

**Regulation Gazette**

**No. 8132**

**Regulasiekoerant**

**Vol. 475**

**Pretoria, 21 January  
Januarie 2005**

**No. 27168**

**CONTENTS****CONTENTS**

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
<b>GOVERNMENT NOTICES</b>		
<b>Justice and Constitutional Development, Department of</b>		
<i>Government Notices</i>		
R. 33 International Co-operation in Criminal Matters Act (75/1996): Mutual Legal Assistance in Criminal Matters Treaty between the Republic of South Africa and the People's Republic of China.....	3	27168
R. 34 Extradition Act (67/1962): Entradition Treaty between the Republic of South Africa and the People's Republic of China.....	18	27168
<b>Labour, Department of</b>		
<i>Government Notices</i>		
R. 24 Labour Relations Act (66/1995): Correction Notice: National Bargaining Council for the Clothing Manufacturing Industry: Extension to Non-parties of Collective Re-enacting and Amending Agreements.....	34	27168
R. 25 Manpower Training Act, 1981 read with the Skills Development Act, 1998: Mining Qualifications Authority (MQA): Amendment: Conditions of Mining Sub-Sector Apprenticeship .....	36	27168
R. 26 do.: do.: do.: Conditions of Jewellery Sub-Sector Apprenticeship .....	38	27168
R. 29 Labour Relations Act (66/1995): Hairdressing and Cosmetology Bargaining Council, KwaZulu-Natal: Extension of period of operation of Main Collective Agreement .....	40	27168

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
<b>GOEWERMENTSKENNISGEWINGS</b>		
<b>Arbeid, Departement van</b>		
<i>Goewermentskennisgewings</i>		
R. 24 Labour Relations Act (66/1995): Correction Notice: National Bargaining Council for the Clothing Manufacturing Industry: Extension to Non-parties of Collective Re-enacting and Amending Agreements.....	34	27168
R. 25 Manpower Training Act, 1981 read with the Skills Development Act, 1998: Mining Qualifications Authority (MQA): Amendment: Conditions of Mining Sub-Sector Apprenticeship .....	36	27168
R. 26 do.: do.: do.: Conditions of Jewellery Sub-Sector Apprenticeship .....	38	27168
R. 29 Wet op Arbeidverhoudinge (66/1995): Haarkappers en Kosmetologie Bedingingsraad, KwaZulu-Natal: Verlenging van tydperk van Hoof Kollektiewe Ooreenkoms.....	40	27168
<b>Justisie en Staatkundige Ontwikkeling, Departement van</b>		
<i>Goewermentskennisgewings</i>		
R. 33 Wet op Internasionale Samewerking en Straftelike Aangeleenthede (75/1996): Verdrag Rakende Wederkerige Regsbystand in Straftelike Aangeleenthede tussen die Republiek van Suid-Afrika en die Volksrepubliek Sjina.....	4	27168
R. 34 Wet op Uitlewering (67/1962): Uitleweringsooreenkoms tussen die Republiek van Suid-Afrika en die Volksrepubliek Sjina.....	19	27168

---

**GOVERNMENT NOTICES**  
**GOEWERMENTSKENNISGEWINGS**

---

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

**No. R. 33**

**21 January 2005**

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

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATY BETWEEN THE REPUBLIC OF**  
**SOUTH AFRICA AND THE PEOPLE'S REPUBLIC OF CHINA**

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 21 October 2003 agreed to the ratification of the Mutual Legal Assistance in Criminal Matters Treaty between the Republic of South Africa and the People's Republic of China as set out in the Schedule. The said Treaty entered into force on 17 November 2004.

Mrs B S Mabandla  
Minister for Justice and Constitutional Development

**SCHEDULE**

No. R. 33

21 Januarie 2005

**WET OP INTERNASIONALE SAMEWERKING IN STRAFREGTELIKE  
AANGELEENTHEDE, 1996 (WET NO. 75 VAN 1996)****VERDRAG RAKENDE WEDERKERIGE REGSBYSTAND IN STRAFREGTELIKE  
AANGELEENTHEDE TUSSEN DIE REPUBLIC VAN SUID-AFRIKA EN DIE VOLKSREPUBLIC  
SJINA**

Ek, Brigitte Sylvia Mabandla, 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), hiërmee kennis dat die Parlement van die Republiek van Suid-Afrika op 21 Oktober 2003 tot die bekragtiging van die Verdrag rakende Wederkerige Regsbystand in Strafregtelike Aangeleenthede tussen die Republiek van Suid-Afrika en die Volksrepubliek Sjina, soos in die Skedule uiteengesit, toegestem het. Die Verdrag het inwerking getree op 17 November 2004.

