

Extradition Treaty Between the Republic of India and Republic of Indonesia

TREATY

India

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Rule

EXTRADITION-TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-RE of 2015

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Extradition Treaty Between the Republic of India and Republic of IndonesiaPublished vide Notification No. G.S.R. 845(E), dated 6th November, 2015Ministry of External AffairsOrderG.S.R. 845(E). - Whereas, the Extradition Treaty between the Republic of India and the Republic of Indonesia was signed at New Delhi on 25th day of January, 2011;And Whereas, the said Extradition Treaty entered into force with effect from the 15th day of December, 2014 in accordance with the provisions of paragraph (1) of Article 23 of the Treaty;And Whereas, the said Extradition Treaty is specified in the Schedule to this Order;Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (3) read with 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 Republic of Indonesia.

Schedule

The Government of the Republic of India and the Government of the Republic of Indonesia (hereinafter referred to as "the Contracting States");Desiring to make more effective cooperation between the two Countries in the suppression of crime on the basis of mutual respect for sovereignty, equality and mutual benefit;Have Agreed as follows:Article 1Obligation to ExtraditeEach Contracting State agrees to extradite to the other, subject to the provisions of this Treaty, any person who may be found in the territory of the Requested State and is wanted in the Requesting State for prosecution or for the imposition or enforcement of a sentence in respect of an extraditable offence, whether such offence was committed before or after the entry into force of this Treaty.Article 2Extraditable Offences

- 1. An offence shall be an extraditable offence, if it is punishable under the laws in both States, by imprisonment for a period of at least one year or by a more severe penalty.**
- 2. 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 to the commission of an offence described in Paragraph 1.**
- 3. For the purpose of this Article, in determining whether the alleged conduct constitutes an offence under the laws of both Parties, it shall be immaterial whether the laws of both Parties place the alleged conduct of the fugitive within the same category of offence/s or denominate the offence/s by the same terminology. The totality of the alleged conduct shall be taken into account, regardless of any differences in the constituent elements of the offence/s for which the extradition is requested.**
- 4. If the request for extradition includes several offences and some of them are not punishable for at least one year imprisonment in both States, extradition may be granted for all offences if it meets the other requirements in accordance with the provisions of the Treaty and includes grant of extradition of at least one extraditable offence.**
- 5. Whether extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested State does not impose the same kind of tax or duty or does not provide for a tax, duty, customs or foreign exchange regulation of the same kinds as the laws of the Requesting State.**
- 6. Without prejudice to Article 3 (4) of this Treaty, an offence would be extraditable under this Treaty, 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.**

7. Where the extradition request is aimed at executing a sentence imposed, the sentence remaining to be served in an extraditable offence must not be less than six months.

Article 3 Refusal of Extradition Mandatory Grounds

1. Extradition shall not be granted where:

a. the offence for which the extradition is requested is a political offence; b. the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of that person's race, religion, nationality, ethnic origin, political opinion, or that person may, for any of these reasons, be subjected to unfair treatment in judicial proceedings; c. the offence for which extradition is requested is a military offence, which is not an offence under the ordinary criminal law; d. the person sought cannot be prosecuted because of the laps of time under the laws of the Requesting State or his sentence cannot be enforced by reason of pardon; e. a final judgement has been passed against the person sought in respect of the offence for which the extradition is requested; f. the request for extradition is made by the Requesting State pursuant to a judgement rendered in absentia, unless the Requesting State guarantees that the person sought, if surrendered, would be treated as an accused person; g. the offence for which extradition is requested, is punishable by death penalty under the law of the Requesting State, while under the law of the Requested State such offence is not punishable by death penalty, unless the Requesting State gives an assurance that if that person is awarded the death penalty, the same will not be carried out.

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

a. an offence against the life or person of the Head of State or the Head of Government or member(s) of their immediate family; b. an offence under any international convention to which the Parties have the obligation by virtue of becoming a State Party thereto, to either extradite or prosecute the person sought or submit the case without delay to their competent authorities for the purpose of prosecution; c. 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; d. 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.

3. Serious offences against the body, person, life and property, even if politically motivated shall not be considered as political offence for the purpose of this Treaty.

Optional Grounds

4. Extradition may not be granted where the Requested State has jurisdiction over the offence for which the extradition is requested, under its national law. In such a situation, the Requested State shall have the obligation to prosecute the person wanted in respect of the offence/s sought for in its courts in accordance with its laws. If the competent authorities of the Requested State decide not to prosecute in such a case or the prosecution is not feasible because of whatever reason, the request for extradition shall be reconsidered.

Article 4 Nationals

1. Each Contracting State shall have the right to refuse extradition of its own nationals.

2. If extradition is not granted pursuant to Paragraph 1, the Requested State shall, at the request of the Requesting State, submit the case to its competent authorities for criminal prosecution in respect of the offence/s sought for in accordance with its national law. For this purpose, the Requesting State shall provide the Requested State the documents and evidence relating to the case.

