

Extradition Treaty Between the Government of the Republic of India and the Government of the Republic of Tunisia

TREATY

India

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EXTRADITION-TREATY-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF TUNISIA of 2004

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Extradition Treaty Between the Government of the Republic of India and the Government of the Republic of Tunisia Published vide Notification No. G.S.R. 534(E), dated 19th August, 2004 Ministry of External Affairs Order G.S.R. 534(E). - Whereas the Extradition between the Government of the Republic of India and the Government of the Republic of Tunisia was signed at Tunis, Tunisia on 4th April, 2000; and the instruments of ratification exchanged at New Delhi on 28th July, 2004 and which Treaty provides as follows: The Government of the Republic of India and the Government of the Republic of Tunisia Desiring to make more effective the cooperation of the two countries in the suppression of crime and, specifically, to regulate and promote the relations between them in matters of extradition; Recognising that concrete steps are necessary to combat terrorism; Have agreed as follows: Article 1 Obligation to Extradite (1) Each Contracting State undertakes to extradite to the other, in 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 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) If the Requesting State asserts jurisdiction in respect of an offence committed outside its territory the Requested State shall grant extradition where in a similar case it would have jurisdiction. (3) Extradition shall be granted if the offence is committed in a third State by a national of the Requesting State. (4) Extradition shall also be granted for an extradition Offence, if occurred in the Requested State provided it is an offence under the law of that State punishable with imprisonment for a term of at least one year. Article 2 Extraditable Offences (1) An offence shall be an extraditable offence only if it is punishable under the laws of both Contracting States by imprisonment for a period of at least one year. (2) If request

for extradition relates to a person wanted for enforcement of a sentence, extradition shall be granted only if a period of at least six months remains to be served.(3) In determining whether an offence is punishable Under the laws of both Contracting States, it shall not matter whether:a - The laws of both States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;b - Under the laws of the States, the constituent elements of the offence differ; it is the totality of the acts or omissions that shall be taken into account.(4) a - An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.b - Where extradition is sought for an offence against a law relating to taxation, customs, duties or other revenue matters, 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.(5) If the request for extradition includes several separate offence each of which is punishable under the laws of both States, but some of which do not fulfil other conditions set out in paragraphs 1 and 2 of this article, the Requested State may grant extradition for the latter offences provided the person is to be extradited for at least one extraditable offence.(6) An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit, aiding or abetting, counselling or procuring the commission of, or being an accessory before or after the fact, to any offence described in paragraph 1 of this article.

Article 3 Extradition of Nationals Neither of the Contracting States shall be bound to extradite the claimed person if that person is its own national at the time of the commission of the offence.

Article 4 The political offence exception(1) Extradition shall not be granted if the offence in respect of which it is Requested is considered by the Requested State as a political offence.(2) The following offences shall not be regarded as offences of a political character:(A) Offences within the scope of International Conventions and Treaties to which both the Contracting states are parties;(B) The taking or attempted taking of the life of a Head of State or members of his family or of a member of the Council of Ministers of either Contracting State;(C) Crimes affecting human life, body, person and property notably:a - murder;b - manslaughter or culpable homicide;c - 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;d - the causing of an explosion likely to endanger life or cause serious damage to property;e - 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;f - the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;g - the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;h - 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;i - kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;j - incitement to murder;k - any other offence related to terrorism which at the time of the request is, under the law of the Requested Party, not to be regarded as an offence of a political character.

Article 5 Extradition and prosecution If a request for extradition is refused only on one of the grounds mentioned in Article 3 and Article 6 (a, b), the Requested State shall, if asked to do so by the Requesting State, take all possible measures in accordance with its own law to prosecute the person claimed. For this purpose, the files, documents and exhibits relating to the offence shall be transmitted to that State. The Requesting State shall be informed of the result of the prosecution.

