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Office on Drugs and Crime

Model Law on Extradition (2004)

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I. INTRODUCTION

The United Nations efforts to provide substantial assistance to Member States in combating national and transnational crime have been intensified over the last years and focused, inter alia, on galvanizing comprehensive strategies in the field of international cooperation in criminal matters and particularly on promoting the effectiveness of extradition as one of the modalities of this cooperation. A milestone in the United Nations initiatives in this direction was the Eighth Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, in 1990. On the recommendations of this Congress, the General Assembly adopted, inter alia, the Model Treaty on Extradition (**resolution 45/116 of 14 December 1990**).

Based on the prevailing trends in extradition law, as well as on accumulated experience with existing bilateral and multilateral treaties, the Model Treaty on Extradition proved to be an important innovation in international cooperation in criminal matters because of both its content and structure. Its provisions were the result of a careful assessment of the needs and difficulties of countries in extradition proceedings. This model instrument offered a set of clear and concise options to be used by interested States for negotiating their extradition treaties, providing at the same time safeguards for both the requesting and the requested States, as well as for the person whose extradition is requested.

During the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo, Egypt, from 29 April to 8 May 1995, a workshop entitled “Extradition and international cooperation: exchange of national experiences and implementation of relevant principles in national legislation” was organized as one of the six research and demonstration workshops included in the programme of the Congress. The workshop surveyed the problems encountered in extradition practice and attached great importance to the need for developing a comprehensive strategy to combat crime in all its forms and gearing modalities of international cooperation in criminal matters, such as extradition, towards achieving that strategy.

Building on the results of the workshop, the Economic and Social Council, on the recommendation of the Commission on Crime Prevention and Criminal Justice at its fourth session (Vienna, 30 May-9 June 1995), adopted resolution 1995/27. In this resolution, the Council requested the Secretary-General to convene a meeting of an

intergovernmental expert group to examine practical recommendations for the further development and promotion of mechanisms of international cooperation in criminal matters.

The meeting was held in Siracusa, Italy, from 10 to 13 December 1996 and its recommendations were adopted by **General Assembly resolution 52/88 of 12 December 1997**. In this resolution, the General Assembly approved complementary provisions to the Model Treaty on Extradition to keep up with the current developments and needs in this area, and requested the Secretary-General to elaborate **model legislation to assist Member States in giving effect to the Model Treaty on extradition**, in order to enhance effective cooperation between States, taking into account the contents of model legislation recommended by the Intergovernmental Expert Group Meeting on Extradition.

Under its mandate given by the General Assembly and in the context of exploring ways and means of increasing the efficiency of extradition mechanisms, the United Nations Office on Drugs and Crime in Vienna (Division for Treaty Affairs, Treaty and Legal Affairs Branch-Terrorism Prevention Branch) undertook to elaborate a model law on extradition. The objective was to prepare a model instrument that would be **inspired by the provisions of the Model Treaty** as well as by the new trends in extradition law, taking also into account the recent developments related to the United Nations Convention against Transnational Organized Crime and its Protocols (adopted by General Assembly Resolution 55/25 of 15 November 2000 and already in force since 29 September 2003), as well as to the United Nations Convention against Corruption (adopted by General Assembly Resolution 58/4 of 31 October 2003).

The fundamental principle guiding this effort was the acknowledgement that effective cooperation in the field of extradition could be achieved through, inter alia, the existence of streamlined national legislation which can be used in two ways: First, where extradition treaties or arrangements exist, as a procedural or enabling framework not with a view to replacing or substituting a treaty in force, but in order to support its implementation. Secondly, in cases of countries that extradite in the absence of a treaty, as a supplementary, comprehensive and self-standing framework for surrendering fugitives to the requesting State.

A first draft of the model law was reviewed by an Expert Group Meeting on the Elaboration of Model Legislation on Extradition, organized by the United Nations Office on Drugs and Crime, Terrorism Prevention Branch (UNODC/DTA/TPB), in

cooperation with the International Institute of Higher Studies in Criminal Sciences (ISISC) and the Monitoring Centre on Organized Crime (OPCO), and hosted by ISISC in Siracusa, Italy, from 4 to 6 December 2003. A revised draft version, based on the comments received by the experts, was distributed as a Conference Room Paper (E/CN.15/2004/CRP.10) at the thirteenth session of the Commission on Crime Prevention and Criminal Justice (Vienna, 11-20 May 2004) and Member States were invited to provide further comments by 30 July 2004. Input and remarks received upon this invitation are reflected in the final version of the model law.

Footnotes accompanying the text of the law intend to provide specific guidelines on drafting or amending national extradition legislation, which are reflecting similar (and accordingly adapted) guidance included in the Revised Manual on the Model Treaty on Extradition (see E/CN.15/2004/CRP.11).

References in the text of the model law to individuals in the masculine gender are intended to include both genders.

II. PART 1: GENERAL PROVISIONS

Section 1: Definitions

For the purposes of the present law, the following definitions shall apply:

“Extradition” means the surrender of any person who is sought by the requesting State for criminal prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.

“Requesting State” means a State which requests of [country adopting the law] the extradition of a person or the provisional arrest of a person with a view to extradition.

“Receiving State” means a State to which a person is to be extradited from a third State through the territory of [country adopting the law].

“Transferring State” means a State from which a person is being extradited to a third State (receiving State) through the territory of [country adopting the law].

“Extradition treaty” means a bilateral treaty concluded between [country adopting the law] and a foreign country, or a multilateral treaty to which [country adopting the law] is a Party, which contains provisions governing extradition of persons who are present in the territory of [country adopting the law].

“A person sought” means a person whose extradition or provisional arrest with a view to extradition is requested by means of submitting a relevant request to the competent authorities of [country adopting the law].

“Transferee” means a person transferred through the territory of [country adopting the law] while being extradited from a third State (transferring State) to the receiving one.

Section 2: Legal bases of extradition

1. A person may be extradited in accordance with the present law or a relevant extradition treaty or agreement on the request of a requesting State for the purpose of prosecution or imposition or enforcement of a sentence in respect of an extraditable offence, as such offence is defined under section 3(1)(a), and if applicable 3(2), of the present law or under the terms of the extradition treaty or agreement .

