

Treaty on Extradition between the Government of the Republic of India and the Government of the Republic of South Africa

TREATY

India

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TREATY-ON-EXTRADITION-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-INDIA-AND-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-SOUTH-AFRICA-2007

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Treaty on Extradition between the Government of the Republic of India and the Government of the Republic of South Africa Published vide Notification No. G.S.R. 441(E), 8th June, 2007 Ministry of External Affairs Order G.S.R. 441(E). - Whether the Extradition Treaty between the Republic of India and Republic of South Africa was signed at New Delhi, on 16th October, 2003, and the instruments of ratification were exchanged at Pretoria on 23rd November, 2005 in accordance with article 23 of the Treaty and which treaty provides as follows :The Government of the Republic of India and the Government of the Republic of South Africa, hereby referred to as "the Contracting States," Desiring to make more effective their co-operation in the prevention and suppression of crime by concluding a Treaty on Extradition; Affirming their respect for each other's legal systems and judicial institutions; Have agreed as follows: Article 1 Obligation to Extradite Each Contracting State agrees to extradite to the other, in accordance with the provisions of this treaty, persons who are wanted for trial/prosecution or the imposition or enforcement of a sentence in the Requesting State for an extradition offence. Article 2 Extraditable Offences

1. For the purpose of this Treaty, extradition shall be granted for conduct, which constitutes an offence under the laws of both Contracting State, punishable by deprivation of liberty for at least one year or by a more severe penalty.

2. Where the request for extradition relate to a person sentenced to deprivation of liberty by a court of the Requesting State for an extraditable offence, extradition shall be granted if a period of at least six months of the sentence remains to be serviced.

3. For the purpose of this Article, in determining whether conduct is an offence against the law of Requested State-

(a) it shall not matter whether the laws of the Contacting States place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology; (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contacting States, the constituent elements of the offence differ.

4. An offence of a fiscal character, including an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter, is an extraditable offence. Provided that the conduct for which extradition is sought is an offence in the Requested State, 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 or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.

5. An offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction. However, where the law of the Requested State does not provide for jurisdiction over an offence in similar circumstances, the Requested State may, in its discretion, refuse extradition on this basis.

6. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that-

(a) it was an offence in the Requesting State at the time of the commission of the offence; and (b) the offence alleged, if it had taken place in the Requested State at the time of the making of the request for extradition, would have constituted an offence against the law of the Requested State.

7. If the request for extradition relates to a sentence of both imprisonment and a pecuniary sanction, the Requested State may grant extradition for the enforcement of both the imprisonment and the pecuniary sanction.

8. If the request for extradition related to more than one offence, each of which is punishable under the laws of both States, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

Article 3Mandatory Refusal of ExtraditionExtradition shall be refused in any of the following circumstances:

1. Where the offence for which extradition is requested is considered by the Requested State to be a political offence. For the purpose of this paragraph, the following conduct does not constitute a political offence:

(a)Conduct that constitutes an offence mentioned in a multilateral convention or agreement to which both Contracting States are parties and are obligation to extradite the person or submit the matter to appropriate authorities for prosecution;(b)murder;(c)a murder of or other violent crime against a Head of State or a Head of Government or Deputy Head of State or Deputy Head of Government of the Requesting or Requested State, or a member of such person's a family;(d)inflicting serious bodily harm;(e)Sexual assault;(f)kidnapping, abduction, hostage-taking or extortion;(g)using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and(h)an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (g).

2. Where there are substantial grounds for believing that the request for extradition is made for the purpose of prosecuting or punishing the person by reason of that person's race religion, nationality, ethnic origin, or sex.

3. Where the prosecution for the offence for which extradition is requested would be barred by lapse of time under the law of the Requesting State.

4. Where the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law.

5. Where the person sought has been finally acquitted or convicted in the Requested State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforce or is no longer enforceable.

Article 4 Discretionary Refusal of Extradition Extradition may be refused in any of the following circumstances :

- 1. Where the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence.**
- 2. Where the person sought is being prosecuted by the Requested State for the offence for which extradition is requested.**
- 3. Whether the offence carried the death penalty under the law of the Requesting State, unless that State undertakes that the death penalty will not be sought, or if a sentence of death is imposed, it will not be carried out.**
- 4. Where, in exceptional cases, the Requested State while also taking into account the seriousness of the offence and the interests of the Requesting State considers that because of the personal circumstances, such as age, mental or physical ability to stand trial, of the person sought, the extradition would be incompatible with humanitarian consideration.**
- 5. Where the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.**

Article 5 Nationality Extradition shall not be refused on the ground of the nationality of the person sought. Article 6 Presentation of Requests

1. A request for extradition shall be submitted-

(a) in the case of the Republic of India, to the Minister of External Affairs; (b) in the case of the Republic of South Africa, to the Minister for Justice and Constitutional Development.

