

Treaty on Extradition between the Republic of India and the Republic of Mauritius

UNION OF INDIA

India

Treaty on Extradition between the Republic of India and the Republic of Mauritius

Rule

TREATY-ON-EXTRADITION-BETWEEN-THE-REPUBLIC-OF-INDIA-AND of 2008

- Published on 19 September 2008
- Commenced on 19 September 2008
- [This is the version of this document from 19 September 2008.]
- [Note: The original publication document is not available and this content could not be verified.]

Treaty on Extradition between the Republic of India and the Republic of Mauritius Published vide Notification No. G.S.R. 661(E), 19th September 2008 G.S.R. 661(E). - Whereas the Extradition Treaty between the Republic of India and the Republic of Mauritius was signed at New Delhi on 21st November, 2003; and the exchange of the Instrument of Ratification of the Treaty took place at Port Louis on 23rd June, 2008 and has entered into force from the date of the exchange of instruments of ratification in terms of Article 20 and which Treaty provides as follows :The Government of the Republic of India and the Government of the Republic of Mauritius;Desirous of making more effective the corporation of the two countries in the suppression of crime by making further provision for the reciprocal extradition offenders;Recognising that concrete steps are necessary to combat terrorism;Have agreed as follows ;Article 1Duty to Extradition(1) Each Contracting State undertakes to extradition to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State, 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 State but in respect of which it has jurisdiction it the Requested State would, in corresponding circumstances, have jurisdiction over such as offence. In such circumstances the Requested State 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 State and the Requesting State bases its jurisdiction on the nationality of the offender; and(b) if it occurred in the Requesting State, it would be an offence under the law of the State punishable with imprisonment for a term of at least one year.Article 2Extradition Offences(1) An

extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one 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.

Article 3 Composite Offences Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of that State 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 State.

Article 4 Extradition of Nationals Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals either in respect of a territorial offence or in respect of an extraterritorial offence.

Article 5 The Political Offence Exception (1) Extradition may be refused if the offence of which it is requested is an offence of a political character; (2) For the purpose of this Treaty the following offences shall not be regarded as offence of a political character : (a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970; (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September, 1971; (c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December, 1973; (d) an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December, 1979; (e) murder; (f) manslaughter or culpable homicide; (g) 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; (h) the causing of an explosion likely to endanger life or cause serious damage to property; (i) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property; (j) the possession of a firearm or ammunition by a person who intends either himself or through another persons to endanger life; (k) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person; (l) damaging property whether used for public utilities or otherwise intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered; (m) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage; (n) incitement to murder; (o) any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character; (p) 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 6 Extradition and Prosecution (1) The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State. (2) Where the Requested State refuses a request for 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 law of that State. (3) If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 7 Grounds for Refusal of Extradition (1) A person may not be extradited if : (a) he satisfies the Requested State that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason by : (i) the trivial nature of the

offence of which he is accused or was convicted; or(ii) the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or(iii) the accusation against him not having been made in good faith in the interests of justice; or(b) the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.(2) A person who has been convicted of an extradition offence may not be extradited therefor unless he was sentenced to imprisonment or other form of detention for a period of four months or more.(3) A person may not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

Article 8 Postponement of Surrender(1) If criminal proceedings against the person sought are instituted in the territory of the Requested State, 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.(2) A person sought may not be extradited until : (a) it has been decided in accordance with the law of the Requested State that he is liable to be extradited; and (b) the expiration of any further period which may be required by the law of that State.

Article 9 Extradition Procedures(1) The request for extradition under this Treaty shall be made through the diplomatic channel.(2) The request shall be 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. (b) a statement of the facts of the offence for which extradition is requested, and (c) the text, if any, of the law: (i) defining that offence; and (ii) prescribing the maximum punishment for that offence.(3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.(4) If the request relates to a person already convicted and sentenced, it shall also be accompanied : (a) by a certificate of the conviction and sentence; (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.(5) If the Requested State considers that the evidence produced or information supplied for the purpose 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 State shall require.

Article 10 Provisional Arrest(1) In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest or a conviction 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 had the offence been committed, or the person sought been convicted, in the territory of the Requested State.(2) A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 11 Rule of Speciality(1) Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the

Requesting State for or in respect of any offence committed before he was returned to that territory other than : (a) the offence in respect of which he was returned; (b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made; or (c) any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made. (2) The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival in the territory of the Requesting State or his return under this Treaty and ending forty-five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State. (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. (4) 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 days of his final discharge, or has returned to that territory after having left it.

Article 12 Evidence (1) The authorities of the Requested State 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 State; and (ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting State; or (b) In such other manner as may be permitted by the law of the Requested State. (2) The evidence described in paragraph (1) shall be admissible in extradition proceedings in the Requested State whether sworn or affirmed in the Requesting State or in some third State.

Article 13 Competing Requests If extradition of the same person whether for the same offence or for different offences is requested by a Contracting State and a third State with which the Requested State has an extradition arrangement, the Requested State shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the Contracting State.

Article 14 Capital Punishment (1) If under the law of the Requesting State the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested State does not provide for the death penalty in a similar case, extradition may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death penalty will not be carried out.

Article 15 Surrender (1) If extradition is granted, the person sought shall be sent by the authorities of the Requested State to such convenient point of departure from the territory of that State as the Requesting State shall indicate. (2) The Requesting State shall remove the person sought from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requested State. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

Article 16 Surrender of Property (1) When a request for extradition is granted, the Requested State shall, upon request and so far as its laws allow, hand over to the Requesting State articles (including sums of money) which may serve as proof or evidence of the offence. (2) If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned. (3) These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested State without charge as soon as possible after the end of the

proceedings. Article 17 Mutual Legal Assistance in Extradition Each Contracting State shall, to the extent permitted by its law afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested. Article 18 Documents and Expenses (1) If in any particular case the Requested State so requires, the Requesting State shall supply a translation of any document submitted in accordance with the provisions of this treaty. (2) Expenses incurred in the territory of the Requested State by reason of the request for extradition shall be borne by that State. (3) The Requested State shall make all the arrangements which shall be requisite with respect to the representation of the Requesting State in any proceedings arising out of the request. Article 19 Obligation under International Convention/Treaties The present Treaty shall not affect the rights and obligations of the Contracting State arising from International Conventions/Treaties to which they are parties. Article 20 Final provisions (1) The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date. (2) This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of the exchange of instruments or ratification. (3) Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice. In witness where of the Undersigned being duly authorized thereto by their respective Governments have signed this Treaty. Done in duplicate at New Delhi on this 21st day of November, 2003, in Hindi and English, both languages being equally authentic. In case of any divergence of interpretation, the English text shall prevail. Now, therefore, in exercise of the powers conferred by sub-section (1) of the 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 Republic of Mauritius from the dated of the publication of this notification.