

AGREEMENT ON EXTRADITION BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF INDIA

The Portuguese Republic and the Republic of India hereinafter referred to as Contracting States;

Desiring to improve the co-operation of the two countries in the prevention and suppression of crime, by making provisions for the reciprocal extradition of offenders;

Have agreed as follows:

Article 1 **Obligation to Extradite**

The Contracting States agree to extradite to each other, subject to their laws and to the conditions specified in this Agreement, any accused person wanted for prosecution or any convicted person wanted for the imposition or enforcement of a sentence for an extraditable offence, found in the territory of the other State.

Article 2 **Extraditable Offences**

1. Extradition shall be granted in respect of offences that are punishable under the laws of both Contracting States by imprisonment or other measure of deprivation of liberty for a maximum period of at least one year. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other measure of deprivation of liberty, extradition shall be granted only if a period of at least six months imprisonment or other measure of deprivation of liberty remains to be served.

2. For the purposes of this Article, in determining whether an offence is an offence against the law of both Contracting States:

a) It shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

b) The totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account and it shall not matter

whether, under the laws of the Contracting States, the constituent elements of the offence differ.

3. Where the offence for which extradition is requested has been committed outside the territory of the requesting State, extradition shall be granted subject to the provisions of this Agreement:

a) If the person whose extradition is requested is a national of the requesting State; or

b) If the law of the requested State provides for the punishment of an offence committed outside its territory in similar circumstances.

4. Extradition shall be granted in accordance with the provisions of this Agreement for offences of a fiscal character including duties, taxation, customs and exchange.

5. If the request for extradition includes several separate offences, which are punishable under the laws of both Contracting States, but some of which do not fulfil the other conditions set out in paragraph 1 of this Article, the requested State may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 3 **Nationals**

1. The requested State shall have the right to refuse to extradite its nationals.

2. Where the requested State refuses to extradite a person on the ground that the person is a national of the requested State, it shall, if the requesting State so requests and the laws of the requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested, may be taken.

Article 4 **Grounds for Refusal to Extradite**

1. Extradition shall not be granted if:

- a) The requested State considers that the execution of the request is contrary to its Constitutional principles and domestic laws;
- b) There are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purposes of prosecuting or punishing a person on discriminatory grounds contrary to the international and internal laws in force in each Contracting State.
- c) The offence for which extradition is requested is an offence of a political nature. For the purposes of this Agreement, the following offences shall not be considered as political offences:
 - (i) Genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;
 - (ii) Offences that ought not to be regarded as political under the international treaties, conventions or Agreements to which each Contracting State is a party;
 - (iii) Murder, culpable homicide;
 - (iv) Voluntarily causing hurt or grievous hurt by a dangerous weapon or means;
 - (v) Possession of a fire-arm or ammunition with intention to endanger life;
 - (vi) The use of a fire-arm with intention to resist or prevent the arrest or detention;
 - (vii) Causing of loss or damage to property used for public utilities or otherwise with intention to endanger life;
 - (viii) Wrongful restraint and wrongful confinement;
 - (ix) Kidnapping and abduction including taking of hostages;
 - (x) Offences related to terrorism and terrorist acts; and
 - (xi) Abetting, conspiring or attempting to commit, inciting, participating as an accomplice in the commission of any of the above offences.

- d) The offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting States;
- e) Final judgement has been rendered in the requested State or in a third State in respect of the offence for which the extradition is requested; and
 - i) The judgement resulted in the person's acquittal;
 - ii) The term of imprisonment to which the person was sentenced has been completely enforced, or is wholly or, with respect to the part not enforced, a pardon or an amnesty has been granted; or
 - iii) The court convicted the person without imposing penalty;
- f) The person whose extradition is requested has been granted amnesty in respect of the offence for which extradition is requested, or has, according to the law of either Contracting State, become immune from prosecution or punishment by reason of lapse of time, or for any other reason;
- g) The extradition sought might lead to a trial by a court of exceptional jurisdiction or that has been specially established for the purpose of trying that person's case or where it concerns the enforcement of a sentence passed by such a court. For the purposes of this Agreement, the expression "court of exceptional jurisdiction" shall not be interpreted as referring to a special court which is set up by the regular procedure established by the internal law of each Contracting State.

