

Treaty in Extradition Between The Government of the Republic of India and The Government of United Mexican States

UNION OF INDIA

India

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TREATY-IN-EXTRADITION-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC OF INDIA AND THE GOVERNMENT OF THE UNITED MEXICAN STATES OF 2009

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Treaty in Extradition Between The Government of the Republic of India and The Government of United Mexican States Published vide Notification No. G.S.R. 525(E), dated 17th June, 2009 Ministry of External Affairs G.S.R. 525(E). - Whereas the Treaty on Extradition between the Government of the Republic of India and the Government of United Mexican States was signed at New Delhi on 10th September, 2007; and the Instrument of Ratification exchanged at Mexico on 18th December, 2008 and as per Article 23.2 of the Treaty, it has entered into force from 17th January, 2009, and which Treaty provides as follows: The Government of the Republic of India and the Government of the United Mexican States hereinafter referred to as "The Parties"; Encouraged by the desire to further strengthen the friendly relations between the parties; Desiring to improve the effectiveness of the cooperation between both countries in prevention and suppression of crime; Conscious of the importance of the co-operation in the fight against crime and granting each other assistance on reciprocal extradition of offenders; Recognizing that concrete steps are necessary to combat terrorism; Based on mutual respect for the sovereignty and equality between the states; Have agreed as follows : Article 1 Obligation to Extradite

1. Each Party undertakes to extradite to the Other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or sentenced of an extradition offence as described in Article 2, committed within the territory of a Party, is found within the territory of the other Party, whether such offence was committed before or after the entry

into force of this Treaty.

2. Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting Party but in respect of which it has jurisdiction if the Requested Party would, in similar circumstances, have jurisdiction over such an offence. In such circumstances the Requested Party shall have regard to all the circumstances of the case including the seriousness of the offence.

3. In addition, extradition shall be available for an extradition offence as described in Article 2 :

(a) If it is committed in a third State by a national of the Requesting Party and this Party bases its jurisdiction on the nationality of the offender; and (b) If it occurred within the territory of the Requested party and it would be an offence under the national legislation of that Party punishable with imprisonment for a term of at least one (1) year.

Article 2 Extradition offences

1. An extradition offence for the purpose of this Treaty is constituted by a conduct, which pursuant to the national legislation of each Party is punishable by a term of imprisonment for a period of at least one (1) year.

2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

3. If the extradition is requested for the serving of sentence imposed in the Requesting Party, the duration of the sentence left to be served shall be at least for six (6) months.

4. For the purpose of this Treaty, extradition shall be considered in respect of extraditable crimes included in multilateral conventions to which both States are Parties.

Article 3 Central Authorities

1. All requests under this Treaty shall be made by the Central Authorities of the Parties through Diplomatic Channels.

2. For the Republic of India the Central Authority is the Ministry of External Affairs and in the United Mexican States the Central Authority is the Ministry of Foreign Affairs.

Article 4 Composite Offences and Dual Criminality Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or a part in the Requested Party, if under the national legislation of the Party this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting Party. Article 5 Extradition of Nationality The Requested Party shall consider the extradition of its nationals. The nationality for this purpose shall be as at the time of the commission of the offence. Article 6 Aut Dedere Aut Judicare (Extradition or Prosecution)

1. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of tribunals of that Party.

2. Where the Requested Party refuses the extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the Same manner as in the case of any offence of a serious nature under the national legislation of that Party.

3. If the competent authorities decide not to prosecute in such a case, the extradition shall be reconsidered at the request of the Requesting Party, in accordance with this Treaty.

Article 7 Political Offence

1. Extradition shall be refused if the offence for which it is requested is an offence of a political character, or related with an offence of political character, according to each Party's national legislation.