3. The nationality of the person sought shall be determined as at the time of the commission of the offence for which extradition is requested.

Article 5 Central Authorities

1. Each Contracting State shall designate a Central Authority for the purpose of the implementation of this Treaty.

2. For the Government of the Republic of India, the Central Authority shall be the Ministry of External Affairs and for the Government of the Republic of Indonesia, the Central Authority shall be the Ministry of Law and Human Rights.

Article 6 Extradition Request and Documents

1. A request for extradition and all communications relating thereto will be sent by the Central Authority of a Contracting State to the Central Authority of the other Contracting State through Diplomatic Channels.

2. A request for extradition shall be accompanied with the following:

a. description of the person sought including the name, age, gender, nationality, other identification documents, if any, occupation, probable location of the person sought, physical description, photographs, fingerprints of the person where available and the information that may help identifying and locating that person; b. a brief statement of the facts of the case, description of the offence/s for which extradition is requested, including the time and place of the commission of the offence/s and other punishment provided for them under the Law; c. the text of the legal provisions determining the offence and the punishment and legal provisions regarding limitation of period for prosecution or enforcing of sentence as the case may be in respect of the offence/s.

3. If the request for extradition relates to the prosecution, it shall be accompanied by: warrant of arrest issued by a court or other competent authority for the purpose of extradition; a charge sheet or indictment charging the accused with the alleged offence/s; and such evidence as would justify his committal for prosecution.

4. Where the request for extradition relates to the executing of a sentence imposed on the person sought, it shall be accompanied by a certified copy of the final judgement and a statement of the period of sentence which has already been served and remains to be served.

5. A request for extradition under this treaty shall be signed and sealed by the competent authority of the Requesting State.

6. Extradition request and all communications related thereto shall be made in the English language.

Article 7 Additional Information If the Requested State considers that the information furnished in support of a request for extradition is not sufficient as to consider the request, that Requested State may request additional information within 30 (thirty) days or within a period as may be agreed between the Contracting States. Article 8 Voluntary Surrender When a person sought explicitly consents before the court during extradition proceedings that he/she volunteers to be surrendered to the Requesting State, the Requested State, subjects to its national law, may surrender the person as expeditiously as possible without further extradition proceedings. Article 9 Provisional Arrest

- 1. In urgent cases, a Contracting State may request the other Contracting State for the provisional arrest of a fugitive criminal for the purpose of extradition before a formal extradition request is submitted. Such request may be submitted in writing through the channels provided for in Article 5 of this Treaty, the International Criminal Police Organization (INTERPOL) or other channels agreed by both Contracting States.**
- 2. The request for provisional arrest shall contain the information indicated in Article 6 (2) of this Treaty, a statement of the existence of the warrant of arrest and a statement that a formal request for extradition against the person shall follow the provisional arrest.**
- 3. The Requested State promptly inform the Requesting State of the result of the request for provisional arrest.**
- 4. The person arrested provisionally shall be released if, within a period of sixty (60) days of his/her arrest, the competent authorities of the Requested State has not received the formal request for extradition.**
- 5. The release of the person pursuant to Paragraph 4 of this Article shall not prevent the subsequent re-arrest and institution of extradition proceedings of that person if the Requested State has subsequently received the formal request for extradition.**

Article 10 Decision on the Request for Extradition

- 1. The Requested State shall consider an extradition request made under this Treaty in accordance with the procedures provided under its national law, and shall promptly inform the Requesting State of its decision.**
- 2. If the Requested State refuses the whole or any part of the request for extradition, the reasons for refusal shall be notified to the Requesting State.**

Article 11 Surrender

- 1. If the extradition has been granted by the Requested State, the Contracting States shall agree on the time, place and other relevant matters relating to the surrender of the fugitive. The Requested State shall inform the Requesting State of the period of time for which the person to be extradited**

was detained prior to the surrender.

2. If the Requesting State has not taken over the person to be extradited within 15 (fifteen) days after the date agreed for surrender, the Requested State shall release that person immediately and may refuse to consider a fresh request by the Requesting State for extradition of that person for the same offence.

3. If a Contracting State fails to surrender or take over the person to be extradited within the agreed period for reasons beyond its control, the other Contracting States shall be notified promptly. The Contracting States shall agree on a new time and place and relevant matters for the execution of the extradition subject to their national laws. In this case, the provisions of Paragraph 2 of this Article shall apply.

Article 12 Postponement and Temporary Surrender

1. If the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which the extradition is requested, the Requested State may, after having made a decision to grant extradition, postpone the extradition until the conclusion of the proceedings or the completion of the sentence. The Requested State shall inform the Requesting State of the postponement.

