting State and service of which has been requested, shall not, even if the subpoena contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently that person voluntarily enters the territory of the Requesting State and is there again duly summoned.

ARTICLE 9
Immunities

1. Any witness or expert, whatever that person's nationality, who, pursuant to a request appears before or assists the competent authorities of the requesting State, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of that State in respect of acts, omissions or convictions which preceded that person's departure from the territory of the Requested State.
2. Subject to Article 10, any person summoned to appear before the judicial authorities of the Requesting State to answer for acts or omissions forming the subject of proceedings against that person shall not be prosecuted or detained or subjected to any other restriction of personal liberty in that State for acts or omissions not specified in the summons and which preceded that person's departure from the territory of the Requested State.
3. The immunity provided for in this Article shall cease to apply if a person contemplated in the above paragraphs, being free to leave the Requesting State, has not left within thirty (30) consecutive days after being informed that his or her attendance is no longer required or, having left, has voluntarily returned.

ARTICLE 10
Transfer of Prisoners for Mutual Assistance

1. Upon request, a person in custody in the Requested State shall, to the extent permitted by its law, be temporarily transferred to the Requesting State to assist in investigations or to testify, provided that the person consents.
2. The transfer may be refused -

- (a) if the person's presence in the Requested State is necessary for pending criminal proceedings in the territory of the Requested State;
 - (b) if the transfer is liable to prolong the person's detention; or
 - (c) if there are other overriding grounds for not transferring the person to the territory of the Requesting State.
3. The person transferred shall remain in custody in the territory of the Requesting State unless the Requested State applies for that person's release.

ARTICLE 11

Instrumentalities and Proceeds of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any instrumentalities or proceeds of crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. If suspected instrumentalities or proceeds of crime are found, the Requested State shall upon request take such measures as are permitted by its law to restrain or seize and forfeit those instrumentalities or proceeds of crime.

ARTICLE 12

Victim Compensation

The Requested State shall, to the extent permitted by its law, provide assistance concerning compensation to victims of crime.

ARTICLE 13

Confidentiality

Either State may ask the other to keep confidential the request and the response thereto, except to the extent necessary to comply with that request. The Requested State shall endeavour to comply with the confidentiality request.

ARTICLE 14

Exemption of Authentication

Documents or records transmitted pursuant to this Agreement shall not require any form of authentication.

ARTICLE 15

Expenses

1. The Requested State shall bear ordinary expenses related to the execution of the request within its jurisdiction except-
- (a) fees of experts; and
 - (b) travel expenses and allowances of witnesses or experts and expenses related to transfer of persons in custody.
2. The allowances, including subsistence, and the traveling expenses to be paid to a witness or expert by the Requesting State shall be calculated as from that person's place of residence and shall

be at rates at least equal to the applicable rates in force in the State where the proceedings are to take place.

3. If a specific request is made, the Requested State may grant the witness or expert an advance. The amount of the advance shall be endorsed on the request or the subpoena and shall be refunded by the Requesting State.

4. If it becomes apparent that the execution of the request requires or may require expenses of an extraordinary nature, the two States shall consult to determine the terms or conditions under which the execution of the request may resume.

ARTICLE 16 **Language**

Requests and supporting documents shall be accompanied by a translation -

- (a) if the Requested State is the Republic of South Africa, the English language; and
- (b) if the Requested State is the French Republic, the French language.

ARTICLE 17 **Consultation**

The Central Authorities referred to in paragraph 2 of Article 3 may consult each other on the interpretation or the implementation of this Agreement.

ARTICLE 18 **Entry into Force and Termination**

- 1. Each State shall notify the other of its compliance with the legal procedures required for the entry into force of this Agreement.
- 2. This Agreement shall come into force on the first day of the second month following the date of receipt of the last notification.
- 3. This Agreement shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.
- 4. Either State may terminate this Agreement at any time by giving notice in writing through the diplomatic channel. The termination will take effect one year after the date of receipt of this notification.

IN WITNESS THEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Cape Town on this 31st day of May 2001, in the English and French languages, both texts being equally authentic.

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

Mr Hubert Vedrine
Minister of Foreign Affairs

**FOR THE GOVERNMENT OF THE
FRENCH REPUBLIC**