2. For the purpose of this Treaty, the following offences shall not be regarded as offences of political character:

(a) offences under International Conventions to which both States are Parties; (b) murder; (c) manslaughter or culpable homicide; (d) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise; (e) the causing of an explosion likely to endanger life or

cause serious damage to property;(f)the making or possession of an explosive substance by a person to intend either himself or another person to endanger life or cause serious damage to property;(g)the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;(h)the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;(i)damaging property whether used for public utilities or otherwise. With intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;(j)kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;(k)incitement to murder;(l)any other offence related to terrorism which at the time of the request is under the national legislation of the Requesting Party, not to be regarded as an offence of a political character; and(m)an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.Article 8Grounds for Refusal of ExtraditionThe extradition may be refused :

- 1. If the person sought is being prosecuted by the Requested Party for the same offence for which the extradition has been requested;**
- 2. If the person sought has been finally acquitted or convicted and sentenced in the Requested Party or a third State for the same offence for which the extradition is requested;**
- 3. If a person who has been convicted of an extradition offence and sentenced to imprisonment or other form of detention for a period of less than six (6) months;**
- 4. Had he been tried in the territory of the Requested Party for the offence for which his extradition is requested, he would have been entitled to be discharged under any rule of the national legislation of the Requested Party relation to previous acquittal or sentence;**
- 5. When the prosecution has become barred by lapse of time according to the national legislation of the Requesting Party;**
- 6. When the Requested Party has well founded reasons to believed that the request for extradition has been presented with the intention to prosecute or punish the person sought, by reason of race, religion or gender.**
- 7. If the offence for which extradition is requested is an offence under military law, which is not also an offence under the ordinary criminal law.**

8. If the extradition for the same offence has been previously denied on the same grounds and with regard to the same person.

9. If the offence for which the extradition is requested is Punishable by death under the law of the Requesting Party, and the death-penalty is not provided for Requesting Party gives such assurance as the Requested Party considers sufficient that the death-penalty will not be imposed or carried out.

Article 9 Postponement of Surrender If criminal proceedings against the person sought are instituted in the territory of the Requested Party, or he is lawfully detained in consequence of criminal proceedings, the decision whether or not to extradite him may be postponed until the criminal proceedings have been completed or he is no longer detained. Article 10 Extradition Procedures

1. The requested shall be made in writing and accompanied by :

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence, including possible location; (b) a statement of facts of the offence for which extradition is requested, and (c) the text of national legislation: (i) Defining the offence; (ii) prescribing the maximum punishment for that offence; and (iii) establishment the time limit for the prosecution of the offence.

2. If the request relates to an accused person, it must also be accompanied by a certified copy of the charging document establishing accusation, the warrant of arrest issued by a Judge, Magistrate or other competent authority in the territory of the Requesting Party and by such evidence as, in accordance with the national legislation of the Requested Party would justify his committal for trial if the offence had been committed within the territory of the Requested Party.

3. If the request relates to a person already convicted and sentenced, it shall be accompanied by :

(a) certified copies of the warrant of arrest, order of conviction and sentence; and, (b) a statement that the conviction or sentence was final and showing the remainder of the sentence to be served.

4. If the Requested Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested Party may require.

Article 11 Provisional Arrest

1. In urgent cases the person sought may, in accordance with the national legislation of the Requested Party, be provisionally arrested by the competent authorities of the Requested Party. The application shall contain an indication of intention to request the formal extradition of that person and a statement of the existence of a warrant of arrest against him and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest as :

(a) time and place of the offence committed; (b) circumstances of the commission; (c) proper information to determine the identity and nationality of the person sought.

2. The request for provisional arrest shall be executed by the competent authorities of the Requested Party in accordance with its national legislation. The Requesting Party shall be informed of the result of the execution of request.

3. The person arrested provisionally could be released if within a period of sixty (60) days of the arrest of the person sought, the Requested Party has not received the formal request for extradition and the documents required pursuant to Article 10 of this Treaty.

4. The Requesting Party may present a further request even though the provisional arrest has ended. The new request shall be made in accordance with the provisions of this Treaty.

Article 12 Documents and Evidence

1. In all cases the documents submitted in accordance with the provisions of this Treaty shall be authenticated by the competent authority, in accordance with the national legislation of the Requested Party and accompanied by a translation in the official language of the Requested Party or in English.

2. The authorities of the Requested Party shall admit as evidence, in any proceedings for extradition, any evidence taken on oath or by way of affirmation, any warrant and any certificate of, or judicial document stating the fact of a conviction, if it is authenticated:

(a)(i)in the case of a warrant being signed, or in the case of any original document by being certified, by a Judge, Magistrate or other competent authority of the Requesting Party; and(ii)either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting Party; or(b)in such other manner as may be permitted by the national legislation of the Requested Party.