2. Extradition pursuant to a treaty shall be governed by extradition treaties or agreements in force for [country adopting the law]. Notwithstanding the foregoing, the procedures applicable to extradition and transit proceedings taking place in [country adopting the law], as set forth in sections 16-40 of the present law, shall apply to all requests for extradition unless otherwise provided for in the applicable treaty or agreement in force. In the absence of an extradition treaty or agreement, extradition may be governed by the provisions of the present law.

3. Extradition may be granted by virtue of comity or where, on the basis of assurances given by the competent authorities of the requesting State, it can be anticipated that this State would comply with a comparable request of [country adopting the law], or where it is otherwise deemed in the interests of justice to do so.

III. PART 2: EXTRADITION FROM [COUNTRY ADOPTING THE LAW] (PASSIVE EXTRADITION)

Chapter 1: Substantive conditions for extradition

Section 3: Extraditable offences-Double criminality requirement

1. Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], extradition shall [may] be granted to the requesting State, if:

a) the offence for which it is requested is punishable under the law of the requesting State by imprisonment or other deprivation of liberty for a maximum period of at least [one/two year(s)], or by a more severe penalty; and

b) the conduct that constitutes the offence would, if committed in [country adopting the law], constitute an offence, which, however described, is punishable under the law of [country adopting the law] by imprisonment or other deprivation of liberty for a maximum period of at least [one/two year(s)] or by a more severe penalty.

2. Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], the extradition of a person who has been sentenced to imprisonment or other deprivation of liberty imposed for such an offence, as defined in subsection (1), shall not be granted unless [may only be granted if] a period of at least [six] months of such sentence remains to be served or a more severe punishment remains to be carried out¹.

¹ For the application of subsections (1) and (2), paragraphs 15-22 of the Revised Manual on the Model Treaty on Extradition may also be considered *mutatis mutandis* as guidance references.

3. In determining whether an offence is an offence punishable under the laws of [country adopting the law] and the requesting State, it shall not matter whether:

a) The laws of both [country adopting the law] and the requesting State place the acts or omissions constituting the offence within the same category of offences or denominate the offence by the same terminology or define or characterize it in the same way;

b) The constituent elements of the offence may be different under the laws of both [country adopting the law] and the requesting State, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account².

4. Acts that infringe the law of the requesting State relating to taxes, duties, customs and exchange [shall] [may] be extraditable offences in accordance with subsection (1), if they correspond to offences of the same nature under the law of [country adopting the law]. Extradition [shall] [may] not be refused on the ground that the law of [country adopting the law] 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 State³.

5. If the request for extradition includes several offences each of which is punishable under the laws of both the requesting State and [country adopting the law], but some of which are not extraditable in accordance with subsections (1)(a) and (2) (penalty requirement), extradition may be granted for the latter offences provided that the person sought is to be extradited for at least one extraditable offence⁴.

² See also paragraphs 20-22 of the Revised Manual on the Model Treaty on Extradition.

³ See also paragraphs 23-26 of the Revised Manual on the Model Treaty on Extradition.

⁴ See also paragraphs 27-33 of the Revised Manual on the Model Treaty on Extradition.

Chapter 2: Grounds for refusal of an extradition request

Section 4: Offences of political nature⁵

1. Extradition [shall not be granted] [may be refused], if the offence for which it is requested is an offence of a political nature.

2. Where extradition is impeded on the ground provided in subsection (1), the competent authorities of the [country adopting the law] and the requesting State shall, as appropriate, consult with a view to facilitating the resolution of the matter.

3. Subsection (1) shall not apply to offences in respect of which [country adopting the law] has assumed an obligation, pursuant to any multilateral convention or bilateral treaty or arrangement, either not to consider them as offences of a political nature for the purpose of extradition or to take prosecutorial action in lieu of extradition⁶.

[4. The following conduct also does not constitute an offence of political nature for the purpose of extradition:

- a) murder or manslaughter;**
- b) inflicting serious bodily harm;**
- c) kidnapping, abduction, hostage-taking or extortion;**
- d) 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**

⁵ See also paragraphs 41-46 of the Revised Manual on the Model Treaty on Extradition.

⁶ States may also include in this “exception” subsection more specific references to include certain crimes related to terrorism. An example that could be used is the following approach of the 2002 European Union Framework Decision against Terrorism:

“Serious crimes or acts of violence committed with the aim of:

- a) causing death or serious bodily harm or intimidating a population; or
- b) unduly compelling a government or international organization to perform or abstain from performing any act; or
- c) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization”.

- e) **an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of the subsections (4)(a) to (4)(d)]⁷.**

⁷ In addition to what is stipulated in subsection (3), this subsection intends to cover cases where an enumerative reference to certain crimes is favoured.

Section 5: Discrimination clause⁸

Extradition shall not be granted, if, in the view of the [competent authority of country adopting the law], there are substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of his

Option 1

race, religion, nationality, ethnic origin, political opinions, sex [gender] or status

Option 2⁹

race, religion, nationality, membership of a particular social group or political opinion

, or his position may be prejudiced for any of those reasons.

⁸ See also paragraphs 47-48 of the Revised Manual on the Model Treaty on Extradition.

⁹ Based on article 33 paragraph 1 of the 1951 Convention relating to the Status of Refugees.

Section 6: Torture, cruel, inhuman or degrading treatment or punishment

Extradition shall not be granted, if, in the view of the [competent authority of country adopting the law], the person sought [has been or] would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment¹⁰.

¹⁰ See also paragraphs 57-58 of the Revised Manual on the Model Treaty on Extradition.

Section 7: Fair trial standards-Judgement in absentia-Extraordinary or ad hoc court or tribunal

1. Extradition may be refused, if, in the view of the [competent authority of country adopting the law], the person sought [has not received or] would not receive the minimum fair trial guarantees in criminal proceedings in the requesting State.

