

**THE RATIFICATION OF THE  
EXTRADITION AND MUTUAL LEGAL  
ASSISTANCE IN CRIMINAL MATTERS  
TREATIES WITH THE PEOPLE'S  
REPUBLIC OF BANGLADESH**

## **1. PURPOSE OF THE TREATIES**

- To underscore that South Africa will not be a safe haven for criminals by providing for the extradition of fugitives and to facilitate the effectiveness of law enforcement authorities in the prevention, investigation and prosecution of crime.
- Ratification of the abovementioned Treaties will assist the Government's Programme of Action and inspire public confidence in the criminal justice system to prevent crime and increase levels of safety.

## **2. BACKGROUND**

- During 2017, the Department provided the Bangladesh authorities with draft treaties for their consideration and comments. Various consultations with the Bangladesh High Commission in Pretoria took place.
- On 26 February 2019, the Bangladesh High Commission indicated that the Bangladesh authorities agree with the contents of the two Treaties.

- Treaties were submitted to the State Law Advisers in the Department of Justice and Constitutional Development as well as in the Department of International Relations and Cooperation. The State Law Advisors have indicated that the treaties are compatible with South Africa's domestic law and international obligations, respectively.
- The President 30 April 2019 authorized the Minister of Justice and Correctional Services to sign the Treaties on behalf of the Government.
- The Minister signed the Treaties on 1 October 2019 in Dhaka, Bangladesh.

### **3. EXTRADITION TREATY**

#### **Article 1**

##### **Obligation to Extradite**

- Undertake to extradite persons to the requesting state who have been charged with or convicted of an extraditable offence or the imposition or enforcement of a sentence.

#### **Article 2**

##### **Extraditable offences**

- An extraditable offence is an offence which is punishable under the laws of both states by the deprivation of liberty for a period of at least one year or by a more severe penalty.
- Where a request for extradition relates to a person sentenced to deprivation of liberty by a court of the requesting state for any extraditable offence, extradition shall be granted only if a period of at least six months of the sentence remains to be served.
- Extraditable offence whether or not the laws of the states place the offence within the same category of offences or describe by the same terminology.
- An offence of a fiscal character including and offence relating to taxation, customs duties, exchange control is an extraditable offence despite the fact that the requested state does not impose the same kind of taxes or duties.

## **Article 3**

### **Mandatory refusal of Extradition**

- Offence of a political nature.
- Offences not to be considered as a offence of a political nature:
  - Assault / murder against the President or Head of Government, Deputy President or Deputy Head of Government or a member of such persons family.
  - An offence mentioned in a multi-lateral convention or agreement to which both states are parties and are obliged to extradite the person or submit the matter to the relevant authorities for prosecution.
  - Offences such as murder, inflicting serious bodily harm, sexual assault, kidnapping, abduction and hostage taking.
  - Using explosives, devices or substances which would endanger human life or which would cause serious bodily harm or substantial property damage.



- A request made for the purpose of prosecuting a person on account of that person's race, religion, nationality, gender or ethnic origin.
- Offence under military law which is also not an offence under criminal law.
- Person finally been acquitted or convicted in the requested state for the offence for which extradition is requested or the sentence imposed has been fully enforced or is no longer enforceable.
- Request for extradition is barred by lapse of time.

## **Article 4**

### **Discretionary refusal of Extradition**

- Extradition may be refused:
  - Requested state has jurisdiction to prosecute.
  - Death penalty possible sentence unless assurances is provided that the death penalty will not be imposed or if imposed will not be carried out.
  - Humanitarian grounds such as age, mental or physical ability of the person sought.
  - Person has been finally acquitted or convicted in a third state for the same offence or sentence imposed has been fully enforced or is not longer enforceable.
  - Requesting state undertakes to give assurances that the person will not be:
    - Detained without trial;
    - Tortured in any way; or
    - Treated or punished in a cruel, inhuman or degrading way.
  - The probable penalty that may be imposed is in conflict with the fundamental principles of the laws of the requested state.

## **Article 5**

### **Nationality**

- Extradition shall not be refused on the ground of the nationality of the person sought.

## **Article 6**

### **Central Authorities**

- South Africa: Director-General Justice and Constitutional Development.
- Bangladesh: The Public Security Division, Ministry of Home Affairs
- Communication between Central Authorities through the Diplomatic Channel.

## **Article 7**

### **Documents to be submitted**

- Information about the description, identity, location and nationality of the person sought.
- Statement describing the conduct constituting the offence including sub-articles (aa) – (cc).
- Information contained in sub-article (b) and (c).