2. The requested State shall have the right to refuse extradition if:

- a) The competent authorities of the requested State have decided to refrain from prosecuting the person whose extradition is requested for the offence in respect of which extradition is requested;
- b) The offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State. However, extradition may be granted in accordance with this treaty notwithstanding that the conduct of the person sought occurred wholly or partly in the requested State, if under the laws of that State, his conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in territory of the requesting State;

c) A prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

d) The person sought has been convicted in that person's absence of the offence for which extradition is requested, unless the requesting State provides an assurance, which is considered by the requested State to be sufficient, that the person sought shall, upon surrender, have a right to appeal against the conviction or to seek re-trial;

e) The requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other reasons of a personal nature to be analysed by the requested State on a case to case basis. If, however the extradition is refused under this clause, the accused shall be prosecuted by the requested State in accordance with its domestic laws.

Article 5

Rule of Specialty

1. Subject to paragraph 3 of this Article, a person extradited under this Agreement shall not be detained or tried, or be subjected to any other restriction of personal liberty, in the requesting State for any offence committed before the extradition other than:

- a) An offence for which extradition was granted, or
- b) Any other extraditable offence in respect of which the requested State consents.

2. A request for the consent of the requested State under this Article shall be accompanied by the documents mentioned in paragraph 4 of Article 8.

3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the requesting State after leaving it.

4. If the description of the offence charged in the requesting State is altered in the course of proceedings, the person extradited shall be proceeded against or sentenced only in so far as the offence under its new description is an offence for which extradition could be granted pursuant to this Agreement.

Article 6

Re-extradition to a Third State

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

a) The requested State consents to that re-extradition; or

b) The person has had an opportunity to leave the requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was surrendered by the requested State or has returned to the requesting State after leaving it.

2. In relation to any consent pursuant to subparagraph 1(a), of this Article the requesting State may request the production of the documents mentioned in Article 8, as well as any declaration made by the extradited person in respect of the re-extradition.

Article 7

Concurrent Requests

If extradition is requested concurrently by a Contracting State and by one or more other States, whether for the same or for different acts or omissions, the requested State shall determine to which of those States the person is to be extradited having regard to the circumstances and, in particular, the existence of other treaties or Agreements binding on the requested State, the relative gravity of the offences and where they were committed, the respective dates of the requests, the nationality of the person and the possibility of subsequent re-extradition.

Article 8

Extradition Procedure

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channels.

2. All documents submitted in support of a request for extradition shall be authenticated.

3. A document is authenticated for the purposes of this Agreement if:

a) It purports to be signed or certified by a judge, magistrate or other competent officer in or of the requesting State; and

b) It purports to be sealed with an official or public seal of the concerned Ministry or the competent authority of the requesting State.

4. A request of extradition shall be accompanied by:

a) If the person is accused of an offence - the original and two certified copies of the warrant for the arrest of the person, a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence, and such documents/information as, according to the law of the requested State, would justify his committal for trial if the offence had been committed in the territory of the requested State;

b) If a person has been convicted in that person's absence of an offence - a judicial or other document or a copy thereof, authorising the apprehension of the person, a statement of each offence for which extradition is requested, a statement of the acts or omissions which are alleged against the person in respect of each offence and a statement of the relevant law that ensures the right to appeal against the decision or to seek retrial;

c) If the person has been convicted of an offence otherwise than in that person's absence - documents evidencing the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;

d) If the person has been convicted of an offence otherwise than in that person's absence but no sentence has been imposed – documents evidencing the conviction and a statement affirming that it is intended to impose a sentence;

- e) In all cases - a statement of the relevant law creating the offence, including any provision relating to the limitation of proceedings and a statement of the penalty that can be imposed for the offence;
- f) In all cases - a description which is as accurate as possible of the person sought together with any other information which may help to establish the person's identity and nationality; and
- g) If applicable - a statement indicating reasons, which have prevented the person from becoming immune from prosecution or sentence by reason of lapse of time in relation to the offence for which extradition is requested, according to the law of the requesting State;
- h) In the case of an offence committed in a third State, statement demonstrating that the third State does not claim the person sought for that offence;
- i) In cases of conviction *in absentia* information that the person sought may appeal against the conviction or seek re-trial;
- j) An assurance that the person sought will be afforded the protection provided for by articles 5 and 6 of this Agreement.

Article 9 **Supplementary Information**

1. If the requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient, in accordance with this Agreement, that State may request that additional information be furnished within such time as it specifies.
2. If a person who is under arrest in relation to extradition is released from custody as a consequence of the failure of the requesting State to provide additional information requested pursuant to paragraph 1 of this article, the requested State shall notify the requesting State as so practicable.