Mev B S Mabandla  
Minister vir Justisie en Staatkundige Ontwikkeling

**SKEDULE**

**TREATY**

**BETWEEN**

**THE REPUBLIC OF SOUTH AFRICA**

**AND**

**THE PEOPLE'S REPUBLIC OF CHINA**

**ON**

**MUTUAL LEGAL ASSISTANCE**

**IN**

**CRIMINAL MATTERS**

**THE REPUBLIC OF SOUTH AFRICA AND THE PEOPLE'S REPUBLIC OF CHINA** (hereinafter referred to as "the Contracting States"),

**DESIRING** to make more effective their co-operation in the prevention and suppression of crime by concluding a treaty on mutual legal assistance in criminal matters;

**AFFIRMING** their mutual respect for sovereignty and equality and mutual benefit and respect for each other's legal systems and judicial institutions;

**HAVE** agreed as follows:

**ARTICLE 1**

**Scope of Application**

1. The Contracting States shall, in accordance with the provisions of this Treaty, provide mutual legal assistance in criminal matters.
2. Such assistance shall include:
  - (a) serving documents of proceedings;
  - (b) taking testimonies or statements from persons;
  - (c) providing documents, records and articles of evidence;
  - (d) obtaining and providing expert evaluations;
  - (e) locating and identifying persons;
  - (f) conducting judicial inspections or examining sites or objects;
  - (g) making persons available for giving evidence or assisting in investigations;
  - (h) transferring persons in custody for giving evidence or assisting in investigations;
  - (i) conducting inquiries, searches, freezing or restraining and seizures;
  - (j) forfeiting or confiscating proceeds of criminal activities and instruments of crime;
  - (k) notifying results of criminal proceedings and supplying criminal records;
  - (l) exchanging information on law; and
  - (m) any other forms of assistance which are not contrary to the laws of the Requested State.

**ARTICLE 2****Central Authorities**

1. For the purpose of this Treaty, the Central Authorities designated by the Contracting States shall communicate directly with each other for matters concerning mutual request and assistance.
2. The Central Authorities referred to in paragraph 1 of this Article shall be the Director-General: Department for Justice and Constitutional Development for the Republic of South Africa and the Ministry of Justice for the People's Republic of China.
3. Should either Contracting State change its designated Central Authority, it shall inform the other Contracting State of such change through diplomatic channels.

**ARTICLE 3****Refusal or Postponement of Assistance**

1. The Requested State may refuse to provide assistance if:
  - (a) the request relates to conduct which would not constitute an offence under the laws of the Requested State;
  - (b) the request is considered by the Requested State as relating to a political offence;
  - (c) the request relates to an offence which is a purely military offence under the laws of the Requesting State;
  - (d) there are substantial grounds for the Requested State to believe that the request has been made for the purpose of investigating, prosecuting, punishing or instituting other proceedings against a person on account of that person's race, sex, religion, nationality or political opinions, or that that person's position may be prejudiced for any of those reasons;
  - (e) the Requested State is in the process of or has terminated criminal proceedings or has already rendered a final judgment against the same suspect or accused for the same offence as contained in the request;
  - (f) the Requested State considers that the assistance requested lacks substantial connection with the case; or
  - (g) the Requested State is of the opinion that the execution of the request would impair its sovereignty, security, public order or other

essential public interests, or would be contrary to the fundamental principles of its domestic law.

2. The Requested State may postpone assistance if execution of the request would interfere with an ongoing investigation, prosecution or other proceeding in the Requested State.
3. Before refusing a request or postponing its execution, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.
4. If the Requested State refuses or postpones assistance, it shall inform the Requesting State of the reasons for the refusal or postponement.

#### **ARTICLE 4**

#### **Form and Content of Requests**

1. A request shall be made in writing. In urgent situations, the Requested State may accept a request in another form and the Requesting State shall confirm the request in writing promptly thereafter unless the Requested State agrees otherwise.
2. A request for assistance shall include the following:
  - (a) the name of the competent authority conducting the investigation, prosecution or other proceeding to which the request relates;
  - (b) a description of the nature of the relevant case, a summary of the relevant facts of and the provisions of laws applicable to the case to which the request relates;
  - (c) a description of the assistance sought and that of the purpose and relevance for which the assistance is sought; and
  - (d) the time limit within which the request should be executed.
3. To the extent necessary and possible, a request shall also include the following:
  - (a) information on the identity and residence of a person from whom evidence is sought;
  - (b) information on the identity and residence of a person to be served and that person's relationship to the proceedings;
  - (c) information on the identity and whereabouts of the person to be



- located or identified;
- (d) a description of the place or object to be inspected or examined;
  - (e) a description of any particular procedure to be followed in executing the request and reasons therefor;
  - (f) a description of the place to be searched and of the property to be inquired into or searched, inspected, frozen or restrained and seized;
  - (g) any degree of confidentiality and the reasons therefor;
  - (h) information as to the allowances and expenses to which a person invited to be present in the Requesting State to give evidence or assist in the investigation will be entitled; and
  - (i) such other information which may facilitate execution of the request.

4. If the Requested State considers the contents contained in the request not sufficient to enable it to deal with the request, it may request additional information.

5. Requests and supporting documents made under this Article shall be accompanied by a translation in an official language of the Requested State.

#### **ARTICLE 5**

##### **Execution of Requests**

1. The Requested State shall promptly execute a request for assistance in accordance with its domestic law.

2. Subject to its domestic law, the Requested State may execute the request for assistance in the manner requested by the Requesting State.

3. The Requested State shall promptly inform the Requesting State of the outcome of the execution of the request. If the assistance requested can not be provided, the Requested State shall inform the Requesting State of the reasons.

#### **ARTICLE 6**

##### **Confidentiality and Limitation on Use**

1. The Requested State shall subject to the fundamental principles of its domestic law, keep confidential a request, including its contents, supporting

documents and any action taken in accordance with the request, if so requested by the Requesting State. If the request cannot be executed without such confidentiality, the Requested State shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed.