2. The request for extradition shall be routed through the diplomatic channels.

Article 7 Documents to be Submitted The following documents shall be submitted in support of a request for extradition: (a) in all cases, whether the person is sought for prosecution or the imposition or enforcement of sentence- (i) information about the description, identity, location and nationality of the person sought; (ii) a Statement describing briefly the conduct constituting the offence for which the extradition is requested, indicating the place and the date of the commission of

the offence and which provides a description or a copy of the text of the legal provisions describing the offence and the applicable penalty. This statement shall also indicate-(aa)that these legal provisions were in force both at the time of the commission of the offence and at the time of the extradition request;(bb)whether or not the prosecution of the offence, the imposition or the enforcement of any applicable penalty is barred by reason of lapse of time;(cc)where the offence occurred outside the territory of the Requesting State, the legal provisions establishing its jurisdiction; and(b)in the case of a person sought for prosecution for an offence(i)the original or a certified true copy of the warrant of arrest or of any document having the same force and effect, issued by a competent authority in the Requesting State;(ii)a copy of the indictment, charge sheet or other charging document; and(iii)evidence that would be sufficient to justify the committal for trial of the person sought, if the conduct had occurred in the Requested State. The record may include any report, statement or other relevant documentation.(c)in the case of a person sought for the imposition or enforcement of a sentence-(i)a certified statement by the competent authority describing the conduct for which the person was convicted and attaching a copy of the document that records the conviction and, where applicable, sentence of the person; and(ii)If a portion of the sentence has already been served, a statement by the competent authority specifying the duration of the sentence which remains to be served.

Article 8 Authentication of Supporting Documents Where the law of the Requested State requires authentication, documents shall be authenticated by a statement by the Minister making the request or a person designated by him or her under the seal of that Minister identifying the person who has signed the document, including that person's position or title.

Article 9 Language All documents submitted in accordance with this Treaty shall be in the English language.

Article 10 Additional Information If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.

Article 11 Waiver Extradition of a person may be granted on request pursuant to the provisions of this Treaty, notwithstanding that the requirements of Article 7 have not been complied with, provided that the person sought consents to being extradited.

Article 12 Provisional Arrest

1. In case of urgency, the competent authorities of the Requesting State may apply by any means [including through the International Police Organisation (INTERPOL)] which allows for a written record for the provisional arrest of the person sought.

2. An application for provisional arrest shall include the following:

(a)information about the description, identity, location and nationality of the person sought;(b)a statement that a request for extradition will follow;(c)a description of the nature of the offence and applicable penalty, with a brief summary of the facts of the case, including date and place of the offence;(d)a statement attesting to the existence of a warrant of arrest or a conviction to which this Treaty applies and details thereof; and(e)any other information which would justify provisional arrest in the Requested State.

3. The Requested State shall promptly inform the Requesting State of the Measures taken pursuant to the application for provisional arrest.

4. Provisional arrest shall be terminated if the Requested State has not received the request within sixty (60) days of the arrest. The competent authorities of the Requested State, insofar as is permitted by the law of that State, may extend that delay with regard to the submission of the documents referred to in Article 7. However, the person sought may be granted bail at any time, subject to the conditions deemed necessary to ensure that the person does not leave the country.

5. The expiry of the sixty (60) day period does not preclude subsequent arrest and extradition if a request for extradition is subsequently received.

Article 13 Competing Requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested State shall determine to which of those states the person is to be extradited and shall notify those states of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all the relevant circumstances, and, in particular, to-

(a) the relative seriousness of those offences, if the requests relate to different offences; (b) the time and place of commission of each offence; (c) the respective dates of the requests; (d) the nationality of the person sought; (e) the ordinary place of residence of the person; (f) whether the requests were made pursuant to an extradition treaty; (g) the interests of the respective States; and (h) the nationality of the victim.

Article 14 Surrender

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State. Reasons shall be given for any complete or partial refusal of an extradition request.

2. Where extradition is granted, the Requested State shall surrender the person in accordance with arrangements agreed to between the competent authorities of the contracting States.

3. The Requesting State shall receive the person within such reasonable period as the Requested State specifies and, if the person is not removed within that period, the Requested State may refuse to extradite that person for the same offence.

