

## DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 1324

11 DECEMBER 2020

**INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT, 1996****(ACT NO. 75 OF 1996)****MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATY BETWEEN  
THE REPUBLIC OF SOUTH AFRICA AND THE PEOPLE'S REPUBLIC OF  
BANGLADESH**

I, Ronald Ozzy Lamola, Minister of Justice and Correctional Services, hereby give notice in terms of section 27(2) of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), that the Parliament of the Republic of South Africa has on 2 June 2020 agreed to the ratification of the Mutual Legal Assistance in Criminal Matters Treaty between the Republic of South Africa and the People's Republic of Bangladesh as set out in the Schedule. The said Treaty entered into force on 6 October 2020.

Mr R.O Lamola

Minister of Justice and Correctional Services

**SCHEDULE**

**TREATY BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

**AND**

**THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH**

**ON**

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH;** (hereinafter jointly referred to as "States" and separately as a "State");

**DESIRING** to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime, including crimes related to terrorism, through cooperation and mutual legal assistance in criminal matters;

**RECALLING** the Declaration of Intent between the States of 25 March 1997 that aims to strengthen cooperation;

**HAVE AGREED** as follows:

### **Article 1 Scope of Application**

1. The States shall, in accordance with this Treaty and national legislation, grant each other mutual legal assistance in criminal matters.
2. Mutual legal assistance includes –
  - (a) locating and identifying persons and objects;
  - (b) serving documents, including documents seeking the attendance of persons;
  - (c) providing information, documents and records;
  - (d) providing objects, including lending exhibits;
  - (e) search and seizure;
  - (f) taking evidence and obtaining statements;
  - (g) authorizing the presence of persons from the Requesting State at the execution of requests;
  - (h) making detained persons available to give evidence or assist investigations;
  - (i) facilitating the appearance of witnesses or the assistance of persons in investigations;
  - (j) taking measures to locate, restrain or forfeit the proceeds of crime; and
  - (k) any other form of assistance not prohibited by the law of the Requested State.
3. This Treaty shall also apply to any requests for mutual legal assistance relating to acts or omissions committed before its entry into force.
4. Mutual legal assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting State, would constitute an offence under the laws of the Requested State.

## **Article 2 Definitions**

1. For the purpose of this Treaty –
  - (a) “criminal matters” means for the Republic of South Africa, both statutory and common law offences and, for the People’s Republic of Bangladesh, investigations, inquiries, trials or other proceedings relating to an offence created by Parliament or by the legislature of a state or province; and Criminal matters shall include investigations, prosecutions or proceedings relating to offences concerning taxation, duties, customs and foreign exchange.
  - (b) “Mutual legal assistance” or “assistance” means any assistance given by the Requested State in respect of investigations, prosecutions or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority.

## **Article 3 Central Authorities**

1. For the purposes of this Treaty, the Central Authority in each State to receive requests for assistance is as follows:
  - (a) for the Republic of South Africa, be the Director-General:-, Department of Justice and Constitutional Development or a person designated by the Director-General; and
  - (b) for the People’s Republic of Bangladesh the Ministry of Home Affairs.

## **Article 4 Execution of Requests**

1. Requests for assistance shall be executed promptly, in accordance with the law of the Requested State and, in so far as not prohibited by that law, in the manner specified by the Requesting State.
2. The Requested State shall, upon receipt of the request, inform the Requesting State of the date and place of execution of the request for assistance, if available.
3. The Requested State shall not refuse to execute a request on the grounds of bank secrecy.

## **Article 5 Contents of Requests**

1. In all cases, requests for assistance shall indicate –
  - (a) the competent authority conducting the investigation, prosecution or proceedings to which the request relates;
  - (b) the nature of the investigation, prosecution or proceedings, and include a summary of the facts and a copy of the applicable laws;
  - (c) the purpose of the request and the nature of the assistance sought;
  - (d) the degree of confidentiality required and the reasons therefor; and
  - (e) any period of time within which the request should be executed.
2. Requests for assistance shall include –

- (a)* in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, a statement indicating the basis for the belief that evidence or proceeds may be found in the Requested State;
  - (b)* in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
  - (c)* in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;
  - (d)* in the case of making a detained person available, an indication of the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the probable date of that person's return; and
  - (e)* in the case of requests in respect of search and seizure, a statement describing the basis of the belief that the money or property is the proceeds of crime and liable for search and seizure.
3. If necessary, and where possible, requests for assistance shall include –
  - (a)* the identity, nationality and location of a person who is the subject of the investigation, prosecution or proceedings;
  - (b)* details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.
4. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.
5. A request shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.

