

# 2019 MODEL ASEAN EXTRADITION TREATY

*Endorsed in Vientiane, Lao PDR on 12 October 2018*

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## 2019 MODEL ASEAN EXTRADITION TREATY

*Endorsed in Vientiane, Lao PDR on 12 October 2018*

### HEADER

TREATY  
ON EXTRADITION  
BETWEEN

THE GOVERNMENT/STATE OF \_\_\_\_\_

AND

THE GOVERNMENT/STATE OF \_\_\_\_\_

The Government/State of \_\_\_\_\_ and  
the Government/State of \_\_\_\_\_,  
each hereinafter referred to as a “Party” and collectively as the “Parties”,

[PREAMBLE]

**HAVE AGREED as follows:**

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## MODEL PROVISIONS

### ARTICLE 1 OBLIGATION TO EXTRADITE

#### OPTION 1 FOR PARAGRAPH 1

- (1) The Parties agree to extradite to each other, in accordance with the provisions of this Treaty and subject to the requirements of their respective laws, any person who is found in the territory of the Requested Party and is wanted in the Requesting Party for the purpose of prosecution or imposition or enforcement of a sentence in respect of an extraditable offence, as provided in Article 2 of this Treaty.

#### OPTION 2 FOR PARAGRAPH 1

- (1) The Parties agree to extradite to each other, in accordance with the provisions of this Treaty, any person who is found in the territory of the Requested Party and is wanted in the Requesting Party for the purpose of prosecution or imposition or enforcement of a sentence in respect of an extraditable offence, as provided in Article 2 of this Treaty.
- (2) For the purpose of this Treaty, the term 'territory of the Requesting Party' shall mean its land territory, internal waters and territorial sea.

#### OPTION 1 FOR PARAGRAPH 3

- (3) The provisions of this Treaty shall apply to requests for extradition, including requests for provisional arrest, made after its entry into force regardless of the date of the commission of the offence or act or omission constituting the offence or offences set out in the request.

#### OPTION 2 FOR PARAGRAPH 3

- (3) The provisions of this Treaty shall apply to requests for extradition including requests for provisional arrest made after its entry into force but shall not apply to the offence or act or omission constituting the offence or offences set out in the request committed prior to its entry into force.

### ARTICLE 2 EXTRADITABLE OFFENCES

#### OPTION 1 FOR PARAGRAPH 1

- (1) Extradition shall be granted for an extraditable offence, being an offence coming within any of the following descriptions of offences and which is punishable according to the laws of both Parties by imprisonment of not less than 12/24/48 months, or by a more severe penalty:
- (a)
- (i) murder of any degree;
  - (ii) manslaughter or culpable homicide;
  - (iii) an offence against the law relating to abortion;
  - (iv) maliciously or wilfully wounding or inflicting grievous bodily harm;

- (v) assault occasioning actual bodily harm;
- (vi) rape;
- (vii) unlawful sexual intercourse with a female;
- (viii) indecent assault;
- (ix) procuring, or trafficking in, women or young persons for immoral purposes;
- (x) kidnapping, abduction or false imprisonment, or dealing in slaves;
- (xi) stealing, abandoning, exposing or unlawfully detaining a child;
- (xii) the offering, giving or receiving of bribes;
- (xiii) arson;
- (xiv) an offence concerning counterfeit currency;
- (xv) an offence against the law relating to forgery;
- (xvi) stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud;
- (xvii) robbery;
- (xviii) blackmail or extortion by means of threats or by abuse of authority;
- (xix) an offence against bankruptcy law or company law;
- (xx) malicious or wilful damage to property;
- (xxi) acts done with the intention of endangering vehicles, vessels or aircraft;
- (xxii) an offence against the law relating to psychotropic substances, dangerous drugs or narcotics;
- (xxiii) piracy;
- (xxiv) revolt against the authority of the master of a ship or the commander of an aircraft;
- (xxv) hijacking and other acts endangering safety of aircraft and acts endangering the safety of an international airport;
- (xxvi) any terrorism financing offence;
- (xxvii) hijacking of ships, destroying or damaging a ship, other acts endangering or likely to endanger safe navigation and offences involving threats thereof;
- (xxviii) an offence against the law relating to benefits derived from the offering, giving or receiving of bribes, drug trafficking, and other serious crimes as defined in the United Nations Convention against Transnational Organised Crime;
- (xxix) perjury or subornation of perjury or conspiring to defeat the course of justice;
- (xxx) burglary, house-breaking or any similar offence;
- (xxxi) any other offence which is made extraditable by the extradition laws of both Parties, where such laws have been enacted to give effect to obligations under an international convention to which both are parties; and

- (b) aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences listed in paragraph (1)(a) of this Article.