2. The Requesting State shall, subject to the fundamental principles of its domestic law, keep confidential the information and evidence provided by the Requested State, if so requested by the Requested State, or shall use such information or evidence only under the terms and conditions specified by the Requested State. In the event of the confidentiality being breached in any way the Requesting State shall promptly inform the Requested State.

3. The Requesting State shall not use any information or evidence obtained under this Treaty for any purposes other than for the case described in the request without the prior consent of the Requested State.

#### **ARTICLE 7**

##### **Service of Documents**

1. The Requested State shall, in accordance with its domestic law and upon request, effect service of documents that are transmitted by the Requesting State. However, the Requested State shall not be obliged to effect service of a document which requires a person to appear as the accused.

2. The Requested State shall, after effecting service, provide the Requesting State with proof of service that shall include the description of the date, place, and manner of service and the authority which served the document. If service cannot be effected, the Requesting State shall be so informed and be advised of the reasons therefor.

#### **ARTICLE 8**

##### **Taking of Evidence**

1. The Requested State shall, in accordance with its domestic law and upon request, take evidence and transmit it to the Requesting State.

2. When the request concerns the transmission of documents or records, the Requested State may transmit certified copies or photocopies thereof. However, where the Requesting State explicitly requires transmission of originals, the

Requested State shall meet such requirement to the extent possible.

3. Subject to the domestic law of the Requested State, the documents and other materials to be transmitted to the Requesting State in accordance with this Article shall be certified in such forms as may be requested by the Requesting State in order to make them admissible in accordance with the domestic law of the Requesting State.

4. Subject to the domestic law of the Requested State, 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 pose questions, through judicial or law enforcement personnel of the Requested State, to the person from whom evidence is to be taken. For this purpose, the Requested State shall promptly inform the Requesting State of the time and place of the execution of the request.

#### **ARTICLE 9**

##### **Refusal to Give Evidence**

1. A person who is required to give evidence in the Requested State pursuant to a request may refuse to give evidence where the laws of either State permit or require that person to refuse to give evidence.

2. If a person claims that there is a right or obligation to refuse to give evidence under the laws of the Requesting State, the Requested State shall, with respect to the right or obligation, rely on a certificate of the competent authority of the Requesting State as evidence of the existence or non-existence of that right or obligation.

#### **ARTICLE 10**

##### **Availability of Persons to Give Evidence or Assist in Investigations**

1. When the Requesting State requests the appearance of a person to give evidence or assist in investigations in the territory of the Requesting State, the Requested State shall invite the person to appear before the appropriate authority in the territory of the Requesting State. The Requesting State shall indicate the extent to which allowances and expenses will be paid to the person. The Requested State shall promptly inform the Requesting State of the person's response.

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 territory of the Requesting State no less than sixty (60) days before the scheduled appearance unless, in urgent cases, the Requested State has agreed to a shorter period of time.

#### **ARTICLE 11**

##### **Transfer of Persons in Custody for Giving Evidence or Assisting in Investigations**

1. To the extent permitted by its laws, the Requested State may, at the request of the Requesting State, temporarily transfer a person in custody in its territory to the Requesting State for appearing before an authority to give evidence or assist in investigations, provided that the person so consents and the Contracting States have previously reached a written agreement on the conditions of the transfer.

2. If the person transferred is required to be kept in custody under the laws of the Requested State, the Requesting State shall hold that person in custody.

3. The Requesting State shall promptly return the person transferred to the Requested State as soon as he/she finished giving evidence or assisting in investigations.

4. For the purposes of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested State for the period of time served in the custody of the Requesting State.

#### **ARTICLE 12**

##### **Protection of Witnesses and Experts**

1. Any witness or expert present in the territory of the Requesting State shall not be investigated, prosecuted, detained, punished or subjected to any other restriction of personal liberty by the Requesting State for any acts or omissions which preceded that person's entry into its territory, nor shall that person be obliged to give evidence or to assist in any investigations, prosecution or other proceedings other than that to which the request relates, except with the prior consent of the Requested State and that person.

2. Paragraph 1 of this Article shall cease to apply if the person referred to in paragraph 1 of this Article has stayed on in the territory of the Requesting State thirty (30) days after that person has been officially notified that his/her presence is no longer required or, after having left, has voluntarily returned. But this period of time shall not include the time during which the person fails to leave the territory of the Requesting State for reasons beyond his/her control.

3. A person who refuses to give evidence or assist in investigations in accordance with Articles 10 or 11 shall not be subject to any penalty or mandatory restriction of personal liberty for such refusal.

### **ARTICLE 13**

#### **Inquiry, Search, Freezing or Restraining and Seizure**

1. The Requested State shall, subject to its domestic law, execute a request for inquiring, searching, freezing or restraining and seizing of evidential materials, articles and assets.

2. The Requested State shall provide the Requesting State with such information as requested concerning the results of executing the request, including information on the results of inquiring or searching, the place and circumstances of freezing or restraining or seizing, and the subsequent custody of such materials, articles or assets.

3. The Requested State may transmit the seized materials, articles or assets to the Requesting State if the Requesting State agrees to the terms and conditions for such transmission proposed by the Requested State.