2. Extradition requested for the imposition or enforcement of a sentence may be refused, if the judgement has been rendered in absentia in the requesting State, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his defence and he has not had or will not have the opportunity to have the case retried in his presence, unless the competent authorities of the requesting State give assurances considered sufficient to guarantee to that person the right to a re-trial which safeguards his rights of defence, or unless the person has been duly notified and has had the opportunity to appear and arrange for his defence and has elected not to do so¹¹.

3. Extradition may be refused, if the person sought would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal¹², unless the competent authorities of the requesting State give assurances considered sufficient that the judgement will be passed by a court which is generally empowered under the rules of judicial administration to pronounce on criminal matters¹³.

¹¹ See also paragraphs 59-60 of the Revised Manual on the Model Treaty on Extradition.

¹² The ad hoc International Criminal Tribunals for the former Yugoslavia (established by Security Council resolution 827 of 25 May 1993) and Rwanda (established by Security Council resolution 955 of 8 November 1994) do not fall within the scope of application of this paragraph, which is also not applicable to other internationalized domestic criminal tribunals, such as the Sierra Leone Special Court (established by treaty between the government of that country and the United Nations on 16 January 2002) or the East Timor Special Panels (established by Regulation (2000/15) promulgated by the United Nations Transitional Administration in East Timor (UNTAET) under its specific mandate).

¹³ See also paragraphs 90-91 of the Revised Manual on the Model Treaty on Extradition.

Section 8: Ne bis in idem

Extradition may be refused, if there has been a final judgement rendered and enforced against the person sought in [country adopting the law] [or in a third State] in respect of the offence for which extradition is requested¹⁴.

¹⁴ See also paragraphs 50-52 of the Revised Manual on the Model Treaty on Extradition.

Section 9: Statute of limitation¹⁵

Extradition [shall not be granted] [may be refused], if prosecution or punishment against the person sought is barred, under the law of [country adopting the law] or the requesting State¹⁶, by lapse of time, prescription or statute of limitation at the time of receipt of the request for extradition¹⁷.

¹⁵ See also paragraph 55 of the Revised Manual on the Model Treaty on Extradition.

¹⁶ It is suggested this ground for refusal be optional, if considered under the law of the requested State. In addition, any acts or events that interrupt or suspend time-limitation in the requesting State should be taken into consideration by the competent authorities of the requested State.

¹⁷ No statutory limitation applies to war crimes, crimes against humanity, as well as to crimes of genocide and apartheid (article I of the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (adopted by General Assembly resolution 2391 (XXIII) of 26 November 1968).

Section 10: Military offences

Extradition [shall not be granted] [may be refused], if the offence for which it is requested is an offence under military law, which is not also an offence under ordinary criminal law in the requesting State¹⁸.

¹⁸ See also paragraph 49 of the Revised Manual on the Model Treaty on Extradition.

Section 11: Nationality¹⁹

Option 1

[Extradition [shall not be granted] [may be refused] on the ground that the person sought is a national of [country adopting the law]].

Option 2

Extradition shall not be refused on the ground that the person sought is a national of [country adopting the law]].

¹⁹ The two alternative options are offered in view of the divergent national approaches on this issue. While traditionally it is common law States that do not restrict the extradition of their nationals (in part on the grounds that they are not always prepared to exercise jurisdiction over such nationals for offences committed outside their respective territories), other States of the civil law tradition have adopted a different view by asserting extraterritorial jurisdiction over nationals, so if nationals are not to be extradited (because of constitutional or policy prohibitions) they may be tried for extraterritorial offences. The approach of making discretionary the extradition of nationals is a way of coordinating the different attitudes (see article 6 of the Council of Europe 1957 Convention on Extradition).

However, an increasing number of civil law States have opted over the last years for not restricting the extradition of their nationals (see art. 7 of the 1996 European Union Convention on Extradition, although enabling a system of renewed reservations by the Member States, as well as the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, which does not include nationality as either a mandatory or optional ground for non-execution of the warrant, providing, however, the option of making execution conditional on a guarantee that, upon conviction, the individual is returned to his State of nationality to serve the sentence there (art. 5 para. 3) and an optional ground for non-execution where the European Arrest Warrant is issued for the purposes of execution of a custodial sentence against a national of the executing Member State and that State undertakes to execute the sentence in accordance with its domestic law). This trend may be explained in part by the complexity and resource implications of conducting domestic prosecutions in lieu of extradition based on foreign gathered evidence, and the concern that dangerous criminals may be able to remain at large in their societies.

In view of the above, it is recommended that States prefer the second option offered in this provision or not include this ground for refusal in their national law, which could, thus, be silent on this point.

Section 12: Death penalty

If the offence for which extradition is requested carries the death penalty under the law of the requesting State and is not so punishable under the law of the [country adopting the law], extradition [shall not be granted] [may be refused], unless the competent authorities of the requesting State give assurances considered sufficient that the death penalty will not be imposed or, if imposed, will not be carried out²⁰.

²⁰ See also paragraphs 81-84 of the Revised Manual on the Model Treaty on Extradition.

Section 13: Extraterritoriality

Extradition may be refused, if the offence for which it is requested has been committed outside the territory of the requesting State²¹ and the law of [country adopting the law] does not allow prosecution for the same offence when committed outside its territory²².

²¹ The extraterritorial jurisdiction of the requesting State should be exercised in accordance with international law and its domestic legislation.

²² See also paragraphs 85-87 of the Revised Manual on the Model Treaty on Extradition.

[Section 14: Surrender to International Criminal Court or Tribunals]

[The grounds for refusal of an extradition request set out in sections 4-13 of the present law shall not apply in the case of a person who is the subject of a request for surrender by the International Criminal Court or Tribunals.]²³

²³ It is within the discretion of States to include this section in the domestic extradition legislation, given that many of them have enacted separate laws to regulate surrender to international judicial bodies.