(1*bis.*) Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, such extradition shall be granted only if a period of at least six/twelve months of such sentence remains to be served.

#### **OPTION 2 FOR PARAGRAPH 1**

- (1) For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least one/two year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of

liberty imposed for such an offence, extradition shall be granted only if a period of at least six/twelve months of such sentence remains to be served.

- (2) An extraditable offence means an offence against the law of the Requesting Party and the act or omission constituting the offence or the equivalent act or omission would, in similar circumstances, if it takes place in or within the jurisdiction of the Requested Party, constitute an offence against the law of the Requested Party.
- (3) For the purposes of paragraph (1) of this Article, an extraditable offence shall be an offence punishable according to the laws of both Parties if the act or omission constituting the offence was an offence for which extradition could be granted under the laws of both Parties at the time it was committed and also at the time the request for extradition is received.

### **ARTICLE 3 BASIS FOR EXTRADITION**

#### **OPTION 1 FOR PARAGRAPH 1**

- (1) Where an extradition request is made in respect of a fugitive/requested person accused of an extraditable offence, he shall be extradited if, according to the laws of the Requested Party, there is sufficient evidence to institute a criminal case against the fugitive/requested person before its court or tribunal, if the offence was committed within its jurisdiction.

#### **OPTION 2 FOR PARAGRAPH 1**

- (1) Where an extradition request is made in respect of a fugitive/requested person accused of an extraditable offence, he shall be extradited if there is evidence in support of the request for extradition which meets the evidentiary standard of the Requested Party for extradition.

#### **OPTION 3 FOR PARAGRAPH 1**

- (1) Where an extradition request is made in respect of a fugitive/requested person accused of an extraditable offence, he shall be extradited if there is sufficient evidence in support of the request for extradition according to the evidentiary standard of the Requested Party, provided that neither Party shall require as a condition to extradition pursuant to this Treaty that the other Party prove a *prima facie* case against the fugitive/requested person sought.
- (2) A fugitive/requested person who has been convicted of an extraditable offence shall, subject to the provisions of this Treaty, be extradited if there is proof of conviction and where applicable of sentence imposed by the court of the Requesting Party and that the fugitive/requested person sought is the person convicted of the offence.

### **ARTICLE 4 MANDATORY GROUNDS OF REFUSAL**

- (1) Extradition shall not be granted under this Treaty in any of the following circumstances:
  - (a) where the Requested Party determines that the offence for which extradition is requested is an offence of a political character;

- (b) where the fugitive/requested person has undergone the punishment provided by the law of, or a part thereof, any country or has been acquitted by a competent tribunal or authority, in respect of that offence or of another offence constituted by the same act or omission constituting the offence for which the fugitive's/requested person's extradition is requested;
- (c) where the fugitive/requested person whose extradition is requested is liable to be tried by a court or tribunal that is especially established for the purpose of trying his case or is only occasionally, or under exceptional circumstances, authorised to try such cases or his extradition is requested for the purpose of his serving a sentence imposed by such a court or tribunal;
- (d) if the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law of the Requested Party or the Requesting Party;
- (e) where Requested Party has substantial grounds for believing that the request for extradition of the fugitive/requested person, although purporting to be made on account of an offence for which extradition would otherwise be granted, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, ethnic origin, sex, status or political opinions;
- (f) where the Requested Party has substantial grounds for believing that the fugitive/requested person, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of race, religion, nationality, ethnic origin, sex, status or political opinions;
- (g) [if the extradition of a fugitive/requested person is sought for the purpose of carrying out a sentence, and it appears that the conviction was obtained in his absence]<sup>1</sup>;
- (h) [where the fugitive/requested person is concerned in an investigation that is in progress or a prosecution that is pending in the Requested Party in respect of any offence that is alleged to have been committed within the jurisdiction of the Requested Party]<sup>2</sup>;
- (i) [where the fugitive/requested person is lawfully detained under the laws of the Requested Party]<sup>3</sup>;
- (j) if the fugitive/requested person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time, or amnesty;
- (k) if, in the view of the Requested Party, the fugitive/requested person sought has not received or would not receive the minimum fair trial guarantees in criminal proceedings in the Requesting Party<sup>4</sup>;

**Additional Options<sup>5</sup>:**

- (l) where the fugitive/requested person is a member of the armed forces of a third State stationed in the territory of the Requested Party or a civilian accompanying and serving with those armed forces or the dependents of any such member or civilian.