## **Article 6**

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

1. Assistance may be refused if in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order, and essential public interest or prejudice the safety of any person.
2. Assistance may be refused, if the execution of the request would be contrary to the domestic law of the Requested State.
3. Assistance may be refused, if the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned.
4. Assistance may be refused, if the request seeking restraint, forfeiture or confiscation of proceeds of crime or seizure of property, is in respect of conduct or activity which cannot be made the basis for such restraint, forfeiture, confiscation or seizure in the Requested State.
5. Assistance may be postponed by the Requested State, if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.
6. The Requested State shall promptly inform the Requesting State of its decision not to comply, in whole or in part, with a request for assistance, or to postpone execution, and shall give reasons for that decision.

7. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider, whether assistance may be provided, subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

### **Article 7**

#### **Service of Documents**

1. The Requested State shall serve any document transmitted to it for the purpose of service.
2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance, in the Requesting State, within a reasonable time, before the scheduled response or appearance.
3. The Requested State shall return a proof of service in the manner required by the Requesting State.

### **Article 8**

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

1. The Requested State shall provide copies of publicly available information, documents and records of government departments, ministries and agencies.
2. The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.
3. The Requested State may provide certified copies of documents or records, unless the Requesting State expressly requests originals.
4. Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible, upon request.
5. In so far as permitted by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

### **Article 9**

#### **Search and Seizure**

1. Search and seizure shall be conducted by the Requested State in accordance with its domestic laws.
2. The competent authority that has executed a request for a search and seizure, shall provide such information as may be required by the Requesting State concerning, but not limited to; the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.

### **Article 10**

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

1. A person requested to testify and produce documents, records or objects in the Requested State may be compelled, if necessary, to appear, testify and produce such documents, records or objects, in accordance with the law of the Requested State.

2. Subject to the law of the Requested State, commissioners, other officials of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State. The right to participate in the taking of evidence includes the right to pose questions.

3. The persons present at the execution of a request may be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript may be permitted.

4. To the extent permitted by its law, the Requested State shall execute a request for the taking of evidence in the manner requested by the Requesting State.

### **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**

1. Upon request, a person serving a sentence in the Requested State, shall be temporarily transferred to the Requesting State to assist in investigations or to testify, provided that the person consents thereto.

2. When the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.

3. When the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be released from custody and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

### **Article 13 Providing Evidence or Assisting in Investigations in the Requesting State**

The Requested State may invite any person identified by the Requesting State, to assist in the investigation or to appear as a witness in the proceedings and seek that person's consent thereto. That person shall be informed of any expenses and allowances payable.

### **Article 14 Safe Conduct**

1. Subject to Article 12(2), a person present in the Requesting State in response to a request shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than that to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left within thirty (30) days after receiving official notification that the person's attendance is no longer required, or having left, has voluntarily returned.

3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requesting or the Requested State in relation to such failure to appear.

### **Article 15**

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

1. The Requested State shall, upon request, endeavor to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.

2. When, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to restrain and forfeit those proceeds.

3. Proceeds forfeited pursuant to this Treaty 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**

1. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be kept confidential, disclosed or used only subject to such terms and conditions as it may specify.

2. The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

### **Article 18**

#### **Limitation of Use**

The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request, without the prior consent of the Requested State.



## **Article 19**

### **Authentication**

Documents, records or 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**

1. Requests shall be submitted in the English language.
2. Supporting documents, if not in the English language, shall be accompanied by an English translation.

## **Article 21**

### **Expenses**

1. The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear –
  - (a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State, and any expenses payable to that person while in the Requesting State pursuant to a request under Article 12 or 13 of this Treaty;
  - (b) the expenses and fees of experts either in the Requested State or the Requesting State; and
  - (c) the expenses of translators, interpreters and transcribers hired for the purpose of executing the request.
2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the States shall consult to determine the terms and conditions under which the requested assistance can be provided.

## **Article 22**

### **Compatibility with other Treaties**

Assistance and procedures set forth in this Treaty shall not prevent either State from granting assistance to the other State through the provisions of other applicable international conventions or agreements, or through the provisions of its domestic law. The States may also provide assistance pursuant to any bilateral arrangement, agreement or practice which may be applicable.

## **Article 23**

### **Consultation**

The Central Authorities of the States shall consult, at times mutually agreed to, by them, to promote the most effective implementation of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

**Article 24**  
**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 exchange of the instruments of ratification.
3. This Treaty may be amended by mutual consent, through an exchange of notes through the diplomatic channel.
4. Either State may terminate this Treaty by written notice to the other State submitted through the diplomatic channel. The termination shall take effect three (3) months from the date on which it was notified to the other State.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed and sealed this Treaty in two originals in the English and Bengali languages, all texts being equally authentic.