Section 15: Prosecution in case of non-extradition

1. An act or omission committed outside the territory of [country adopting the law] shall be deemed to have been committed in [country adopting the law] and the [competent executive authority of country adopting the law] shall submit the relevant case without undue delay to the [competent prosecutorial authority of country adopting the law] for the purpose of prosecution of the person committing the act or omission, if:

a) that person is after the commission of the act or omission present in the territory of [country adopting the law]; and

b) a request for the extradition of that person has been refused on one of the grounds provided in sections 4, 11 or 12 of the present law, as well as in section 5 of this law, where the position of the person sought may be prejudiced after his extradition on account of his race, religion, nationality, ethnic origin, political opinions, sex [gender] or status²⁴; and

c) the State that requested extradition has subsequently sought the prosecution of the person in [country adopting the law] in respect of the offence for which extradition was requested; and

d) the conduct that constitutes the offence would, if committed in [country adopting the law], constitute an offence, which, however described, is punishable under the law of [country adopting the law], and, under these circumstances, the person sought would be liable to sanction if he had committed the offence in [country adopting the law].

2. For the purpose of subsection (1), the fact that extradition has been refused and that the foreign State has requested prosecution of the person sought in [country adopting the law] may be proved by a certificate to that effect issued by the [competent executive authority of country adopting the law].

²⁴ The wording of article 33 paragraph 1 of the 1951 Convention relating to the Status of Refugees could also be used (see section 5 of the model law).

3. Subsection (1) shall not apply, if prosecution or punishment against the person sought is barred under the law of [country adopting the law] by lapse of time, prescription or statute of limitation at the time of receipt of the request for assumption of prosecution.

Chapter 3: Documentary requirements-Extradition proceedings

Section 16: Incoming extradition requests and required supporting documents²⁵

Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], extradition shall only be granted on the basis of a written request submitted by the competent authorities of the requesting State to the [competent executive authority of country adopting the law] and accompanied by the following supporting documents and information:

a) In all cases:

i) as accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location; and

ii) the text of the relevant provision of the law creating the offence and prescribing the scale of penalties for this offence, or, where the offence is not created by statute, a description of the elements of the offence and its origin, and a statement of the penalty that can be imposed for this offence; and

iii) the text of the relevant provision(s) of the law establishing jurisdiction of the requesting State in respect of the offence.

b) If the person sought is accused of an offence, by:

i) the original or certified copy of a warrant issued by a competent judicial authority for the arrest of that person, a statement of the offence for which extradition is requested and a description of the acts or omissions

²⁵ See also paragraphs 94-112 of the Revised Manual on the Model Treaty on Extradition.

constituting the alleged offence, including an indication of the time and place of its commission, as well as of the degree of participation in this offence by the person sought; [and]

[ii) evidence admissible under the present law, considered sufficient to [establish a prima facie case that the person sought had committed the offence for which extradition is requested] [justify the committal of the person sought for trial for the offence in respect of which extradition is requested, if that offence had been committed in [country adopting the law]] or evidence that would constitute reasonable and probable grounds to believe that the offence had been committed.]²⁶

c) If the person sought has been convicted of an offence, by a statement of the offence for which extradition is requested, a description of the acts or omissions constituting the offence, the original or certified copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served.

d) If the person sought has been convicted of an offence in his absence, in addition to the documents set out in subsection (c), by a statement indicating

²⁶ Option for countries requiring a “prima facie evidence of guilt” or lesser quantum of guilt. Common law and civil law often differ as to the nature of extradition and, therefore, as to the documents required to be presented to the requested State. For example, in most European States, extradition is considered an act of international legal cooperation, the purpose of which is to further criminal investigations conducted abroad. Courts dealing with extradition cases abstain from examining the evidence of guilt against the person wanted, as they feel this examination is incumbent exclusively upon the judicial authorities of the requesting State. For extradition to be authorized, it suffices that the formal and material requirements provided for by the treaty be present. Some common law States have recently changed their law and practice in this regard and have followed the approach of civil law States. In other States influenced by common law the magistrate will examine whether the request contains reasonable grounds to believe (sometimes referred to as probable cause to believe) that the person wanted committed the crime charged, or whether the requests provides prima facie evidence of guilt as if the accused were charged with the same alleged offences in that State. In such States, if the magistrate holds that the evidence produced by the requesting State is sufficient to justify committal for trial should the facts be prosecuted in that State, extradition will be granted, assuming that the other legal requirements are met.

In view of the need for simplification of the evidentiary requirements in extradition proceedings (see also art. 16 para. 8 of the United Nations Convention against Transnational Organized Crime and art. 44 para. 9 of the United Nations Convention against Corruption), it is recommended that States not insist on the establishment of a “prima facie evidence of guilt” for granting an extradition request.

that he has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision, or specifying the legal means available to him to prepare his defence or to have the case retried in his presence.

e) If the person sought has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested, a description of the facts or omissions constituting the offence, a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

Section 17: Certification and authentication²⁷

A request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication, unless a relevant extradition treaty or agreement or the domestic legislation of [country adopting the law] provides otherwise.

²⁷ See also paragraphs 121-128 of the Revised Manual on the Model Treaty on Extradition.

Section 18: Concurrent requests²⁸

When two or more States request the extradition of the person sought either for the same offence or for different offences, the [competent executive authority of country adopting the law] shall determine which, if any, extradition request to authorize under section 19(3) of the present law. [For this purpose, the [competent executive authority of country adopting the law] shall take into account existing treaty obligations and, where appropriate, all the relevant circumstances, such as: time and place of the offence; time sequence of receipt of the requests; nationality of the person sought and the victims; ordinary place of residence of the person sought and the victims; possibility of re-extradition of the person sought; whether extradition is requested for the purposes of prosecution or imposition or enforcement of a sentence; whether, in the judgement of the [competent executive authority of country adopting the law], the interests of justice are best met; and, if the requests relate to different offences, the seriousness of the offences.]²⁹

²⁸See also paragraphs 253-257 of the Revised Manual on the Model Treaty on Extradition.

²⁹The reference of the circumstances to be taken into account while considering concurrent requests is within brackets, because it is up to the competent national authorities to decide whether a relevant legislative provision is necessary or these circumstances can be treated as policy guidelines in extradition practice.

Section 19: Preliminary verification of extradition request - Additional information

1. After receiving an extradition request and its supporting documents, the [competent executive authority of country adopting the law] shall examine whether the documentary requirements and substantive provisions set out in the applicable extradition treaty or agreement, or, in the absence of such treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], the documentary requirements set out in section 16 and the substantive conditions set out in section 3(1)(a), and if applicable 3(2), as well as in section 3(1)(b) of the present law, are met.