Article 6 Grounds for refusal of extradition Extradition shall not be granted in any of the following circumstances:a - When there are substantial grounds for believing that a request for

extradition for an ordinary criminal offence has been made for, the purpose of prosecuting or punishing a person on account of that persons race, religion, nationality or political opinions or that the person's position may be prejudiced for any of these reasons;b - If the Requested State asserts jurisdiction in respect of the offence for which extradition is requested;c - If, according to the Law of the Requesting State, that State has no jurisdiction in respect of the offence for which extradition is requested;d - If, according to the law of either State, the person claimed has become immune by reason of lapse of time from prosecution or punishment;e - If an amnesty has been granted in either State before the extradition request has been made in respect of the offence or offences for which the extradition is sought;f - If the person claimed, has already been tried and finally acquitted or convicted in respect of the offence or offences for which extradition is sought;g - If the person claimed is the subject of proceedings in the Requested State in respect of the offence for which extradition is Requested;h - If extradition would be incompatible with humanitarian considerations in view of age or health;i - when the offence for which extradition is requested is a military offence, which is not also an offence under the ordinary criminal law of the Contracting States.

Article 7 Rule of speciality(1) A person extradited under this Treaty shall not be proceeded against, sentenced, detained, or subjected to any other restriction of personal liberty in the territory of the Requesting State for any offence committed before surrender other than;a - an offence for which extradition was granted;b - Any other offence in respect of which the Requested State consents.c - 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.(2) A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in paragraph 3 or 4 of Article 11 and a legal record of any statement made by the extradited person with respect to the offence.(3) Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the Requesting State after leaving it.

Article 8 Re-extradition(1) The Contracting State to which a person has been extradited under this treaty shall not re-extradite him to a third State without the consent of the Contracting State that extradited him.(2) The request for consent to re-extradition shall be accompanied by original or certified copied of the extradition documents of the third State.(3) Such consent is not required under the conditions set out in paragraph 3 of Article 7.

Article 9 Concurrent requests(1) If requests are received from the Requesting State and from one or more other States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting State of its decision.(2) In determining to which State a person is to be extradited, the Requested State shall have regard to all the circumstances and, in particular to :a - If the requests relate to different offences-the relative seriousness of the offences;b - The time and place of commission of each offence;c - the respective dates of the requests;d - the nationality of the person;

Article 10 Notification of decision(1) The Requested State shall inform as soon as possible the Requesting State through the diplomatic channels of its decision with regard to the request for extradition.(2) Reasons shall be given for any complete or partial rejection.

Article 11 Channel of communication and required documents(1) The request for extradition shall be made in writing and transmitted through the diplomatic channel.(2) The request shall be accompanied in all cases by:a - as accurate a description as possible of the person sought, and any other information which will help to establish that person's identity, nationality, and location;b - a Statement of the pertinent facts of the case including the date and

place of commission of the offence; c - the legal description of the offence and a statement of the maximum penalties therefor and the text of all provisions of the law of the Requesting State applicable to the offence. (3) If the request relates to a person charged with an offence, it must also be accompanied by: a - the original or a certified copy of the warrant for arrest or the equivalent order issued by a competent authority of the Requesting State for producing that person before the court; b - such evidence as, according to the law of the Requested State, would justify the arrest and the committal for trial of the claimed person if the offence had been committed in the territory of the Requested State. (4) When the request relates to a convicted person, it shall also be supported: a - by the original or a certified copy of the judgment of conviction; and b - if a sentence has been imposed, by the original or a certified copy of the sentence and a statement of the extent to which it has been carried out and that it is immediately enforceable.

Article 12 Form of evidence (1) A document that, in accordance with Article 11, accompanies a request for extradition shall be admitted in evidence in any extradition proceedings, if duly authenticated, in the territory of the Requesting State. (2) A document is duly authenticated for the purposes of this Treaty if: a - in the case of a warrant it is signed, and in any other case its authenticity is certified, by a Judge, Magistrate or other competent authority in the Requesting State; and b - it is sealed with the official seal of an appropriate Minister of the Requesting State. (3) The evidence mentioned in paragraph 1 shall be admissible in extradition proceedings in the Requested State if it is established in accordance with the law of the Requesting State, or any third State.

Article 13 Additional information If the Requested State considers that the evidence or information provided in a request of extradition is not sufficient to enable it to decide on the request, additional evidence or information shall be submitted to it within such reasonable time as the Requested State shall specify.