### **ARTICLE 14**

#### **Return of Documents, Records and Articles of Evidence to the Requested State**

At the request of the Requested State, the Requesting State shall, as soon as possible, return to the Requested State the original documents or records and articles of evidence provided to it by the latter under this Treaty.

**ARTICLE 15**  
**Proceeds of Crime**  
**and Instruments of Crime**

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds and instruments of crime are deposited within its territory and shall notify the Requesting State of the result of inquiries made. In making the request, the Requesting State shall give the Requested State the reasons for inferring that the proceeds or instruments may be deposited in the latter's territory.
2. Once the suspected proceeds or instruments of crime are found in accordance with paragraph 1 of this Article, the Requested State shall, at the request of the Requesting State, take measures to freeze or restrain, seize and forfeit or confiscate such proceeds or instruments according to its domestic law.
3. At the request of the Requesting State, the Requested State may, to the extent permitted by its domestic law and under the terms and conditions agreed to by the Contracting States, transfer all or part of the proceeds or instruments of crime, or the proceeds from the sale of such assets to the Requesting State.
4. In applying this Article, the legitimate rights and interests of the Requested State and any third party to such proceeds or instruments shall be respected under the domestic law of the Requested State.

**ARTICLE 16**  
**Notification of Results of Proceedings**  
**in Criminal Matters**

1. A Contracting State that has made a request to the other in accordance with this Treaty shall, at the request of the latter, inform the latter of results of the criminal proceedings to which the request for assistance relates.
2. Either Contracting State shall, upon request, inform the other Contracting State of the results of any criminal proceedings it may have instituted against a national of the latter.

**ARTICLE 17**  
**Supply of Criminal Records**

The Requested State shall provide, upon request, the Requesting State with the

past criminal records and information of the sentence against the person investigated or prosecuted in a criminal matter in the territory of the Requesting State, if the person concerned has also been prosecuted in the Requested State.

#### **ARTICLE 18**

#### **Exchange of Information on Law**

The Contracting States shall, upon request, furnish each other with information on the laws and on judicial and law enforcement practice in the respective States relating to the implementation of this Treaty.

#### **ARTICLE 19**

#### **Authentication**

For the purpose of this Treaty, any documents transmitted in accordance with this Treaty shall not require any form of authentication unless this Treaty otherwise provides.

#### **ARTICLE 20**

#### **Expenses**

1. The Requested State shall meet the cost of executing the request, but the Requesting State shall bear the following:
  - (a) expenses for persons to travel to, stay in and leave from the Requested State under Article 8 (4);
  - (b) allowances or expenses for persons to travel to, stay in and leave from the Requesting State under Articles 10 or 11 in accordance with the standards or regulations of the place where such allowances or expenses have been incurred;
  - (c) expenses and fees of experts; and
  - (d) expenses and fees of translation and interpretation.
2. The Requesting State shall, upon request, pay in advance the expenses, allowances and fees it shall bear.
3. If it becomes apparent that the execution of a request requires expenses of an extraordinary nature, the Contracting States shall consult each other to determine the terms and conditions under which the request can be executed.

**ARTICLE 21****Service of Documents and Taking of Evidence  
by Diplomatic or Consular Officials**

Either Contracting State may serve documents on and take evidence from its nationals in the territory of the other Contracting State through its diplomatic or consular agents therein, provided that the domestic law of the other Contracting State will not be violated and no coercive measures of any kind are taken.

**ARTICLE 22****Compatibilities with other Treaties**

This Treaty shall not prevent either Contracting State from providing assistance to the other Contracting State according to other applicable international agreements or its domestic laws. The Contracting States may also provide assistance in accordance with any other arrangement, agreement, or practice which may be applicable.

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

Any dispute arising out of the interpretation and application of this Treaty shall be resolved through consultation by diplomatic channels if the Central Authorities of the Contracting States are themselves unable to reach agreement.

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

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at a place to be determined by the Contracting States. This Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
2. This Treaty may be amended at any time by written agreement between the Contracting States.



3. Either Contracting State may terminate this Treaty at any time by notice in writing to the other Contracting State through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.

4. This Treaty applies to any requests presented after its entry into force even if the relevant acts or omissions occurred before this Treaty enters into force.

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

**DONE** at Pretoria on this 20<sup>th</sup> day of January 2003, in duplicate in the English and Chinese languages, both texts being equally authentic.

**Dr P M Maduna**  
Minister for Justice and Constitutional  
Development  
**For The Republic of South Africa**

**Mr Wang Yi**  
Deputy Minister for Foreign Affairs  
**For The People's Republic of China**

No. R. 34

21 January 2005

**EXTRADITION ACT, 1962 (ACT NO. 67 OF 1962)****EXTRADITION TREATY BETWEEN THE REPUBLIC OF SOUTH AFRICA AND  
THE PEOPLE'S REPUBLIC OF CHINA**

I, Brigitte Sylvia Mabandla, 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 11 November 2002 agreed to the ratification of the Extradition Treaty between the Republic of South Africa and the People's Republic of China as set out in the Schedule. The said Treaty entered into force on 17 November 2004.