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<sup>1</sup> The Parties may decide as alternative to Article 5.1(e) in negotiating their extradition treaty.

<sup>2</sup> The Parties may decide as alternative to Article 5 (g) in negotiating their extradition treaty.

<sup>3</sup> The Parties may decide as alternative to Article 5 (h) in negotiating their extradition treaty.

<sup>4</sup> The Parties may determine "minimum fair trial guarantee" in negotiating their extradition treaty including by referring to relevant international conventions to which they are party.

<sup>5</sup> It is optional. The Parties may decide to include it in negotiating their extradition treaty.

- [(2) Where extradition is refused pursuant to sub paragraphs 1 (h) or (i), this is without prejudice to another request being made for the extradition of the fugitive/requested person for the same offence when the above-mentioned circumstances no longer apply.<sup>6]</sup>
- (3) For the purpose of this Treaty, the following shall not be held to be offences of a political character:
- (a) an offence against the life or person of any Head of State or any Head of Government or a member of his immediate family;
  - (b) an offence for which both Parties have the obligation pursuant to a multilateral international convention, the purpose of which is to prevent or repress a specific category of offences, to either extradite the fugitive/requested person or submit the case without undue delay to their competent authorities for the purpose of prosecution;
  - (c) serious offences involving an act of violence against the life of a person;
  - (d) offences relating to terrorist acts<sup>7</sup>; and

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<sup>6</sup> The Parties may decide as alternative to Article 5 (2) in negotiating their extradition treaty.

<sup>7</sup> The Parties may wish to negotiate and define the scope and meaning of the term "terrorist acts". Possible definitions for consideration by the Parties are as follows:

#### OPTION 1

Adopting with or without modification of Article 2 of the ASEAN Convention on Counter Terrorism and other international conventions on counter terrorism to which they are party.

#### OPTION 2

"Terrorist act" include the use or threat of action:

(a) where the action:

- (i) involves serious violence against a person;
- (ii) involves serious damage to property;
- (iii) endangers a person's life;
- (iv) creates a serious risk to the health or the safety of the public or a section of the public;
- (v) involves the use of firearms or explosives;
- (vi) involves releasing into the environment or any part thereof, or distributing or otherwise exposing the public or any part thereof to:
  - (A) any dangerous, hazardous, radioactive or harmful substance;
  - (B) any toxic chemical; or
  - (C) any microbial or other biological agent, or toxin;
- (vii) disrupts, or seriously interferes with, any public computer system or the provision of any service directly related to communications infrastructure, banking and financial services, public utilities, public transportation or public key infrastructure;
- (viii) disrupts, or seriously interferes with, the provision of essential emergency services such as the police, civil defence and medical services;
- (ix) involves hijacking and other acts endangering the safety of aircraft or acts endangering the safety of an international airport or port; or
- (x) involves prejudice to public security or national defence; and

(b) where the use or threat is intended or reasonably regarded as intending to:

- (i) influence or compel the Government, any other government, or any international organisation to do or refrain from doing any act; or
- (ii) intimidate the public or a section of the public.

Note: *This definition of "terrorist act" is based on the Commonwealth Model Legislative Provisions on Measures to Combat Terrorism, apart from sub-paragraph (ix) on hijacking and other acts endangering the safety of aircraft or acts endangering the safety of an international airport or port.*

- (e) any attempt, abetment, assistance, facilitation or conspiracy to commit any of the offences referred to in sub paragraphs (a) to (d).

(4) If any question arises as to whether an offence is an offence of a political character, the decision of the Requested Party shall be determinative.