DONE at Dhaka this the 1st day of October of the year 2019 in two originals each, in English and Bengali, both texts being equally authentic. However, in case of divergence of interpretation, the English text shall prevail

**MR RO LAMOLA**  
**MINISTER OF JUSTICE AND**  
**CORRECTIONAL SERVICES**  
**FOR THE GOVERNMENT OF**  
**THE**  
**REPUBLIC OF SOUTH AFRICA**

**MR A KHAN**  
**MINISTER OF HOME**  
**AFFAIRS FOR**  
**THE GOVERNMENT OF**  
**THE PEOPLE'S**  
**REPUBLIC OF**  
**BANGLADESH**

---

**EXTRADITION ACT, 1962 (ACT NO. 67 OF 1962)****EXTRADITION TREATY BETWEEN THE REPUBLIC OF SOUTH AFRICA AND  
THE PEOPLE'S REPUBLIC OF BANGLADESH**

I, Ronald Ozzy Lamola, Minister of Justice and Correctional Services, hereby give notice in terms of section 2(3) *ter* of the Extradition Act, 1962 (Act No. 67 of 1962), that the Parliament of the Republic of South Africa has on 2 June 2020 agreed to the ratification of the Extradition Treaty between the Republic of South Africa and the People's Republic of Bangladesh as set out in the Schedule. The said Treaty entered into force on 6 October 2020.

Mr R.O Lamola

Minister of Justice and Correctional Services

**SCHEDULE**

**TREATY BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

**AND**

**THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH**

**ON**

**EXTRADITION**

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH** hereby referred to as "the Contracting States";

**RECALLING** the Declaration of Intent between the Contracting States of 25 March 1997 that aims to strengthen cooperation;

**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 and in accordance with their domestic law, any persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

### **Article 2 Extraditable Offences**

1. For the purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting States that is, punishable by imprisonment for a period of at least one year, or more.
2. Where the request for extradition relates to a person sentenced to imprisonment 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 served.
3. For the purpose of this Article, in determining whether conduct is an offence against the law of the Requested State:
  - (a) it shall not matter whether the laws of the Contracting 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 Contracting 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 relates 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 to 6, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

### **Article 3** **Mandatory Refusal of Extradition**

Extradition 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 obliged 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 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, counseling, 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 enforced 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. Where the offence carries 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 considerations.
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.
6. Extradition may be refused unless the Requesting Party undertakes or gives such assurances as considered sufficient by the Requested Party that the person sought will not be:
  - a. Detained without trial;
  - b. Tortured in any way; or
  - c. Treated or punished in a cruel, inhumane or degrading way.
7. Where 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**

1. The Central Authorities for Extradition shall be:
  - (a) in the case of the Republic of South Africa, to the Director-General for Justice and Constitutional Development;
  - (b) in the case of the Government of the People's Republic of Bangladesh, the Public Security Division, Ministry of Home Affairs.
2. A request for extradition shall be submitted to the Central Authorities 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; and
  - (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 her or him, 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 must be considered for bail as soon as reasonably possible but not later than 48 hours after his or her arrest, 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 beyond its control prevent 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 State shall, subject to its domestic law, 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 Specialty**

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 and subject to such conditions as may be imposed by the Requested State;
  - (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 its 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 particulars 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 Department for Justice and Constitutional Development of the Republic of South Africa and the Ministry of External Affairs of Government of the People's Republic of Bangladesh or persons designated by the respective Ministers may consult with each other through the diplomatic channels 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 an exchange of notes through the diplomatic channel by mutual consent between the Contracting States.  
Either Contracting State may terminate this Treaty by written notice to the other State submitted through the diplomatic channel. The termination shall take effect three (3) months from the date on which it was notified to the other Contracting State.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at, Dhaka this 1st day of October of the year 2019 in two originals each, in English and Bengali, both texts being equally authentic. However, in case of divergence of interpretation, the English text shall prevail.

**MR RO LAMOLA**  
**MINISTER OF JUSTICE AND**  
**CORRECTIONAL SERVICES**  
**FOR THE GOVERNMENT OF**  
**THE**  
**REPUBLIC OF SOUTH AFRICA**

**MR A KHAN**  
**MINISTER OF HOME**  
**AFFAIRS FOR**  
**THE GOVERNMENT OF**  
**THE PEOPLE'S**  
**REPUBLIC OF**  
**BANGLADESH**