Mrs B S Mabandla  
Minister for Justice and Constitutional Development

**SCHEDULE**

No. R. 34

21 Januarie 2005

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

Ek, Brigitte Sylvia Mabandla, 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 11 November 2002 tot die bekragtiging van die Uitleweringsverdrag tussen die Republiek van Suid-Afrika en die Volksrepubliek Sjina, soos in die Skedule uiteengesit, toegestem het. Die Verdrag het inwerking getree op 17 November 2004.

Mev B S Mabandla  
Minister vir Justisie en Staatkundige Ontwikkeling

**SKEDULE**

**TREATY**

**BETWEEN**

**THE REPUBLIC OF SOUTH AFRICA**

**AND**

**THE PEOPLE'S REPUBLIC OF CHINA**

**ON**

**EXTRADITION**

**THE REPUBLIC OF SOUTH AFRICA AND THE PEOPLE'S REPUBLIC OF CHINA**  
(hereinafter referred to as "the Contracting States");

**DESIRING** to make more effective their co-operation in the prevention and suppression of crime by concluding a Treaty on Extradition;

**AFFIRMING** their mutual respect for sovereignty and equality and mutual benefit and respect for each other's legal systems and judicial institutions;

**HAVE AGREED** as follows:

**ARTICLE 1**  
**Obligation to Extradite**

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty and at the request of the other Contracting State, persons who are wanted for prosecution or imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

**ARTICLE 2**  
**Extraditable Offences**

1. For the purpose of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting States that is punishable by imprisonment for a period of at least one year or by a more severe penalty.
2. Where the request for extradition relates to a person sentenced by a court of the Requesting State for an extraditable offence, extradition for the purpose of enforcing the sentence shall be granted if a period of at least six months of the sentence remains to be served.
3. For the purpose of this Article, in determining whether conduct is an offence against the laws of the Requested State, it shall not matter whether the laws of the Contracting States

place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology or stipulate the same constituent elements of the offence.

4. An offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction. Where such conduct occurred outside the territory of the Requesting State, it shall set out its legal provisions establishing its jurisdiction.

5. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:

- (a) it was an offence in the Requesting State at the time of the conduct constituting the offence; and
- (b) the conduct alleged would, if it had taken place in the Requested State at the time of the making of the request for extradition, have constituted an offence against the laws of the Requested State.

6. If the request for extradition relates to a sentence of both imprisonment and a pecuniary sanction, the Requested State may grant extradition for the enforcement of both the imprisonment and the pecuniary sanction.

7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting States, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

### **ARTICLE 3**

#### **Mandatory Refusal of Extradition**

Extradition shall be refused where:

- (a) the offence for which extradition is requested is considered by the Requested State to be a political offence;
- (b) the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin,

political opinion, sex, or status or that that person's position may be prejudiced for any of those reasons;

- (c) the person whose extradition is requested has, under the laws of the Requesting State, become immune from prosecution or punishment because of lapse of time, pardon or amnesty;
- (d) the offence for which extradition is requested only constitutes a military offence; or
- (e) the person sought has been finally acquitted or convicted or is otherwise exempted from further prosecution for the same offence for which extradition is requested.

#### **ARTICLE 4**

#### **Discretionary Refusal of Extradition**

Extradition may be refused where:

- (a) the offence for which extradition is requested is subject to the jurisdiction of the Requested State and the person sought is being prosecuted or will be prosecuted in that State;
- (b) the probable penalty that may be imposed in the Requesting State is in conflict with the fundamental principles of the laws of the Requested State;
- (c) in exceptional cases, the Requested State, while also taking into account the seriousness of the offence and the interests of the Requesting State, considers that because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

#### **ARTICLE 5**

#### **Nationality**

1. A Contracting State shall have the right to refuse to extradite its own nationals.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its prosecuting authorities.

**ARTICLE 6****Presentation of Requests**

1. Requests for provisional arrest or extradition shall be made:
  - (a) in the case of the Republic of South Africa, to the Minister for Justice and Constitutional Development; and
  - (b) in the case of the People's Republic of China, to the Ministry of Foreign Affairs.
  
2.
  - (a) Requests for extradition shall be made in writing and communicated directly between the authorities of the Contracting States mentioned in paragraph 1 of this Article, however, use of the diplomatic channel shall not be excluded.
  - (b) Requests for provisional arrest shall be communicated as outlined in subparagraph (a) of this paragraph or through the facilities of the International Criminal Police Organization (INTERPOL) or through other channels agreed upon by both Contracting States.

**ARTICLE 7****Documents to be Submitted**

1. The following documents shall be submitted in support of a request for extradition:
  - (a) in all cases:
    - (i) the name of the requesting authority;
    - (ii) information about the person sought including, but not limited to, his or her name, age, sex, nationality, occupation or location that may help to identify and trace that person;
    - (iii) a statement prepared by a competent authority, which describes briefly the conduct constituting the offence for which the extradition is requested, indicating the place and the date of the commission of the offence and which provides a description or a copy of the text of the legal provisions describing the offence and applicable penalty;
    - (iv) a copy of the text of the relevant legal provisions establishing criminal jurisdiction over the offence where the offence occurred outside the territory of the Requesting State; and



- (v) a copy of the text of the relevant legal provisions concerning any time limit on the prosecution of the offence in question.
- (b) in the case of a person sought for prosecution for an offence:
  - (i) the original or a certified true copy of the order of arrest or of any document having the same force and effect, issued by a competent authority of the Requesting State;
  - (ii) a copy of the indictment, charge sheet or other charging document, if any; and
  - (iii) a document issued by a competent authority in charge of the prosecution of the case containing a summary of the available evidence and a statement certifying that the evidence is sufficient under the laws of the Requesting State to warrant the prosecution of the person sought.
- (c) in the case of a person who has been convicted:
  - (i) a statement by a competent authority describing the conduct for which the person was convicted and a certified copy of the document that records the conviction and, where applicable, sentence of the person; and
  - (ii) if a portion of the sentence has already been served, a statement by a competent authority specifying the portion of the sentence which remains to be served.