3. The evidence described in paragraph (2) shall be admissible in extradition proceedings in the Requested Party whether sworn or affirmed in the Requesting Party or in some third State.

Article 13Summary ExtraditionIf the person sought informs the competent authorities of the Requested Party that he agrees to be extradited, that Party may stop further proceedings, and take all measures for extradition subject to its national legislation in an expeditious manner.Article 14Conflicting RequestsIf extradition of the same person is requested, whether for the same or for different offences by the other Party and a third State with whom the Requested Party has extradition arrangements, the Requested Party shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the other Party to this Treaty.Article 15Surrender

1. If extradition is granted, the person sought shall be sent by the authorities of the Requested Party to a convenient point of departure from its territory, in consultation with the Requesting Party.

2. The Requesting Party shall remove the person sought from the territory of the Requested Party within sixty days (60) or such longer period as may be permitted under the national legislation of the Requested Party. If he/she is not removed within that period, the Requested Party may release the person and refuse to extradite him her for the same offence.

Article 16Seizure and Surrender of Property

1. To the extent permitted under its national legislation, the Requested Party may seize and surrender to the Requesting Party, all articles, documents, and evidence connected with the offence in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the, tradition cannot be effected due to the death, disappearance, or escape of the person sought.

2. The Requested Party may condition the surrender of the property upon satisfactory assurances from the Requesting Party that the property will be returned to the Requested Party as soon as possible. The Requested Party may also defer the surrender of such property if it is needed as evidence in the Requested Party.

3. The rights of third parties in such property shall be duly respected.

Article 17 Rule of Speciality

1. Any person who is surrendered to the Requesting Party under this Treaty shall not be, during the period described in paragraph (2) of this Article, arrested, imprisoned or tried within the territory of the Requesting Party for or in respect of any offence committed before he was extradited to that territory other than;

a. the offence in respect of which he was extradited; b. any lesser offence disclosed by the facts proved for the purposes of securing his surrender other than an offence in relation to which an order for his extradition could not lawfully be made; or c. any other offence in respect of which the Requested Party may consent to his arrest, imprisonment or trial concerning the offence other than an offence in relation to which an order for his extradition could not lawfully be made or would not in fact be made.

2. The period referred to in paragraph (1) of this Article is period beginning with the day of his arrival in the territory of the Requesting party or his extradition under this Treaty and ending forty-five (45) days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting Party.

3. The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.

Article 18 Re-Extradition A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty (60) days of his final discharge, or has returned to that territory after having left it. Article 19 Expenses Expenses incurred in the territory of the Requested Party on account of the execution of the request for extradition shall be borne by that Party. The expenses on account of the transfer of the fugitive shall be borne by the requesting Party: Article 20 Obligation under International Conventions The present Treaty shall not affect the rights and obligations of the

Parties in respect of extradition arising from International Conventions/Treaties to which both are States Parties. Article 21 Consultations Any difference arising out of the application, interpretation or implementation of the present Treaty shall be resolved amicably through consultations between the Central authorities. Article 22 Transit

1. Either Party may authorize transportation through its territory of a person surrendered to the other Party by a third State. A request for transit shall be made through diplomatic channels. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.

2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the Party. In case of an unscheduled landing on the territory of one Party, the other Party may require the request for transit as provided in paragraph 1. That Party shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within ninety-six (96) hours of the unscheduled landing.

Article 23 Final Provisions

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force on the thirtieth (30th) day after the exchange of the instruments of ratification.

3. This Treaty may be amended by mutual consent.

4. Either Party may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Party.

5. The request for extradition received prior to its termination shall be considered under this Treaty.

Signed in duplicate at New Delhi this the tenth day of September 2007 in Hindi, Spanish, and English, all texts being equally authentic. In case of any divergence, the English text shall prevail. Now, therefore, in exercise of the powers conferred by sub-section 1 of Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the United Mexican States with effect from the date of

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the publication of this notification.