Article 14 Waiver of extradition proceedings If the person claimed consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

Article 15 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 16 Surrender of the person (1) If extradition is granted, the Contracting States will decide the place and date of surrender and the Requesting State shall be informed of length of time for which the person claimed was detained with a view to surrender. (2) Subject to the provisions of paragraph 3 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 40 days and the Requested State may refuse to extradite him for the same offence. (3) If circumstances beyond its control prevent a Contracting State from surrendering or taking over the person to be extradited within the time stipulated in paragraph 2, it shall notify the other Contracting State. The two States shall agree on a new date for surrender and the provisions of paragraph 2 of this Article shall apply.

Article 17 Postponement of surrender The Requested State may postpone the surrender of a person claimed if that person is being proceeded against, or is serving a sentence in prison for an offence other than that for which extradition is sought and shall so inform the Requesting State.

Article 18 Surrender of property (1) If extradition is granted, all articles including property of any kind and money found in the possession of the person claimed that may be required as evidence or that have been acquired as a result of the offence shall, to the extent permitted by the law of the Requested State, be surrendered by the Requested State. (2) The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed. (3) When the said property is liable to seizure or confiscation in the

territory of the Requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it be returned.(4) Any right which the Requested State or any other State or party may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial.

Article 19 Provisional arrest(1) In case of urgency, a Contracting State may request the provisional arrest of a person sought.(2) The request for provisional arrest shall be made through the diplomatic channel or through Interpol. The request may be transmitted by post or telegraph or by any other means affording evidence in writing.(3) The request shall contain:a - A description of the person sought;b - A statement of the nature of the offence and of the time at which and the place where it is alleged to have been committed;c - A statement of the existence of one of the documents referred to in paragraph 3 (a) or 4 of Article II; andd - A statement that it is intended to send a request for extradition.(4) On receipt of such a request, the Requested State shall take the appropriate steps to secure the arrest of the person claimed. The Requesting State shall be promptly notified of the result of its request.(5) The person arrested shall be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition supported by the relevant documents shall not have been received.(6) This provision shall not prevent rearrest and institution of the extradition proceedings if the request is subsequently received.

Article 20 Transit(1) Where a person is to be extradited to a Contracting State from a third State through the territory of the other Contracting State, the State to which the person is to be extradited shall request the other State to permit transit through its territory.(2) The request of transit shall be transmitted through diplomatic channels and be accompanied by the documents mentioned in paragraph 3 (a) or 4 of Article 11 and the description of the person being transported and a brief statement of the facts of the case.(3) The Requested State shall grant such a request expeditiously unless its sovereignty, security or public order would be prejudiced thereby.(4) The State of transit shall ensure legal provisions enabling the person to be held in custody during transit.(5) If an air transportation, that doesn't plan a landing in the territory of the Requested State, is going to be used, it's not necessary to send a request of transit.(6) Nevertheless, in that case, a notice shall be given to the State the territory of which will be flown over, about the existence of the documents mentioned in the paragraph 2 of this Article. This notice will have the effect of a request of provisional arrest in the event of an unscheduled landing pending receipt of the transit request.

Article 21 Language Documentssubmitted under this Treaty shall be accompanied by a translation in English.

Article 22 ExpensesExpenses incurred in the territory of the Requested State shall be borne by that State. However, the Requesting State shall bear the expenses incurred in respect of conveying the person claimed to the Requesting State and any expenses incurred in respect of transit.

Article 23 Obligation under International Conventions and TreatiesThe present Treaty shall not affect the rights and the obligations of the Contracting States, arising from International Conventions and Treaties to which they are parties.

Article 24 Applicable LawsExcept where this Treaty otherwise provides, proceedings with regard to provisional arrest, extradition and transit shall be governed by the law of the Requested State and the International Conventions and Treaties to which both Contracting States are parties.

Article 25 Ratification, Entry into Force and Termination(1) 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 of ratification.(2) Either Contracting State may terminate this Treaty at any time by giving notice in writing to the other State through the diplomatic channel, and the termination shall become

effective six months after the receipt of the notice. In witness whereof the undersigned being duly authorised thereto by their respective Governments, have signed this Treaty. Done in duplicate at Tunis this fourth day of April, 2000 in Hindi, Arabic and English languages. In case of any interpretational difference, 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 directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of Tunisia with effect from the date of publication of this notification.