2. Any document submitted in accordance with this Treaty shall be in an official language of the Requested State or be accompanied by a certified translation into an official language of that State.

## **ARTICLE 8**

### **Authentication of Supporting Documents**

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

- (a) in the case of the Republic of South Africa, the Minister responsible for Justice or a person designated by him or her under his or her signature; and
- (b) in the case of the People's Republic of China, a person duly designated by the Ministry of Foreign Affairs to be responsible for the authentication of documents,

identifying the person who has signed the document, including that person's position or title.

### **ARTICLE 9**

#### **Additional Information**

If the Requested State considers that the information furnished in support of a request for extradition is not sufficient, that State may request that additional information be furnished within thirty (30) days. Where duly requested by the Requesting State, that time limit may be extended for fifteen (15) days. If the Requesting State fails to submit the required information within any stipulated time, it may be deemed to have renounced its request. However, in that event the Requesting State shall not be precluded from making a fresh request for extradition for the same offence.

### **ARTICLE 10**

#### **Consent**

Subject to its laws, a Requested State may extradite to a Requesting State a person sought, who consents thereto.

### **ARTICLE 11**

#### **Provisional Arrest**

1. In case of urgency, the competent authorities of the Requesting State may apply by any means which allows for a written record for the provisional arrest of the person sought.
2. An application for provisional arrest shall include the following:
  - (a) the name of the requesting authority;
  - (b) information about the person sought including, but not limited to, his or her name, age, sex, nationality, occupation or location that may help to identify and trace that person;
  - (c) a statement that a request for extradition will follow;
  - (d) a description of the offence and applicable penalty, with a brief summary of the facts of the case, including the date and place of the commission of the offence;

- (e) a statement attesting to the existence of a warrant of arrest or a conviction to which this Treaty applies and details thereof; and
- (f) any other information which would justify provisional arrest in the Requested State.

3. The Requested State shall promptly inform the Requesting State of the measures taken pursuant to the application for provisional arrest.

4. Provisional arrest shall be terminated if the Requested State has not received the documents referred to in Article 7 through the channel provided for in Article 6 within forty-five (45) days after the arrest. The competent authorities of the Requested State, insofar as is permitted by the laws of that State, may extend that period with regard to the reception of such documents.

5. The expiry of the forty-five (45) day period, and of any extension thereto, does not preclude subsequent arrest and extradition if a request for extradition is subsequently received.

#### **ARTICLE 12**

##### **Concurrent Requests**

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 State shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

#### **ARTICLE 13**

##### **Decision and Notification**

The Requested State shall deal with the request for extradition in accordance with the procedures provided for in its laws and as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State. Reasons shall be given for any complete or partial refusal of an extradition request.

**ARTICLE 14****Surrender**

1. Where extradition is granted, the Requested State shall surrender the person in accordance with arrangements agreed to between the competent authorities of the Contracting States.
2. The Requesting State shall receive the person within such reasonable period as the Requested State specifies and, if the person is not received by the Requesting State within that period, the Requested State may refuse to extradite that person for the same offence, unless otherwise provided for.
3. If circumstances beyond its control prevent a Contracting State from surrendering or receiving the person to be extradited, it shall notify the other Contracting State. The Contracting States shall decide upon a new date of surrender and the provisions of paragraph 2 of this Article shall apply.
4. At the time of the surrender of the person, the Requested State shall inform the Requesting State of the total period of time the person had been detained with a view to his or her extradition.

**ARTICLE 15****Postponed or Temporary Surrender**

1. Where the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.
2. Insofar as is permitted by its laws, where a person referred to in paragraph 1 of this Article has been found extraditable, the Requested State may temporarily surrender the person sought for the purpose of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting States. 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. A person who is returned to the

Requested State following a temporary surrender shall be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty.

#### **ARTICLE 16**

##### **Surrender of Property**

1. The Requested State shall, insofar as its laws permit and at the request of the Requesting State, seize property, reasonably suspected to be involved in the commission of the offence or required for the proof of the offence for which the extradition of the person is requested. The Requested State shall surrender the property to the Requesting State when extradition is granted.
2. The property mentioned in paragraph 1 of this Article shall be surrendered even if extradition, having been granted, cannot be carried out owing to the death, disappearance or escape of the person sought.
3. Where the property referred to in paragraphs 1 and 2 of this Article is required in the Requested State in connection with civil or criminal proceedings, the Requested State may temporarily retain it until the conclusion of such proceedings or surrender it on condition that it be returned.
4. Any rights that the Requested State or third parties may have acquired in the property shall be preserved. Where these rights exist, the property shall, at the request of the Requested State, be returned without charge to the Requested State as soon as possible after the conclusion of the proceedings.