2. Where the [competent executive authority of country adopting the law], acting in accordance with subsection (1), considers that the information provided by the competent authorities of the requesting State in support of a request for extradition does not suffice for rendering a decision on the granting of extradition [on the eligibility of extradition], it may request that additional information be furnished within the period set forth in the applicable extradition treaty or agreement, or otherwise as soon as practicable [within a period of x days].

3. Where the requirements referred to in subsection (1) are met, the [competent executive authority of country adopting the law] shall authorize the [competent prosecutorial authority of country adopting the law] to seek, on behalf of the requesting State, an order of the [competent judicial authority of country adopting the law] that the person sought is eligible for extradition.

Section 20: Provisional arrest³⁰

1. The [competent executive authority of country adopting the law], after receiving a request by a foreign State for the provisional arrest of a person sought either directly or through the facilities of the International Criminal Police Organization (ICPO/INTERPOL) or by virtue of a multilateral or bilateral treaty or agreement, [shall] [may] authorize the [competent prosecutorial/law enforcement authority of country adopting the law] to apply to the [competent judicial authority of country adopting the law] for the provisional arrest of that person pending the presentation of the extradition request, if satisfied that the criteria of the applicable extradition treaty or agreement are met, or, in the absence of such treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], if satisfied that there are reasonable grounds to believe that:

- a) the person sought is ordinarily resident of [country adopting the law], or is in or on his way or routinely travels to [country adopting the law]; and
- b) the request for provisional arrest relates to (an) offence(s) which meet(s) the requirements set out in section 3(1)(a), and if applicable 3(2) of the present law, and to conduct that meets the requirements set out in section 3(1)(b) of the present law; and
- c) the foreign State shall submit a request for the extradition of that person within [x] days.

2. The [competent judicial authority of country adopting the law] [shall] [may], on ex parte application of the [competent prosecutorial/law enforcement authority of country adopting the law], order the provisional arrest of the person sought, if satisfied that the criteria of the applicable extradition treaty or

³⁰ See also paragraphs 136-157 of the Revised Manual on the Model Treaty on Extradition.

agreement are met, or, in the absence of such treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], if satisfied that there are reasonable grounds to believe that:

- a) a warrant for that person's arrest or an order of a similar nature has been issued or the person has been convicted in the foreign State; and
- b) it is necessary in the public interest to arrest that person, including to prevent him from escaping or committing an offence.

3. The provisional arrest of the person sought shall be ordered in accordance with subsection (2) by means of a provisional arrest warrant issued by the [competent judicial authority of country adopting the law]. The warrant shall order that the person be arrested and brought without undue delay before the [competent judicial authority of country adopting the law]. It shall also include the name of the issuing authority, the date of its issuance, as well as information on the person sought (name and description), the foreign State that requested the provisional arrest and the offence in respect of which provisional arrest is requested.

4. A person who has been provisionally arrested in accordance with subsections (2) and (3) shall be discharged if:

- a) the provisional arrest was requested under an extradition treaty or agreement that provides for a period after the date of provisional arrest within which an extradition request and its supporting documents should be submitted, and:
 - i) the requesting State has not made a formal extradition request within that period; or

- ii) **the requesting State has made a formal extradition request within that period, but the [competent executive authority of country adopting the law], acting in accordance with subsection (1), has not authorized the proceedings within [x] days after the expiry of that period.**

- b) **the provisional arrest was not requested under an extradition treaty or agreement or was requested under an extradition treaty or agreement that does not provide for a period within which an extradition request and its supporting documents should be submitted, and:**
 - i) **the requesting State has not made a formal extradition request within [x][40-60] days after the date of provisional arrest; or**

 - ii) **the requesting State has made a formal extradition request within [x] [40-60] days, but the [competent executive authority of country adopting the law], acting in accordance with subsection (1), has not authorized the proceedings before the expiry of [x] additional days.**

5. The discharge of the person shall not prevent his re-arrest and the initiation of proceedings with a view to his extradition if the extradition request and its supporting documents are subsequently submitted by the competent authorities of the requesting State.

Section 21: Extradition arrest warrant

1. Where the [competent executive authority of country adopting the law] has authorized the proceedings under the applicable extradition treaty or agreement, or section 19(3) of the present law and unless the person sought has already been arrested under the applicable extradition treaty or agreement, or section 20 of the present law, the [competent executive authority of country adopting the law] shall authorize the [competent prosecutorial authority of country adopting the law] to apply to the [competent judicial authority of country adopting the law] for issuing an extradition arrest warrant against that person.

2. The [competent judicial authority of country adopting the law] shall, on ex parte application of the [competent prosecutorial authority of country adopting the law], issue an extradition arrest warrant against the person sought, if satisfied that the criteria of the applicable extradition treaty or agreement are met, or, in the absence of such treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], if satisfied that there are reasonable grounds to believe that:

a) a warrant of that person's arrest or an order of a similar nature has been issued or the person has been convicted in the requesting State in respect of the offence for which extradition is requested; and

b) the information available would justify the issuance of a domestic arrest warrant if the person were accused of the offence in [country adopting the law] or were unlawfully at large after conviction in [country adopting the law].

3. Section 20(3) of the present law shall apply accordingly.

Section 22: Proceedings after the arrest of the person sought

A person arrested under the applicable extradition treaty or agreement, or under section 20 or 21 of the present law shall be brought without undue delay [within [x] days after his arrest] before the [competent judicial authority of country adopting the law], which:

- a) shall order the detention of that person in custody; and**

- b) shall set the date for the extradition hearing and remand the person sought accordingly.**

Section 23: Extradition hearing

1. The extradition hearing before the [competent judicial authority of country adopting the law] shall be conducted in accordance with any specific procedural rules that may be applicable mutatis mutandis in extradition proceedings in [country adopting the law][option: reference to specific rules]³¹.

2. The [competent judicial authority of country adopting the law] shall examine the person sought with regard to his personal circumstances and shall ask him whether, and if so on what grounds, he agrees with his extradition. It shall also explain to him the conditions of extradition and make reference to his right to apply for judicial review, to retain a counsel or to have a court-appointed counsel.

