

No. 47707

**South Africa
and
Canada**

**Treaty between the Government of the Republic of South Africa and the
Government of Canada on extradition. Durban, 12 November 1999**

Entry into force: *4 May 2001 by notification, in accordance with article 22*

Authentic texts: *English and French*

Registration with the Secretariat of the United Nations: *South Africa, 30 August
2010*

**Afrique du Sud
et
Canada**

**Traité d'extradition entre le Gouvernement de la République d'Afrique du Sud et le
Gouvernement du Canada. Durban, 12 novembre 1999**

Entrée en vigueur : *4 mai 2001 par notification, conformément à l'article 22*

Textes authentiques : *anglais et français*

Enregistrement auprès du Secrétariat des Nations Unies : *Afrique du Sud, 30 août
2010*

[ENGLISH TEXT – TEXTE ANGLAIS]

TREATY
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
AND
THE GOVERNMENT OF CANADA
ON
EXTRADITION

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND
THE GOVERNMENT OF CANADA**, hereby referred to as “the Contracting
Parties”;

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

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

HAVE AGREED as follows:

ARTICLE 1

Obligation to Extradite

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

ARTICLE 2

Extraditable Offences

1. For the purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting Parties that is punishable by deprivation of liberty for a maximum term of one year or more or by a more severe punishment.
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting State for an extraditable offence, extradition 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 law of the Requested State:
 - (a) it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology;
 - (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.
4. An offence of a fiscal character, including an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter, is an extraditable offence. Provided that the conduct for which extradition is sought is an offence in the Requested State, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.
5. 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. However, where the law of the Requested State does not provide for jurisdiction over an offence in similar circumstances, the Requested State may, in its discretion, refuse extradition on this basis.
6. 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 law of the Requested State.
7. 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.
8. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both 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 in any of the following circumstances:

1. Where the offence for which extradition is requested is considered by the Requested State to be a political offence or an offence of a political character. For the purpose of this paragraph, the following conduct does not constitute a political offence or an offence of a political character:
- (a) conduct that constitutes an offence mentioned in a multilateral agreement to which Canada and the Republic of South Africa are parties and are obliged to extradite the person or submit the matter to appropriate authorities for prosecution;
 - (b) murder;
 - (c) inflicting serious bodily harm;
 - (d) sexual assault;
 - (e) kidnapping, abduction, hostage-taking or extortion;
 - (f) using explosives, incendiaries, devices or substances in circumstances in

which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and

- (g) an attempt or conspiracy to engage in, counseling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (f).
- 2. Where there are substantial grounds for believing that the request for extradition is made for the purpose of prosecuting or punishing the person by reason of that person's race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.
- 3. Where the prosecution for the offence for which extradition is requested would be barred by prescription under the law of the Requesting State.
- 4. Where the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law.
- 5. Where the person sought has been finally acquitted or convicted in the Requested State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

ARTICLE 4

Discretionary Refusal of Extradition

Extradition may be refused in any of the following circumstances:

- 1. Where the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence.
- 2. Where the person sought is being prosecuted by the Requested State for the offence for which extradition is requested.
- 3. Where the offence carries the death penalty under the law of the Requesting State, unless that State undertakes that the death penalty will not be sought, or if a sentence of death is imposed it will not be carried out.
- 4. Where, 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.