## **ARTICLE 5 DISCRETIONARY GROUNDS OF REFUSAL**

(1) Extradition may be refused under this Treaty in any of the following circumstances:

- (a) where extradition would significantly affect the interests of the Requested Party in matters of national security or foreign affairs;
- (b) where the Requested Party has decided either not to institute or to terminate proceedings against the fugitive/requested person for the acts or omissions constituting an offence for which extradition is sought, not being an offence against the laws relating to terrorist acts or which occurred within the territory of the Requesting Party;
- (c) where the offence for which extradition is requested is an offence, not being an offence against the laws relating to terrorist acts, which has been committed in whole or in part within the territory of the Requested Party, provided that harm (damage or injury) intended or arising from the commission of the offence does not or is not intended to occur within the territory of the Requesting Party;
- (d) where the fugitive/requested person has been sentenced or would be liable to be tried or sentenced in the Requesting Party by any court or other tribunal constituted primarily to enforce religious or customary laws;
- (e) [if the extradition of a fugitive/requested person is sought for the purpose of carrying out a sentence, and the person sought has been convicted in absentia, unless the person was validly convicted, in accordance with the laws of the Requesting Party, and/or the Requesting Party guarantees that the fugitive/requested person sought has the opportunity to seek re-trial in his/her presence;]<sup>8</sup>
- (f) where the acts or omissions constituting the offence for which extradition is requested was alleged to have been committed outside the territory of the Requesting Party but within the

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### **OPTION 3**

For the purposes of this Treaty, a “terrorist act” is an offence or offences punishable under the laws of either the Requested Party or the Requesting Party intended or reasonably intended to:

- (i) influence or compel the Government, any other government or any international organization to do or refrain from doing any act, or
- (ii) intimidate the public or section of the public,

and includes the threat to commit such an offence or offences.

#### **For Options 1, 2, and 3:**

- 2. A terrorist act does not include military activities undertaken by military forces of a State in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.
- 3. In paragraph (2), “military forces of a State” means the armed forces of a State which are constituted, organised, trained, equipped and subject to the formal command, control and responsibility under its internal law for the primary purpose of national defence or security.

<sup>8</sup> The Parties may decide as an alternative to Article 4.1(g), in negotiating their extradition treaty.

Requesting Party's jurisdiction, and the laws of the Requested Party do not provide for the Requested Party to exercise criminal jurisdiction over such acts or omissions if committed outside the territory of the Requested Party;

- (g) [where the fugitive/requested person is concerned in an investigation that is in progress or a prosecution that is pending in the Requested Party in respect of any offence that is alleged to have been committed within the jurisdiction of the Requested Party]<sup>9</sup>;
- (h) [where the fugitive/requested person is lawfully detained under the laws of the Requested Party]<sup>10</sup>;

**Additional Options<sup>11</sup>:**

- (i) where the surrender of the fugitive/requested person is likely to violate obligations arising from international agreements or arrangements to which the Requested Party is a party.
- (j) whereby reason of
  - (i) the accusation against the fugitive/requested person not having been made in good faith or in the interests of justice; or
  - (ii) the passage of time since the offence was alleged to have been committed or was committed;

and having regard to the circumstances under which the offence was alleged to have been committed or was committed, it would be unjust, oppressive or too severe a punishment to surrender the fugitive/requested person.

[(2) Where extradition is refused pursuant to sub paragraphs 1 (h) or (i), this is without prejudice to another request being made for the extradition of the fugitive/requested person for the same offence when the above-mentioned circumstances no longer apply<sup>12</sup>.]

[(3) When the offence for which extradition is requested is punishable by death under the laws of the Requesting Party, and the laws of the Requested Party do not permit such punishment for that offence, the Requested Party may refuse the request unless the conditions as may be agreed upon by the Parties are met.]<sup>13</sup>

## **ARTICLE 6 EXTRADITION OF NATIONALS**

### **OPTION 1 FOR PARAGRAPH 1**

- (1) Extradition shall not be refused on the ground that the fugitive/requested person is a national of the Requested Party.

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<sup>9</sup> The Parties may decide as an alternative to Article 4.1(h), in negotiating their extradition treaty.

<sup>10</sup> The Parties may decide as an alternative to Article 4.1(i), in negotiating their extradition treaty.

<sup>11</sup> It is optional. The Parties may decide to include it in negotiating their extradition treaty.

<sup>12</sup> The Parties may decide as alternative to Article 4 (2) in negotiating their extradition treaty.

<sup>13</sup> This paragraph shall only be applicable as an option for the situation where one of the parties has no capital punishment/death penalty. The Parties may consider a number of mechanisms including assurances, consultations, or other measures that deal on the issue of death penalty.

**OPTION 2 FOR PARAGRAPH 1**

- (1) Extradition may be refused on the ground that the fugitive/requested person is a national of the Requested Party.

**OPTION 3 FOR PARAGRAPH 1**

- (1) Extradition shall be refused on the ground that the fugitive/requested person is a national of the Requested Party.

