

## **A SOUTH AFRICAN PERSPECTIVE ON MUTUAL LEGAL ASSISTANCE AND EXTRADITION IN A GLOBALIZED WORLD**

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### **SUMMARY**

This contribution focuses on the modalities of mutual legal assistance and extradition from a South African perspective. The question is posed whether South Africa has succeeded to establish the required framework as a fully fledged member of the international community to make a positive contribution in the fields of mutual legal assistance and extradition subsequent to its international political isolation during the apartheid era. Although the international community derives substantial benefit from a borderless global world, it has as a result also to deal with the negative impact of globalization on international crime. Physical and/or electronic crimes are increasingly committed across borders and may be described as borderless, but law enforcement (combating, investigation and prosecution of crime) is still very much confined to the borders of a state. Criminal networks have taken advantage of the opportunities resulting from the dramatic changes in world politics, business, technology, communications and the explosion in international travel and effectively utilize these opportunities to avoid and hamper law enforcement investigations. As a sovereign state has control over its own territory it also implies that states should not interfere with each other's domestic affairs. The correct and acceptable procedure would be for a state (requesting state) to apply to another state (requested state) for co-operation in the form of mutual legal assistance regarding the gathering of evidence and/or extradition of the perpetrator. Co-operation between states are governed by public international law between the requesting and requested state and the domestic law of the requested

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state. The South African legislature has increasingly provided for extraterritorial jurisdiction of South African courts in respect of organized crime and terrorism. It does however appear that existing criminal justice responses are experiencing challenges to meet the demands of sophisticated international criminal conduct. Mutual legal assistance and extradition provisions may show that the world is becoming smaller for fugitives and criminals, but the processes are far from expeditious and seamless. An overview of the South African law pertaining to mutual legal assistance and extradition indicates that the South African legislative framework and policies as well as international treaties make sufficient provision to render international assistance in respect of mutual legal assistance and extradition. The role of the courts in upholding the rule of law and protecting the constitutionally enshrined bill of rights, is indicative of the important function that the judiciary fulfills in this regard. It is important that extradition is not only seen as the function of the executive as it also involves the judiciary. It appears that South Africa has displayed the necessary commitment to normalize its international position since 1994 and to fulfill its obligations in a globalized world by reaching across borders in an attempt to address international criminal conduct.

**KEYWORDS:** Extradition; mutual legal assistance; international crime; organized crime; bill of rights; criminal justice; extraterritorial jurisdiction; international agreements