3. Evidence that would be otherwise be admissible under the law of [country adopting the law] shall be admitted as evidence at the extradition hearing. The following shall also be admitted as evidence at the extradition hearing, even if it would not otherwise be admissible under the law of [country adopting the law]:

a) The contents of the documents submitted in accordance with section 16 of the present law or in conformity with the terms of an extradition treaty or agreement;

b) [Evidence adduced by the person sought that is relevant to the test set out in section 24(1)(c) of the present law, if the [competent judicial authority of country adopting the law] considers it reliable]³².

4. [The person sought is not entitled to adduce, and the [competent judicial authority of country adopting the law] is not entitled to receive, evidence to

³¹ Legislative drafters at the national level should take into account that the rationale of this provision is not to turn the extradition proceedings into a mini-trial before the surrender of the person sought to the authorities of the requesting State.

³² Option for countries requiring a “prima facie evidence of guilt” or lesser quantum of guilt (see also footnote 26).

contradict an allegation that he has engaged in the conduct which constitutes the offence for which extradition is requested, unless an extradition objection based on sections [5]³³, 8 and 9 of the present law has been raised]³⁴.

³³ If by domestic law or policy the judicial authority is to be accorded the power to decide on this ground for refusal.

³⁴ Countries requiring a “prima facie evidence of guilt” or lesser quantum of guilt may not take into account this subsection (see also footnote 26).

Section 24: Decision on eligibility for extradition

1. The [competent judicial authority of country adopting the law] shall decide that the person sought is eligible for extradition, if satisfied that the criteria of the applicable extradition treaty or agreement have been fulfilled, or, in the absence of such treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], if satisfied that:

a) the conduct constituting the offence(s) for which extradition is requested meets the requirements set out in section 3(1)(b) of the present law; and

b) the person brought before the [competent judicial authority of country adopting the law] is the person sought for extradition; [and]

[c] in case extradition is requested for the purpose of prosecution in the requesting State, there is evidence admissible under the present law, considered sufficient to [establish a prima facie case that the person sought had committed the offence for which extradition is requested] [justify the committal of the person sought for trial for the offence in respect of which extradition is requested, if that offence had been committed in [country adopting the law]] or evidence that would constitute reasonable and probable grounds to believe that the offence had been committed]³⁵.

2. Notwithstanding subsection (1), the [competent judicial authority of country adopting the law] shall not find the person sought eligible for extradition, if mandatory grounds for refusal set forth in the applicable extradition treaty or agreement and not to be decided upon by the [competent executive authority of country adopting the law] have been established, or, in the absence of such a

³⁵ Option for countries requiring a “prima facie evidence of guilt” or lesser quantum of guilt (see also footnote 26).

treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], if satisfied that there are substantial grounds to believe that:

Option 1³⁶

any of the grounds for refusal set out in sections 4-13 of the present law is applicable.

Option 2³⁷

the following grounds for refusal are applicable

[List of grounds for refusal]

3. If the [competent judicial authority of country adopting the law] rules that the person sought is eligible for extradition to the requesting State, it shall

a) remand that person in custody until the [competent executive authority of country adopting the law] renders a decision under section 26 of the present law, and if extradition is ordered, until the surrender of the person to the requesting State;

b) advise the person sought of his right to lodge an appeal against its decision on his eligibility for extradition or otherwise seek judicial review of its decision in accordance with applicable law.

³⁶ If by domestic law or policy the judicial authority is to be accorded the power to decide on any of the grounds for refusal.

³⁷ If by domestic law or policy the judicial authority is to be accorded the power to decide on certain grounds for refusal.

4. If the [competent judicial authority of country adopting the law] rules that the person sought is not eligible for extradition to the requesting State, it shall order the discharge of that person, unless section 15 of the present law applies³⁸.

³⁸ See also footnote 40.

Section 25: Appeal/petition for judicial review³⁹

1. Within a period of [x]days after the decision of the [competent judicial authority] has been rendered under section 24 of the present law, an appeal or other applicable petition for judicial review may be lodged before the [competent judicial appeal authority of country adopting the law] by:

a) the person sought, if the [competent judicial authority of country adopting the law] has found him eligible for extradition; or

b) the [competent prosecutorial authority of country adopting the law], acting on behalf of the requesting State, if the [competent judicial authority of country adopting the law] has found the person sought not eligible for extradition⁴⁰.

2. An appeal or other applicable petition for judicial review lodged under subsection (1) shall be scheduled for hearing at an early date whether that date is in or out the prescribed sessions of the [competent judicial appeal authority of

³⁹ There are different national approaches regarding the legal remedies against an extradition decision. In most countries the recourse is limited to the judicial stage of extradition proceedings, while in others to the administrative stage, so that the courts are considered to be administrative ones.

Other countries allow a recourse at both stages, e.g. before and after the decision of the executive authority on the surrender of the person sought to the requesting State. Given that, countries adopting the latter two-tier judicial review system in extradition proceedings may include in their extradition legislation a separate provision that could be incorporated, for example, in section 26 of the present law, enabling the person sought to have recourse to the competent Administrative Court, challenging (usually by virtue of domestic constitutional provisions) the decision of the competent executive authority on his surrender to the requesting State. In this case, the division of labour between the judicial authorities concerning the adjudication on the legal issues at stake is basically developed at the jurisprudential level.

In addition, legislations of other States provide for two (one judicial and one administrative) reviews, but at the same time defer the appeal hearing available at the judicial stage until the competent executive authority renders a decision on the surrender of the person sought, so that both reviews be heard at the same time. In this case, appropriate adjustments could be made in the text of the present law, so that the provisions on review proceedings be grouped together after section 26 on executive discretion.

In any case, it is recommended that, in order to achieve judicial economy and accelerate the extradition process without prejudicing the effectiveness of judicial review, a single appeal mechanism be adopted, whenever consistent with basic constitutional principles, that would review appropriate factual and legal issues with a view to eliminating repeated and partial reviews.