Article 10 **Provisional Arrest**

1. In case of urgency a Contracting State may apply, by means of the facilities of the International Criminal Police Organisation (INTERPOL),

or otherwise, for the provisional arrest of the person sought, pending the presentation of the request for extradition.

2. The application may be transmitted by post or telegraph, or by any other means affording a record in writing.
3. The requests for provisional arrest shall indicate the existence of either a detention order or a sentence against the person claimed, describe briefly the facts that amount to an offence, state when and where such offence was committed, the legal provisions that are applicable, as well as the available data concerning the identity, the nationality and the whereabouts of that person.
4. On receipt of an application for provisional arrest the requested State shall take the necessary steps to secure the arrest of the person sought and the requesting State shall be promptly notified of the result of its application.
5. Provisional arrest shall be terminated if the request for extradition is not received within 18 days of the arrest; it may however be prolonged for up to 40 days of the arrest if the reasons given by the requesting State so justify.
6. The provisions of paragraph 5 above shall not prejudice re-arrest and extradition if a request is received subsequently.

Article 11 **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 refusal, in whole or in part, of a request.
2. Where extradition is granted, the person shall be removed from the requested State from a point of departure in that State convenient to the Contracting States.
3. The requesting State shall remove the person from the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the person may be released and the requested State may refuse to extradite the person for the same offence.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited it shall notify the other Contracting State. The two Contracting States shall mutually decide upon a

new date of surrender, and the provisions of paragraph 3 of this article shall apply.

Article 12

Postponement and Temporary Surrender

1. The requested State may postpone the surrender of a person in order to proceed against the person, or so that the person may serve a sentence, for an offence other than an offence constituted by an act or omission for which extradition is requested. In such cases the requested State shall advise the requesting State accordingly.

2. To the extent permitted by its law, the requested State may temporarily surrender the person sought to the requesting State in accordance with conditions to be determined by mutual Agreement between the Contracting States.

Article 13

Surrender of Property

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.

4. Where the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if that State so requests.

Article 14

Transit

1. Where a person is to be extradited to a Contracting State from a third State through the territory of the other Contracting State, the Contracting State to which the person is to be extradited shall request the other Contracting State to permit the transit of that person through its territory.
2. Upon receipt of such a request the requested Contracting State shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so, provided that in any case the transit of a person may be refused on any ground on which the extradition of that person might be refused under this Agreement.
3. Permission for the transit of a person shall, subject to the law of the requested Contracting State, include permission for the person to be held in custody during transit.
4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting State in whose territory the person is being held may direct that the person be released if that person's transportation is not continued within a reasonable time.
5. The Contracting State to which the person is being extradited shall reimburse the other Contracting State for any expense incurred by that other Contracting State in connection with the transit.

Article 15 **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 and detention of the person whose extradition is requested until the person is surrendered to a person nominated by the requesting State.
3. The requesting State shall bear the expenses incurred in conveying the person from the territory of the requested State.

Article 16 **Language**

A Contracting State which sends to the other Contracting State a document, in accordance with this Agreement, that is not in the language of the other

Contracting State shall provide a translation of the document into the language of the other Contracting State.

Article 17 **International Obligations**

The present Agreement shall not affect the rights and obligations of the Contracting States arising from international conventions to which they are parties.

Article 18 **Entry into Force and Termination**

1. This Agreement shall enter into force thirty days from the date of the last communication through diplomatic channels between the Contracting States indicating the fulfilment of the respective internal legal or constitutional requirements for its entry into force.

2. Either Contracting State may terminate this Agreement by giving notice in writing and at any time to the other through diplomatic channels, and if such notice is given the Agreement shall cease to have effect six months after the receipt of the notice.

3. The provisions of this Agreement shall be applicable to the extradition requests presented after its entry into force, irrespective of the date on which the facts occurred.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at New Delhi, on the 11th day of January of the year 2007 (two thousand and seven), in Portuguese, Hindi and English, all texts being equally authentic. However, in case of divergence, the English text shall prevail.

For the Portuguese Republic

(Professor João Gomes Cravinho) Secretary of State for Foreign Affairs
and Cooperation

For the Republic of India

(Mr. Anand Sharma) Minister of State for External Affairs

Está conforme o original

Lisboa, 20 de Novembro de 2007

O Chefe de Divisão do Serviço da Ásia e Oceania

Dr. João Manuel Syder Santiago Terenas