2. If the postponement of the extradition may seriously impede the criminal proceedings in the Requesting State, the Requested State may, upon request, temporarily surrender the person sought to the Requesting State, provided that its ongoing criminal proceedings are not hindered, and that the Requesting State undertakes to return that person unconditionally and immediately upon conclusion of relevant proceedings.

Article 13 Concurrent Requests Where requests for extradition are received from two or more Countries for the extradition of the same person either for the same offence or for different offences, for the purpose of determining to which of those Countries the person is to be extradited, the Requested State shall consider all relevant factors, including but not limited to: a. whether the request was made pursuant to a treaty; b. the gravity of the offence/s; c. the time and place of the commission of the offence/s; d. the nationality of the person sought and of the victim/s; e. respective dates of the requests; and f. the possibility of subsequent extradition to another Country.

Article 14 Rule of Speciality The person extradited in accordance with this Treaty shall neither be proceeded

against nor subjected to the execution of sentence in the Requesting State for an offence committed by that person before his surrender other than the offence for which the extradition is granted, not shall that person be re-extradited to a third Country, unless: a. the Requested State has consented in advance. For the purpose of such consent, the Requested State may require the submission of the documents and information mentioned in Article 6 of this Treaty; b. that person has not left the Requesting State within 30 (thirty) days after having been free to do so or that person has voluntarily returned to the Requesting State after leaving it. However, this period of time shall not include the time during which that person fails to leave the Requesting State for reasons beyond his control; or c. any lesser offence disclosed by the facts for the purpose of securing his return, other than an offence for which extradition could not lawfully be made. Article 15 Surrender of Property

1. If the Requesting State so requests, the Requested State shall, to the extent permitted by its national law, seize the proceeds and instruments of the offence and other property which may serve as evidence found in its territory or found in the possession of the person sought, and when extradition is granted, shall surrender these property to the Requesting State.

2. When the extradition is granted, the property mentioned in Paragraph 1 of this Article may nevertheless be surrendered even if the extradition can not be carried out owing to the death, disappearance or escape of the person sought, or any other reasons.

3. The Requested State may, for conducting any other pending criminal proceeding, postpone the surrender of above-mentioned property until the conclusion of such proceedings, or temporarily surrender that property on condition that the Requesting State undertakes to return it.

4. The surrender of such property shall not prejudice any legitimate right of the Requested State or any third party to that property. Where these rights exist, the Requesting State shall, at the request of the Requested State, promptly return the surrendered property without charge to the Requested State as soon as possible after the conclusion of the proceedings.

Article 16 Mutual Legal Assistance Each Contracting State shall, to the extent permitted by its laws, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested. Article 17 Transit

1. When a person is to be extradited to a Contracting State from a third Country through the territory of the other Contracting State, it shall request the other Contracting State for the permission of transit. No such request is required where air transpiration is used and no landing in the territory of the other Contracting State is scheduled.

2. The Requested State shall, in so far as not contrary to its national law, grant the request for transit made by the Requesting State.

3. If an unscheduled landing in the territory of the other Contracting State occurred, transit shall be subjected to the provision of Paragraph 1. That Contracting State may, in so far not contrary to its national law, hold the person in custody for a period of 96 (ninety six) hours while waiting the request of transit.

Article 18 Notification of Result The Requesting State shall inform the Requested State promptly about the outcome of the criminal trial or the execution of sentence against the person extradited or information concerning the re-extradition of that person to a third Country. Article 19 Expenses Expenses arising from the procedures for extradition in the Requested State shall be borne by that State. Expenses of transportation and the transit expenses in connection with the surrender or taking over of the extradited person shall be borne by the Requesting State. Article 20 International Obligation This Treaty shall not affect the rights and obligations of the Contracting States concerning extradition pursuant to international conventions or other arrangements to which they are a party. Article 21 Settlement of Differences Any differences arising from the interpretation or application of this Treaty shall be settled by consultation between the Contracting States through diplomatic channels. Article 22 Amendment This Treaty may be amended at any time by mutual consent of the Contracting States. Such an amendment shall enter into force by the same procedure as applicable for the entry into force of this treaty. Article 23 Final Provisions

1. The Contracting States shall notify each other about the completion of their respective domestic requirements for the entry into force of this Treaty. The Treaty shall enter into force on the date of the receipt of the later notification.

2. Either Contracting States may terminate this Treaty by giving a notice in writing to the other Contracting State through diplomatic channels at any time. Termination shall take effect after 6 (six) months of the receipt of such notice. Termination of this Treaty shall not affect the extradition requests submitted prior to the termination.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty. Done at New Delhi on this 25th day of January, 2011, in two originals each in the Hindi, Indonesian and English languages, all text being equally authentic. In case of divergence of interpretation, the English text shall prevail.