## **Article 8**

### **Authentication of supporting documents**

- Where the requested state required authentication, documents to be authenticated by a statement of the person making the request under the seal of that office.

## **Article 9**

### **Language**

- All documents to be submitted in the English language.

## **Article 10**

### **Additional information**

- Additional information may be requested before a decision is taken on the extradition request and a time limit may be set for the receipt thereof.

## **Article 11**

### **Waiver**

- The extradition of the person sought may be granted notwithstanding that the requirements of article 7 have not been complied with, provided that the person sought consents.

## **Article 12**

### **Provisional arrest**

- In urgent cases the requesting state may apply for provisional arrest of the person sought pending the presentation of the formal request for extradition.
- Request shall be in writing and communicated by any means including through INTERPOL.
- Information to be submitted for provisional arrest is set out in sub-article 2.
- Person provisionally arrested may be discharged from custody if request for extradition is not received within 60 days from the date of the request for provisional arrest.

## **Article 13**

### **Competing requests**

- If the extradition of the same person is concurrently requested by one of the states and a third state or more for the same offence or different offences, the requested state shall determine to which state it will extradite a person, considering the existence of and extradition treaty, the seriousness, place of commission of the offences, respective dates of the request and nationality of the person sought.

## **Article 14**

### **Surrender**

- The requested state shall as soon as possible inform the requesting state regarding its decision to extradite. Reasons shall be given for complete or partial refusal.
- The requested state shall surrender the person in accordance with the arrangements agreed between the respective authorities and the requesting state shall receive the person within a reasonable period.

## **Article 15**

### **Postponed or Temporary surrender**

- If permitted by the laws of the requested state, a person being prosecuted or serving a sentence may be temporarily surrendered to the requesting state for the purposes of prosecution.

## **Article 16**

### **Surrender of Property**

- To the extent permitted by the laws of the states and without prejudice to the rights of third Parties, the requested state may seize and surrender to the requesting state, property, articles or documents that may be found in the territory of the requested state that is connected with the offence for which extradition is sought.
- Return of such property may be requested within a fixed period of time.

## **Article 17**

### **Rule of Speciality**

- A person who has been extradited, shall not be prosecuted, sentenced, detained or re-extradited to a third state for any other offence as the offence for which extradition is requested unless the requested state consents or the person had the opportunity to leave the territory of the requesting state and did not do so.

## **Article 18**

### **Re-extradition to a Third State**

- Where a person has been extradited 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:
  - The requested state consents
  - The person had an opportunity to leave the requesting state and has not done so within 30 days or the person voluntarily returned to the requesting state.



## **Article 19**

### **Transit**

- States may authorize transit through its territory of a person surrendered to the other state by a third state.

## **Article 20**

### **Expenses**

- The requested state shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition, the arrest of the person and the maintenance in custody of the person sought.
- The requesting state shall bear the expenses incurred in conveying the person from the requested state.

## **Article 21**

### **International Obligations under Conventions and Treaties**

- The treaty shall not exempt either state from its international obligations.

## **Article 22**

### **Consultations**

- The interpretation and implementation of this treaty shall be resolved through the diplomatic channel

## **Article 23**

### **Entry into Force, Amendment and Termination**

- Treaty subject to ratification and instruments of ratification shall be exchanged as soon as possible.
- Treaty shall enter into force on the date of the exchange of instruments of ratification.
- Treaty may be amended through the mutual written consent of the Parties.
- Treaty may be terminated upon written notice and shall take effect 3 months following notification.

#### **4. MUTUAL LEGAL ASSISTANCE TREATY**

##### **Article 1**

##### **Scope of Application**

- The Treaty provides for various forms of assistance such as taking of evidence or statements from persons, providing information, documents, records and articles of evidence, locating or identifying persons or items, serving documents or any other form of legal assistance not prohibited by the laws of the requested state.
- Retrospective application.
- Dual criminality not a requirement.

## **Article 2**

### **Definitions**

- See definitions of “Criminal Matters” and “Mutual Legal Assistance” or “Assistance”

## **Article 3**

### **Central Authorities**

- South Africa: Director-General Justice and Constitutional Development.
- Bangladesh: Ministry of Home Affairs

## **Article 4**

### **Execution of Requests**

- Executed promptly in accordance with the law of the requested state and if not prohibited by the law, in the manner specified by the requesting state.
- Requested state shall not refuse to execute a request on the ground of bank secrecy.