⁴⁰ National authorities would need to be prepared to serve a new extradition arrest warrant, in case an appeal against the judicial decision is lodged by the competent prosecutorial authority on behalf of the requesting State under this section of the present law. They also need to be prepared to serve a new arrest warrant for domestic charges in case section 15 of the present law is applicable.

country adopting the law]. The hearing before the [competent judicial appeal authority of country adopting the law] shall be conducted in accordance with any specific procedural rules that may be applicable mutatis mutandis in extradition appeal proceedings in [country adopting the law] [option: reference to specific rules]⁴¹.

3. Where the [competent judicial appeal authority of country adopting the law] renders a final decision that the person sought is eligible for extradition, it shall transmit to the [competent executive authority of country adopting the law] a copy of the order and any reasoning for the decision.

4. Where the [competent judicial appeal authority of country adopting the law] renders a final decision that the person sought is not eligible for extradition, it shall order the discharge of that person, unless section 15 of the present law applies.

⁴¹ See also footnote 31.

Section 26: Executive discretion

1. Where the [competent judicial authority of country adopting the law] has rendered a final decision ruling that the person sought is eligible for extradition, the [competent executive authority of country adopting the law] may order his surrender to the requesting State.

2. Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], the [competent executive authority of country adopting the law] may seek from the competent authorities of the requesting State the assurances referred to in sections 7(2), 7(3) and 12 of the present law or may subject the surrender of the person sought to the condition set forth in section 34(1) of the present law.

3. If the [competent executive authority of country adopting the law] subjects the surrender of the person sought to assurances or conditions under subsection (2), the order of surrender shall not be executed until the [competent executive authority of country adopting the law] is satisfied that the assurances are given or the conditions agreed to by the competent authorities of the requesting State.

4. Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], the [competent executive authority of country adopting the law] may refuse to order the surrender of the person sought to the requesting State, if satisfied that there are substantial grounds to believe that:

- a) a prosecution against that person in respect of an offence for which extradition is requested is pending in [country adopting the law]⁴²;**
- or**

⁴² It is understood that extradition is not barred in case domestic prosecution does not end in an acquittal or conviction and is terminated without a decision on the merits.

- b) the offence for which extradition is requested is regarded under the law of [country adopting the law] as having been committed in whole or in part within the territory of [country adopting the law]⁴³; or
- c) [the extradition of that person would be incompatible with humanitarian considerations in view of his age or health [or other personal circumstances]]⁴⁴.

5. Further to subsection (4) and without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], the [competent executive authority of country adopting the law] may refuse to order the surrender of the person sought to the requesting State, if satisfied that that there are substantial grounds to believe that:

Option 1⁴⁵

any of the grounds for refusal set out in sections 4-13 of the present law is applicable.

Option 2⁴⁶

the following grounds for refusal are applicable

[List of grounds for refusal]

⁴³ This provision could be applicable only in cases where the competent national authorities actually proceed with the prosecution of the offence.

⁴⁴ It is recommended that the inclusion of this provision in national extradition legislation be considered in view of the alternative option provided in section 29(1)(b) and (2) of the present law.

⁴⁵ If by domestic law or policy the executive authority is to be accorded the power to decide on any of the grounds for refusal.

⁴⁶ If by domestic law or policy the executive authority is to be accorded the power to decide on certain grounds for refusal other than those mentioned in subsection (4).

6. If the [competent executive authority of country adopting the law] refuses to order the surrender of the person sought to the requesting State, that person shall be discharged, unless section 15 of the present law applies.

Section 27: Simplified extradition procedure⁴⁷

1. At any time after the [competent executive authority of country adopting the law] has authorized the proceedings under the applicable extradition treaty or agreement, or, in the absence of such a treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], under section 19(3) or section 20(1) of the present law, and after having been advised of his rights and the legal consequences of a simplified extradition procedure, the person sought may consent to be extradited to the requesting State without conducting a formal extradition proceeding under sections 23-25 of the present law. He may also expressly renounce his entitlement to the rule of speciality.

2. The consent and, where appropriate, the renunciation of the entitlement to the rule of speciality shall be recorded by the [competent judicial authority of country adopting the law].

3. The consent and, where appropriate, the renunciation given under subsection (1) [shall] [may] not be revoked.

4. A copy of the consent of the person sought shall be transmitted to the [competent executive authority of country adopting the law] with a view to arranging his surrender under section 28 of the present law.

⁴⁷ See also paragraphs 116-120 of the Revised Manual on the Model Treaty on Extradition.

Section 28: Surrender of the person sought⁴⁸

1. If the [competent executive authority of country adopting the law] decides under section 26 of the present law that the person sought is to be surrendered to the requesting State, it shall arrange for the surrender of that person and shall inform its counterpart in the requesting State without undue delay on the decision, the place and date of surrender and the length of time for which the person was detained for the purpose of his extradition.

2. The surrender of the person sought shall be ordered by means of a surrender warrant or other final order of extradition issued by the [competent authority of country adopting the law]⁴⁹. The surrender warrant or other final order of extradition shall:

a) contain the name of the person sought; and

b) state the requesting State to which that person is to be surrendered; and

c) state, in accordance with the law of either [country adopting the law] or the requesting State, the offence(s) for which that person is to be surrendered to the requesting State; and

d) authorize the law enforcement officer who has custody of that person to [transport him from the place of custody to another place within [country adopting the law] for the purpose of handing him over to the custody of a foreign escort officer, as well as to] hold the person in custody for so long as it is necessary for carrying out his surrender to the foreign escort officer, and, if the person escapes while in custody, to arrest him; and

⁴⁸ See also paragraphs 166-183 of the Revised Manual on the Model Treaty on Extradition.

⁴⁹ The surrender of the person sought can be ordered by a judicial warrant or an administrative act. National legislation shall identify the nature and type of the relevant order and, accordingly, the authority in charge of issuing it.

e) authorize the foreign escort officer to transport the person out of [country adopting the law]; and

f) take any other steps provided for in an applicable extradition treaty or agreement.