**OPTION 1 FOR PARAGRAPH 2**

- (2) Paragraph (1) of this Article shall not apply where the offence for which the surrender is sought is one:
- (a) against laws relating to terrorist acts;
  - (b) which has occurred within the territory of the Requesting Party; or
  - (c) in respect of which substantial harm (damage or injury) arising from or intended by the commission of the offence is in the territory of the Requesting Party.<sup>14</sup>

**OPTION 2 FOR PARAGRAPH 2**

- (2) Paragraph 1 of this Article shall not apply where the offence for which the surrender is sought is one against laws relating to terrorist acts and which has occurred within the territory of the Requesting Party, or in respect of which substantial harm (damage or injury) arising from or intended by the commission of the offence is in the territory of the Requesting Party.<sup>15</sup>
- (3) If the fugitive/requested person whose extradition is requested is a national of the Requested Party, and where extradition is refused on this ground, the Requested Party shall, if allowed by its laws and the Requesting Party so requests, submit the case to its competent authorities with a view to taking appropriate action against the fugitive/requested person in respect of the offence for which extradition had been requested.
- (4) The nationality of the fugitive/requested person shall be determined as of the date of [the offence for which the extradition is sought] [receipt of the request for extradition]<sup>16</sup>.

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<sup>14</sup> In the event that Option 2 of paragraph 1 is selected, the Parties may decide between Option 1 for paragraph 2 and Option 2 for paragraph 2 when negotiating their extradition treaty. If Option 3 of paragraph 1 is selected, the Parties may negotiate the applicability of paragraph 2.

<sup>15</sup> In the event that Option 2 of paragraph 1 is selected, the Parties may decide between Option 1 for paragraph 2 and Option 2 for paragraph 2 when negotiating their extradition treaty. If Option 3 of paragraph 1 is selected, the Parties may negotiate the applicability of paragraph 2.

<sup>16</sup> The brackets are intended to be options for the Parties to consider.

**ARTICLE 7**  
**THE REQUEST AND SUPPORTING DOCUMENTS**

- (1) Requests for extradition and supporting documents, and subsequent communications shall be conveyed through diplomatic channel or the appropriate authority as may be notified from time to time by one Party to the other.
- (2) The request shall be accompanied by:
- (a) as accurate a description as possible of the fugitive/requested person sought, together with any other information which would help to establish that person's identity, nationality and location, such as a recent photograph or fingerprint records, where available;
  - (b) a statement of each offence for which extradition is sought and a statement of the acts and omissions which are alleged against the fugitive/requested person in respect of each offence, including the date, time and location of the commission of the offence; [and]
  - (c) the text of the legal provisions creating the offence, the designation of the offence for which extradition is requested and a statement of the punishment which the offence carries, including any law relating to the limitation on the institution of proceedings, or on the execution of any punishment for that offence; [and]
  - [(d) a written confirmation by the Competent/Designated Authority/Attorney-General of the Requesting Party, certifying that in his opinion, the documents submitted disclose the existence of sufficient evidence under the law of the Requesting Party to justify [prosecution/further proceedings]<sup>17</sup>.]<sup>18</sup>
- (3) If the request relates to a fugitive/requested person who is an accused person it shall, in addition to the information required in paragraph (2) above, be accompanied by the warrant of arrest issued by a judge, magistrate or competent authority of the Requesting Party or an authenticated copy thereof and statements/sworn statements of witnesses concerning their knowledge of the offence, and by such evidence as would satisfy the requirements of Article 3 of this Treaty.
- (4) If the request relates to a fugitive/requested person who has already been convicted or sentenced by the Requesting Party, it shall, in addition to the information required in paragraphs (2) and (3) above, be accompanied by an authenticated copy of the certificate of the conviction or sentence as the case may be, and
- (a) if the fugitive/requested person has been convicted but not sentenced, a statement to that effect by the appropriate court; or
  - (b) if the fugitive/requested person has been sentenced, a statement by the competent authority indicating that the sentence is enforceable and the extent to which the sentence remains to be served.

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<sup>17</sup> The brackets are intended to be options for the Parties to consider.

<sup>18</sup> This sub paragraph applies to cases where the person has not been convicted or sentenced. The Parties may decide to retain this paragraph or reflect its content in a separate paragraph or in paragraph 3.