#### **ARTICLE 17**

##### **Rule of Specialty**

1. A person who has been extradited shall not be prosecuted, sentenced or detained for any offence committed prior to the surrender other than that for which that person was extradited, nor shall the person's liberty be restricted for any other reason, except where:
  - (a) the Requested State consents;

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

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

### **ARTICLE 18**

#### **Re-extradition to a Third State**

1. Where a person has been surrendered to the Requesting State, that State shall not extradite the person to any third State for an offence committed before that person's surrender except where:

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

2. The Requested State may request from the Requesting State the production of the documents submitted to it by the third State in relation to any consent sought pursuant to subparagraph 1(a) of this Article.

**ARTICLE 19****Transit**

1. Insofar as is permitted by its laws, transit through the territory of one of the Contracting States shall be granted upon a request by the other Contracting State. The request for transit may be submitted by any means affording a record in writing.
2. No authorization for transit shall be necessary when air travel is used and no landing is scheduled in the territory of the Transit State. In the case of an unscheduled landing, the Transit State may require the request for transit provided for in paragraph 1. Insofar as is permitted by its laws, the Transit State shall detain the person in transit until the transit is carried out, provided that the necessary request is received as soon as possible after the unscheduled landing.

**ARTICLE 20****Expenses**

1. The Requested State shall make all necessary arrangements for, and meet the expense of, any proceedings arising out of a request for extradition.
2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person sought and in the maintenance in custody of the person until surrender to the Requesting State and the expenses associated with the seizure of property referred to in Article 16.
3. The Requesting State shall bear the expenses incurred in conveying the person extradited and transporting any property seized from the Requested State to the Requesting State.

**ARTICLE 21****Notification of Result**

The Requesting State shall promptly provide the Requested State with information on the

outcome of the criminal proceedings or the enforcement of sentence against the person extradited or concerning the re-extradition of that person to a third State.

**ARTICLE 22**  
**Consultation**

The Department for Justice and Constitutional Development of the Republic of South Africa and the Ministry of Foreign Affairs of the People's Republic of China or persons designated by the respective Department or Ministry, may consult with each other directly in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

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

Any dispute between the two Contracting States arising from the implementation or interpretation of this Treaty shall be settled by consultation through diplomatic channels.

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

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at a place to be determined by the Contracting States. This Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
2. This Treaty applies to any request submitted after its entry into force even if the relevant offence was committed before such entry into force.
3. This Treaty may be amended by mutual consent.
4. Either Contracting State may, by notice in writing through the diplomatic channel, terminate this Treaty at any time. The termination shall take effect on the one hundred and



eightieth day after the date on which it is notified to the other Contracting State. Termination shall not affect the processing of any extradition request received prior to such termination.

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

**DONE** in duplicate at Beijing, on this 10<sup>th</sup> day of December 2001, in the English and Chinese languages, each language version being equally authentic.

Dr P M Maduna  
Minister for Justice and Constitutional  
Development  
For The Republic of South Africa

Mr Zhang Fusen  
Minister of Justice of the People's  
Republic of China  
For The People's Republic of China

**DEPARTMENT OF LABOUR  
DEPARTEMENT VAN ARBEID**

No. R. 24

21 January 2005

**LABOUR RELATIONS ACT, 1995**

**CORRECTION NOTICE**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING  
INDUSTRY: EXTENSION TO NON-PARTIES OF COLLECTIVE RE-ENACTING  
AND AMENDING AGREEMENTS**

The following corrections to Government Notices Nos. R. 1175, R. 1185, R. 1187 and R. 1191 appearing in Government Gazette No. 26878 of 15 October 2004, are hereby published for general information:

**1. R. 1175 – COLLECTIVE FUND AGREEMENT FOR THE NORTHERN  
REGION**

1.1 Substitute the following for clause 7B(1).

1.1.1 "The fund known as the **Millinery Industry Sick Pay Fund (Northern Areas)**, in this Part referred to as the 'Fund', is hereby continued."