## **Article 5**

### **Contents of Requests**

- Request shall be made in writing and shall include information contained in sub-articles 1 to 5.

## **Article 6**

### **Refusal of Postponement of Assistance**

- Although various grounds for refusal exist, the requested state may refuse assistance if the execution of the request would impair its sovereignty, security, public order, or other essential public interests. See also grounds for refusal under Extradition Treaty.
- Conditions may be set for the execution of the request.



## **Article 7**

### **Service of Documents**

- The requested state shall use its best efforts to effect service of any document.
- The requested state shall return a proof of service.

## **Article 8**

### **Provision of Information, Documents, Records and Objects**

- Requested state shall provide the requesting state with copies of publicly available records, including information that are in the possession of government departments and agencies.
- Requested state may provide the requesting state with any records in any form, including documents and information that are in the possession of a government department or agency which are publicly available unless those materials or information relate to the national security
- The records produced shall be authenticated pursuant to the prescribed legal procedures in the requested state.

## **Article 9**

### **Search and Seizure**

- The requested state shall in accordance with its national laws execute a request for search, seizure and transfer of any article related to the offence which is subject to investigation in the requesting state.

## **Article 10**

### **Taking Evidence in the Requested State**

- A person requested to testify and produce records, documents or objects in the requested state may be compelled if necessary in accordance with the law of the requested state.
- Subject to the law of the requested state, officials of the requesting state shall be permitted to be present when evidence is taken and participate in the taking of such evidence including the right to pose questions.

## **Article 11**

### **Presence of Persons at the Execution of Requests**

- To the extent permitted by the law of the requested state, persons specified in the request shall be permitted to be present at the execution of the request.

## **Article 12**

### **Making Detained Persons Available to Give Evidence or Assist in Investigations**

- A person in the custody of the requested state may, upon request, be provisionally transferred to the custody of the requesting state for the purpose of giving evidence or assisting in investigations in relation to a criminal matter if the requested state and the person sought consent.

## **Article 13**

### **Providing evidence or Assisting in Investigations in the Requesting State**

- The requested state may invite a person identified by the requesting state to assist in the investigation or to appear as a witness.

## **Article 14**

### **Safe Conduct**

- Requesting state shall not subject the person to the service of process, detention or any restriction of personal liberty, by reason of any offence or conviction that preceded his or her departure from the requested state.
- A person made available shall not without his or her consent be required to give evidence in any proceedings or assist in any investigation other than proceedings or investigations to which the request relates.

- If the person had the liberty and the means to leave the requesting state and did not leave within the subsequent thirty (30) days after being notified that his or her presence is no longer required or when the person having left it and voluntarily returns within the said period, he or she may be prosecuted, tried or serve a sentence for any offence.

## **Article 15**

### **Proceeds and Instruments of Crime**

- The requested state shall upon request ascertain whether any proceeds of crime are located within its jurisdiction and shall notify the requesting state of the outcome. If proceeds of crime are found, measures should be taken to restrain and forfeit those proceeds.
- Proceeds forfeited shall accrue to the requested state unless otherwise agreed.



## **Article 16**

### **Restitution and Fine Enforcement**

- The requested state shall to the extent permitted by its law provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

## **Article 17**

### **Confidentiality**

- The requested state may require that information or evidence furnished be kept confidential or used only subject to such terms and conditions as it may specify.
- The requesting state may require that the request be kept confidential.

## **Article 18**

### **Limitation of Use**

- The requesting state may be requested not to use any information or evidence obtained in any other proceedings other than that described in the request without the consent of the requested state.

## **Article 19**

### **Authentication**

- Documents and other objects transmitted pursuant to this treaty shall not require any form of authentication except as specified in Article 8 or as required by the requesting state.

## **Article 20**

### **Language**

- See Extradition Treaty

## **Article 21**

### **Expenses**

- Requested state shall bear all costs relating to the execution of a request.
- Requesting state shall pay the fees of experts, translation, transcription, allowances and expenses to travel.
- In the event of expenses of an extraordinary nature, the states shall consult.

## **Article 22**

### **Compatibility with other Treaties**

- Assistance set forth in this treaty shall not prevent assistance to a state through the provisions of other applicable conventions or agreements or through the provisions of its domestic law.

## **Article 23**

### **Consultation**

- The Central Authorities shall consult to promote the most effective implementation of this treaty.

## **Article 24**

- Entry into Force, Amendment and Termination**
- See Extradition Treaty



**THANK YOU**