## **ARTICLE 8 PROVISIONAL ARREST**

- (1) In urgent cases the fugitive/requested person sought may, at the discretion of the Requested Party and subject to its law, be provisionally arrested at the request of the Requesting Party.
- (2) A request for provisional arrest may be transmitted by means of the facilities of the International Criminal Police Organisation (Interpol) or by any means which afford a record in writing, as agreed by the Parties, through the diplomatic channels or by any other channels as the Parties may agree.
- (3) The request for provisional arrest shall contain:
  - (a) an indication of intention to request the extradition of the fugitive/requested person sought;
  - (b) a description of the fugitive/requested person and information concerning his identity, nationality and probable location in the territory of the Requested Party;
  - (c) original or authenticated/certified copies of a warrant of arrest or judgment of conviction against the fugitive/requested person;
  - (d) a brief description of the offence and copies of the charges against the fugitive/requested person;
  - (e) a sworn or affirmed statement setting out the facts of the case, including the sentence that can be or has been imposed for the offence for which extradition is sought and, where applicable, how much of that sentence remains to be served; and
  - (f) the reasons why the request is urgent and provisional arrest is sought.
- (4) The Requesting Party shall be promptly notified of the result of its request.
- (5) The provisional arrest of the fugitive/requested person sought shall be terminated upon the expiration of 30/60 days from the date of the provisional arrest if the request for extradition and supporting documents specified in Article 7 have not been received or where any information requested under Article 9 is not furnished within the time specified. If the fugitive/requested person is released, the Requested Party shall promptly notify the Requesting Party.
- (6) The release of a fugitive/requested person pursuant to paragraph (5) of this Article shall not prevent a re-arrest and institution of proceedings with a view to the extradition of the fugitive/requested person if the request for extradition and supporting documents are subsequently received.

## **ARTICLE 9 ADDITIONAL INFORMATION**

- (1) If the Requested Party considers that the information furnished in support of a request for extradition is insufficient to allow the Requested Party to make a decision pursuant to this Treaty, the Requested Party shall request that additional information be provided. The Requested Party may fix a time-limit of 30/60 days from the date the request for additional information is [made by the Requested Party/received by the Requesting Party]<sup>19</sup> for the submission of such information, subject to further extension of time to be granted at the discretion of the Requested Party.

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<sup>19</sup> The brackets are intended as options for the Parties to consider.

- (2) If the fugitive/requested person whose extradition is sought is under arrest and the additional information provided is insufficient to allow the Requested Party to make a decision pursuant to this Treaty or is not received within the time-limit specified in paragraph (1) of this Article, the fugitive/requested person may be released. Such release shall not preclude the Requesting Party from making a new request for the extradition of the fugitive/requested person.
- (3) Where the fugitive/requested person is released from custody in accordance with paragraph (2) of this Article, the Requested Party shall notify the Requesting Party as soon as possible.

#### **ARTICLE 10 CONFIDENTIALITY**

The Requested Party shall, to the extent contemplated by its laws and legal processes, make its best efforts to keep confidential the fact that a request has been made, the contents of a request and its supporting documents, and other relevant information concerning the execution of a request if such confidentiality is requested by the Requesting Party. [If a request cannot be executed without disclosure of such information, the requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.]<sup>20</sup>

#### **ARTICLE 11 AUTHENTICATION**

- (1) Documents supporting a request for extradition shall be admitted in evidence if duly authenticated. Documents are duly authenticated if they purport to be:
  - (a) certified by a judge, magistrate or competent authority of the Requesting Party to be the original document containing or recording that evidence or a true copy of such a document; and
  - (b) sealed with the official seal of the competent authority of the Requesting Party.
- (2) An authenticated translation of documents submitted by the Requesting Party in support of a request for extradition shall be admissible in proceedings for extradition.

#### **ARTICLE 12 LANGUAGE OF DOCUMENTATION**

- (1) All documents submitted in accordance with this Treaty shall be in the English language. The Requested Party may request for translation into its official language.
- (2) The Treaty Parties shall indicate its official language when submitting its written notification pursuant to Article 26 (1).
- (3) The costs of supplying the translation shall be borne by the Requesting Party.

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<sup>20</sup> The Parties may insert the second sentence in negotiating their extradition treaty.