**2. R.1185 – MAIN COLLECTIVE AGREEMENT FOR THE WESTERN CAPE  
REGION**

2.1 Clause 3. **SPECIAL PROVISIONS**

2.1.1 Delete the reference to clause 23 on the first line.

2.2 Clause 4. **GENERAL PROVISIONS**

2.2.1 Substitute the expression "20 to 26(12)" for the expression "20 to 22, 24 to 26(12)".

**3. R. 1187 – COUNTRY AREAS COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

**3.1 Clause 3. SPECIAL PROVISIONS**

**3.1.1 Delete the reference to clause 23 on the first line.**

**3.2 Clause 4. GENERAL PROVISIONS**

**3.2.1 Substitute the expression “20 to 26(12)” for the expression “20 to 22, 24 to 26(12)”.**

**4. R. 1191 – KNITTING DIVISION COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION**

**4.1 Clause 3. SPECIAL PROVISIONS**

**4.1.1 Delete the reference to clause 23 on the first line.**

**4.2 Clause 4. GENERAL PROVISIONS**

**4.2.1 Substitute the expression “20 to 26(12)” for the expression “20 to 22, 24 to 26(12)”.**

No. R. 25

21 January 2005

**MANPOWER TRAINING ACT, 1981 READ WITH ITEM 4 OF SCHEDULE 2  
OF THE SKILLS DEVELOPMENT ACT, 1998**

**MINING QUALIFICATIONS AUTHORITY (MQA)**

**AMENDMENT OF CONDITIONS OF MINING SUB SECTOR  
APPRENTICESHIP**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, acting in terms of section 13 of the Manpower Training Act, 1981, hereby amend, with effect from the date of publication of this notice, Government Notice No.R. 2399 of 4 October 1991, as amended by Government Notices Nos. R.172 of 10 January 1992, R.2834 of 9 October 1992, R.436 of 19 March 1993, R.1094 of 25 June 1993, R. 1961 of 16 October 1993, R. 2311 of 3 December 1994, R. 409 of 17 March 1995, R. 1936 of 22 December 1995, R. 2079 of 20 December 1996, R.486 of 4 April 1997, R. 1502 of 14 November 1997, R. 1142 of 13 November 1998, R.129 of 5 February 1999, R. 140 of 18 February 2000, R. 157 of 23 February 2001, R.156 of 15 February 2002 and R. 345 of 7 March 2003 by the substitution of clause 3 (1) of the Conditions of Apprenticeship with regard to wages of the following clause:

“ 3. (1) An employer, excluding Government, shall pay an apprentice monthly as

specified below in accordance with the apprentice's completed phase of training, which is inclusive of a technical education component and a MQA controlled competence test:

Year of Competence Level	Wages (R per month)
First year	R 2108
Second year	R 2426
Third year	R 2792
Fourth year	R 3203
Fifth year	R 3686
Sixth year	R 4228
Seventh year	R 4863

**M.M.S. MDLADLANA**

**Minister of Labour**

No. R. 26

21 January 2005

**MANPOWER TRAINING ACT, 1981 READ WITH ITEM 4 OF SCHEDULE 2  
OF THE SKILLS DEVELOPMENT ACT, 1998**

**MINING QUALIFICATIONS AUTHORITY (MQA)**

**AMENDMENT OF CONDITIONS OF JEWELLERY SUB SECTOR  
APPRENTICESHIP**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, acting in terms of section 13 of the Manpower Training Act, 1981, hereby amend, with effect from the date of publication of this notice, Government Notice No.R. 2399 of 4 October 1991, as amended by Government Notices Nos. R.172 of 10 January 1992, R.2834 of 9 October 1992, R.436 of 19 March 1993, R.1094 of 25 June 1993, R. 1961 of 16 October 1993, R. 2311 of 3 December 1994, R. 409 of 17 March 1995, R. 1936 of 22 December 1995, R. 2079 of 20 December 1996, R.486 of 4 April 1997, R. 1502 of 14 November 1997, R. 1142 of 13 November 1998, R.129 of 5 February 1999, R. 140 of 18 February 2000, R. 157 of 23 February 2001, R.156 of 15 February 2002 and R. 345 of 7 March 2003 by the substitution of clause 3 (1) of the Conditions of Apprenticeship with regard to wages of the following clause:

“ 3. (1) An employer, excluding Government, shall pay an apprentice monthly as

specified below in accordance with the apprentice's completed phase of training, which is inclusive of a technical education component and a MQA controlled competence test:

Year of Competence level	Wages (R per month)
First year	R 1508
Second year	R 2256
Third year	R 2632
Fourth year	R 3384

**M.M.S. MDLADLANA**

**Minister of Labour**

No. R. 29

21 January 2005

**LABOUR RELATIONS ACT, 1995****HAIRDRESSING AND COSMETOLOGY BARGAINING COUNCIL –  
KWAZULU-NATAL: EXTENSION OF PERIOD OF OPERATION OF MAIN  
COLLECTIVE AGREEMENT**

I, THEMBINKOSI MKALIPI, Executive Manager: Collective Bargaining, duly authorised thereto by the Minister of Labour, hereby, in terms of section 32(6)(a)(i) of the Labour Relations Act, 1995, extend the periods fixed in Government Notices Nos. R. 357 of 5 April 2002, R. 1533 of 13 December 2002 and R. 851 of 23 July 2004 by a further period ending 29 July 2005.

T MKALIPI

**EXECUTIVE MANAGER: COLLECTIVE BARGAINING**

---

No. R. 29

21 Januarie 2005

**WET OP ARBEIDSVERHOUDINGE, 1995****HAARKAPPERS EN KOSMETOLOGIE BEDINGINGSRAAD –  
KWAZULU-NATAL: VERLENGING VAN TYDPERK VAN HOOF  
KOLLEKTIEWE OOREENKOMS**

Ek, THEMBINKOSI MKALIPI, Uitvoerende Bestuurder: Kollektiewe Bedinging, behoorlik daartoe gemagtig deur die Minister van Arbeid, verleng hierby, kragtens artikel 32(6)(a)(i) van die Wet op Arbeidsverhoudinge, 1995, die tydperk vasgestel in Goewermentskennisgewings Nos. R. 357 van 5 April 2002, R. 1533 van 13 Desember 2002 en R. 851 van 23 Julie 2004 met 'n verdere tydperk wat op 29 Julie 2005 eindig.

T MKALIPI

**UITVOERENDE BESTUURDER: KOLLEKTIEWE BEDINGING**

---