4. If circumstances belong its control present a contracting State from surrendering or removing the person to be extradited it shall notify the other contracting State. The contracting States shall decide upon a new date of surrender and the provisions of paragraph 3 of this article shall apply.

Article 15 Postponed or Temporary Surrender

1. Where the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.

2. To the extent permitted by its law, where a person referred to in paragraph 1 of this Article has been found extraditable, the Requested State may temporarily surrender the person sought for the purposes of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting States. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person. A person who is returned to the Requested State following a temporary surrender shall be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty.

Article 16 Surrender of Property

1. The Requested States shall, in so far as its law permits and at the request of the Requesting State, seize and surrender property that may be used in the prosecution of the offence and which, at the time of the arrest, is found in the possession of the person sought or is discovered subsequently.

2. The property mentioned in paragraph 1 of this Article shall be surrendered even if extradition having been granted, cannot be carried out owing to the death or escape of the person sought.

3. Where the property referred to in paragraphs 1 and 2 of this Article is required in the Requested State in connection with civil or criminal proceedings, the Requested State may temporarily retain or surrender it on condition that it be returned.

4. Any rights that the Requested State or third parties may have acquired in the 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 17 Rule of Speciality

1. A person who has been extradited shall not be prosecuted, sentenced or detained for any offence committed prior to the surrender other than that for which that person was extradited, nor shall the person's liberty be restricted for any other reason, except in the following cases:

(a) where the Requested State consents; (b) where the person, having had an opportunity to leave the Requesting state, has not done so within thirty (30) days of final discharge, or has voluntarily returned to that State after having left it; or (c) where the person extradited consents before a judicial authority in the Requesting State.

2. A request for the consent of the Requested State under paragraph 1 of this Article shall, if required by the Requested State, be accompanied by the relevant documents required by Article 7 and a record of any statement made by the extradited person in respect of the offence concerned.

3. If the charge for which the person was extradited is subsequently changed, that person may be prosecuted or sentenced provided the offence under its revised description is :

(a) based on substantially the same facts contained in the extradition request and is supporting documents; (b) punishable by the same maximum penalty as, or a lesser penalty than, the offence for which the person was extradited; and (c) substantially the same in nature to the original offence. Article 18 Re-Extradition to a Third State

1. Where a person has been surrendered to the Requesting State, that State shall not extradite the person to any third State for an offence committed before that person's surrender unless-

(a) the Requested State consents to that extradition; or (b) the person has had an opportunity to leave the Requesting State and has not done so within thirty (30) days of final discharge in respect of the offence for which that person was surrendered by the Requested State or if the person has voluntarily returned to the Requesting State after having left it.

2. The Requested State may request the production of the documents submitted by the third State in relation to any consent pursuant to sub-paragraph 1(a) of this Article.

Article 19 Transit

1. To the extent permitted by its law, transit of a person sought in extradition proceedings by one Contracting State, through the territory of the other Contracting State shall be granted on a request in writing. The request for transit-

(a) may be transmitted by any means; and (b) shall contain the information referred to in paragraph 2 of Article 12, and the particular of the transit and ultimate proposed surrender.

2. No authorization for transit shall be necessary when air travel is used and no landing is scheduled in the territory of the transit State. In the case of an unscheduled landing, the transit State may require the request for transit provided for in paragraph 1. To the extent permitted by its law, the transit State shall detain the person in transit until the request is received and the transit is carried out, provided that the request is received within forty eight (48) hours after the unscheduled landing.

Article 20 Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition.

2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until surrender to the Requesting State.

3. The Requesting State shall bear the expense incurred in conveying the person extradited from the territory of the Requested State.

Article 21 International Obligations under Conventions and Treaties The present Treaty shall not affect the rights and obligations of the Contracting States arising from international conventions or treaties to which they are parties. Article 22 Consultation The Ministry of External Affairs of the Republic of India and the Department for Justice and Constitutional Development of the Republic of South Africa or persons designated by the respective Ministers may consult with each other through the diplomatic channel in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty. Article 23 Entry into Force, Amendment and Termination

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

2. This Treaty shall enter into force on the date of the exchange of instruments of ratification.

3. This treaty may be amended by mutual consent.

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

5. The Contracting State may also terminate this Treaty by mutual consent on such terms and conditions as may be agreed to between the States.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty: Done at New Delhi this the 16th day of October of the year Two Thousand and Three, in two originals each, in Hindi and English, both text being equally authentic. However, in case of divergence of interpretation, 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 Republic of South Africa from the date of publication of this order.