### **ARTICLE 13 CONCURRENT REQUESTS**

- (1) Where the Requested Party receives requests from two or more States for the extradition of the same fugitive/requested person, the Requested Party shall determine, at its discretion, to which State the fugitive/requested person is to be extradited [and, in doing so, shall give priority to requests from States with whom it has a treaty, agreement or arrangement for the surrender of fugitives/requested persons]<sup>21</sup>.
- (2) In making a determination under paragraph (1) of this Article, the Requested Party shall/may consider all the circumstances of the case, including but not limited to:
  - (a) the relative seriousness or gravity of the offences;
  - (b) the time and place of the commission of the offences;
  - (c) the relative dates on which the requests were made; and
  - (d) the citizenship or other national status and ordinary residence of the fugitive/requested person sought.

### **ARTICLE 14 ARRANGEMENTS FOR SURRENDER**

- (1) The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the competent authority or the diplomatic channel.
- (2) Where the request for extradition is rejected, the Requested Party shall also inform the Requesting Party of the provisions of this Treaty on which the rejection is based.
- (3) When a fugitive/requested person is to be surrendered, that fugitive/requested person shall be delivered under the custody of the authorities of the Requested Party to the last point of departure within that Party's territory. The Parties shall agree on the time and place of the surrender of the fugitive/requested person.
- (4) Subject to the provisions of paragraph (5) of this Article, the Requesting Party shall remove the fugitive/requested person within the period specified by the Requested Party and if the fugitive/requested person is not removed within that period, the fugitive/requested person may be discharged from custody and the Requested Party may subsequently refuse to surrender that fugitive/requested person for the same offence.
- (5) If circumstances beyond the control of both parties prevent a Party from surrendering or taking over the fugitive/requested person, it shall notify the other Party. In that case, the Parties shall agree on a new time and place for surrender and the provisions of paragraphs (3) and (4) of this Article shall apply accordingly.
- (6) If any question arises as to whether the circumstances cited by the Requesting Party are beyond its control and has prevented it from taking over the fugitive/requested person, the decision of the Requested Party shall be determinative.

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<sup>21</sup> This phrase is for the parties to decide in negotiating their extradition treaty. The negotiating parties may also consider to place this language in paragraph 2.

**ARTICLE 15**  
**SIMPLIFIED EXTRADITION PROCEDURE**

Notwithstanding that the requirements of Article 7 have not been met, the Requested Party, if not precluded by its law, may grant extradition/surrender the fugitive/requested person to the Requesting Party after receipt of a request for provisional arrest, or for extradition as the case may be, provided that the person sought explicitly consents before a competent authority.

**[ARTICLE 16**  
**POSTPONEMENT OF SURRENDER**

The Requested Party, after having made a decision to grant extradition, may postpone the surrender of the fugitive/requested person in order to proceed against him or so that he may serve a sentence in the Requested Party, for any offence other than that for which extradition is requested, until the conclusion of the proceedings and the execution of any sentence imposed, as the case may be.]<sup>22</sup>

**ARTICLE 17**  
**SPECIALTY AND RESURRENDER**

- (1) A fugitive/requested person who has been extradited shall not be tried, sentenced, detained or subjected to any other restriction of personal liberty by the Requesting Party for any offence committed prior to his surrender other than:
  - (a) the offence or offences in respect of which his extradition was granted; or
  - (b) an offence disclosed by the facts in respect of which his extradition was granted, provided such offence is one for which he could be extradited under this Treaty, and provided further that such offence is punishable by a penalty no more severe than the penalty for the offence for which he was extradited.
- (2) Paragraph (1) of this Article shall not apply if the fugitive/requested person has:
  - (a) first had an opportunity to exercise his right to leave the territory of the Requesting Party and he has not done so within the timeframe prescribed in the law of the Requested Parties or in the absence of such law within 45/60 days; or
  - (b) voluntarily returned to the territory of the Requesting Party having left it.
- (3) A fugitive/requested person who has been surrendered to a Requesting Party by the Requested Party shall not be re-surrendered by the Requesting Party to a third jurisdiction for an offence committed prior to his extradition to the Requesting Party unless the Requested Party consents to that surrender.

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<sup>22</sup> This Article shall only be applicable as an option if Article 5.1(g) and (h) is selected instead of Article 4.1 (h) and (i).

**ARTICLE 18**  
**SURRENDER OF PROPERTY**

- (1) The Requested Party may, in accordance with its law, hand over to the Requesting Party, upon a written request, any property seized from the person of the fugitive/requested person at the time of his arrest which is relevant as proof of the offence in respect of which extradition is granted.
- (2) The Requesting Party shall/may submit a request in writing for the delivery of any property found in the possession of the fugitive/requested person concurrently with the request seeking the extradition of the fugitive/requested person [, failing which the Requested Party shall not be obliged to consider the said request]<sup>23</sup>.
- (3) The handing over of the property referred to in paragraph (1) of this Article shall be subject to such terms and conditions as may be imposed by the Requested Party.
- (4) Notwithstanding paragraph (2) above, the Requested Party may temporarily retain any property referred to in paragraph (1) of this Article in connection with pending proceedings in its jurisdiction.
- (5) The handing over of the property referred to in paragraph (1) of this Article shall not prejudice the rights of the Requested Party or of any third party in those items.

**ARTICLE 19**  
**REPRESENTATION AND EXPENSES**

- (1) The Requested Party shall make all necessary arrangements for assistance to the Requesting Party, including legal representation in any proceedings arising out of requests for extradition.
- (2) The Requested Party shall bear the expenses incurred within its territory arising from the request or by reason of extradition. If it becomes apparent that expenses of an extraordinary nature are likely to be incurred, the Parties shall consult each other to determine how these expenses will be met.
- (3) The Requesting Party shall bear all expenses following the date when the Requested Party informs the Requesting Party in writing that the fugitive/requested person is ready for surrender to the Requesting Party.
- (4) The Requesting Party shall bear the costs incurred in conveying the fugitive/requested person from the territory of the Requested Party including transit costs.

**ARTICLE 20**  
**CONSULTATION**

- (1) For the purpose of promoting the most effective use of this Treaty, the Parties may consult, at times mutually agreed upon by them, concerning the interpretation, application or implementation of this Treaty either generally or in relation to a particular case.

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<sup>23</sup> The Parties may insert this phrase if the term “shall” is used instead of “may”.

- (2) The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

## **ARTICLE 21 SETTLEMENT OF DISPUTES**

Any difference or dispute between the Parties arising from the interpretation or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiation between the Parties through diplomatic channels or any other peaceful means for the settlement of disputes as agreed between the Parties.

## **ARTICLE 22 AMENDMENTS**

- (1) This Treaty may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment shall enter into force on such date as shall be mutually agreed upon by the Parties and shall form part of this Treaty.
- (2) Any modification or amendment shall not affect the rights and obligations of the Parties arising from or based on the provisions of this Treaty before the entry into force of such modification or amendment.

## **[ARTICLE 23 RESERVATIONS**

- (1) The Parties may, when signing this Treaty, make a reservation in respect of any provision or provisions of the Treaty.
- (2) Any Party which has made a reservation in respect of a provision of the Treaty may not claim application of the said provision by any other Party save in so far as it has itself accepted the provision.

## **ARTICLE 24 RATIFICATION, APPROVAL AND DEPOSITARY**

- (1) This Treaty shall be subject to ratification or approval in accordance with the internal procedures of the Parties.
- (2) The instruments of ratification or approval shall be deposited with the -- who shall promptly inform the other Parties of such deposit.]<sup>24</sup>

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<sup>24</sup> Articles 23 and 24 shall only be applicable as options for multilateral treaties.

**ARTICLE 25**  
**RELATIONSHIP WITH OTHER INTERNATIONAL INSTRUMENTS**

**OPTION 1**

The provisions of this Treaty shall not affect the rights and obligations of the Treaty Parties arising from international conventions/treaties to which both of them are parties.

**OPTION 2**

The provisions of this Treaty shall not affect any other agreement or arrangement, bilateral or multilateral, concluded by any Party that governs or will govern, in whole or in part, extradition.

**ARTICLE 26**  
**ENTRY INTO FORCE AND TERMINATION**

(1) The Parties shall notify each other in writing after their respective requirements for the entry into force of this Treaty have been complied with. This Treaty shall enter into force \_\_\_\_\_ days from the date of the later notification.

(2) Each of the Parties may terminate this Treaty at any time by giving notice to the other through the diplomatic channel. Termination of this Treaty shall have effect months after the receipt of notice to terminate.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments/States have signed this Treaty.

Done at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ Two thousand and \_\_\_\_\_  
in the \_\_\_\_\_ language/languages<sup>25</sup>.

For the Government/State of  
\_\_\_\_\_

For the Government/State of  
\_\_\_\_\_

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<sup>25</sup> The Parties may decide on the inclusion of the prevailing language clause of the Treaty.