3. If the person sought is not surrendered to the requesting State within the date provided for in the applicable extradition treaty or agreement, or, in the absence of such a treaty or agreement or specific date provided for therein, or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], within [x days] after the date the surrender warrant or other final order of extradition was issued in accordance with subsection (2), or entered into force in case of postponement of surrender, the [competent executive authority of country adopting the law] [shall] [may] seek to obtain a judicial order for the discharge of that person.

Section 29: Postponement of surrender⁵⁰

1. Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], the [competent executive authority of country adopting the law] may postpone the surrender of the person sought to the requesting State, if:

- a) a proceeding is pending in [country adopting the law] against that person or he is to serve a sentence in [country adopting the law] for an offence other than that for which extradition is requested; or**
- b) the surrender of that person would have been dangerous to his life or extremely prejudicial to his health or there is any other very serious humanitarian reason for delay in surrendering him to the requesting State.**

2. In case of postponement of surrender in accordance with subsection (1)(a), the surrender warrant or other final order of extradition issued in accordance with section 28(2) of the present law shall not take effect until the person sought has been discharged, whether by acquittal, by expiry of the sentence or otherwise. If postponement has been decided in accordance with subsection (1)(b), the surrender of the person sought shall take place as soon as these humanitarian reasons have ceased to exist.

⁵⁰ See also paragraphs 184-185 of the Revised Manual on the Model Treaty on Extradition.

Section 30: Temporary surrender⁵¹

1. In case the person sought is serving a sentence in [country adopting the law] for an offence other than that for which extradition is requested, the [competent executive authority of country adopting the law] may, instead of postponing his surrender in accordance with section 29 of the present law, order his temporary surrender to the requesting State, if:

a) the surrender is requested for an offence of which the person sought is accused but has not been convicted; and

b) the competent authorities of the requesting State have given assurances considered sufficient that the person sought shall remain in custody while temporarily surrendered and shall be returned to [country adopting the law] within [x] days after the completion of the trial or, in case of appeal, after the completion of proceedings for which the presence of that person in the requesting State is required.

2. If extradition of the person sought is requested for the purpose of prosecution for an offence committed outside the territory of [country adopting the law], and denied on the ground provided in section 11 of the present law, the [competent executive authority of country adopting the law] may permit the temporary surrender of that person to the requesting State, if the competent authorities of the latter give assurances considered sufficient that he shall be returned after his trial to [country adopting the law] in order to serve his sentence there.

3. Any assurance referred to in subsections (1)(b) and (2) that is included in a relevant extradition treaty or agreement need not be repeated as a specific assurance.

4. The temporary surrender of the person sought under subsections (1) and (2) shall be ordered by means of a temporary surrender warrant or other equal

⁵¹ See also paragraphs 186-189 of the Revised Manual on the Model Treaty on Extradition.

order of temporary surrender issued by the [competent authority of country adopting the law]. Section 28(2) of the present law shall apply accordingly.

5. A surrender warrant or other equal order of temporary surrender issued under subsection (4) shall prevail over a prior warrant or other order under which the person to whom it applies is otherwise detained in [country adopting the law].

6. A person sought shall be surrendered to the requesting State without a further request for extradition after that person:

a) has been temporarily surrendered; and

b) has been convicted by the [competent judicial authority of the requesting State] and had a term of imprisonment imposed on him; and

c) has been returned to [country adopting the law]; and

d) has finished serving the period of sentence imposed in [country adopting the law] at the time of the temporary surrender, unless the [competent executive authority of country adopting the law] orders his earlier surrender.

7. When the sentence that the person sought is serving in [country adopting the law] expires within the period during which that person is temporarily surrendered to the requesting State, his surrender shall be considered to be a final one.

[8. The [competent executive authority of country adopting the law] may [in consultation with the competent prosecutorial authority of country adopting the law] waive the return of the temporarily surrendered person by the requesting State.]

Section 31: Search and seizure

1. Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], the [competent judicial authority of country adopting the law] may, after the person sought has been arrested in accordance with section 20 or section 21 of the present law [and upon request of the requesting State], order that the premises in which that person was found be searched and all property [or equivalent sum of money] found in his possession at the time of arrest or discovered at any subsequent time be seized or otherwise secured in [country adopting the law], if satisfied that there are reasonable grounds to believe that this property [or equivalent sum of money]:

a) has been acquired as a result of the offence for which the provisional arrest with a view to extradition of that person was requested or the relevant extradition request was presented; or

b) may be required as evidence in proving such an offence.

[2. Search and seizure shall be ordered in accordance with subsection (1) by means of a search and seizure warrant issued by the [competent judicial authority of country adopting the law], on ex parte application of the [competent prosecutorial/law enforcement authority of country adopting the law]. The warrant shall include the name of the issuing authority, the date of its issuance, as well as information on the person sought, the offence for which he was arrested and the purpose for the search and seizure.]

Section 32: Surrender of property⁵²

1. Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], the [competent executive authority of country adopting the law] may, upon request of the requesting State, direct that any property seized or otherwise secured in accordance with section 31 of the present law be surrendered to the requesting State. The property may be surrendered to the requesting State notwithstanding that the surrender of the person sought cannot be carried out.

2. Where national legislation of [country adopting the law] and the rights of bona fide third parties so require, the [competent executive authority of country adopting the law] shall not order the surrender of the property referred to in subsection (1), unless the competent authorities of the requesting State have given assurances considered sufficient that this property shall be returned to [country adopting the law] free of charge as soon as the criminal proceedings in this State have been terminated.

⁵² See also paragraphs 190-205 of the Revised Manual on the Model Treaty on Extradition.

IV. PART 3: EXTRADITION TO [COUNTRY ADOPTING THE LAW]
(ACTIVE EXTRADITION)

Section 33: Competence to transmit extradition or other related requests

The [competent executive authority of country adopting the law], upon request of the [competent judicial/prosecutorial authority of country adopting the law], may make a request to a foreign State for the extradition of a person for the purpose of criminal prosecution or imposition or enforcement of a sentence in respect of an offence over which [country adopting the law] has jurisdiction. The same authority may also make a request to a foreign State for the provisional arrest of a person pending the presentation of the extradition request, or submit a request for consent after the surrender of a person on the waiver of the rule of speciality in accordance with section 34(1)(a) of the present law.

Section 34: Treatment of surrendered persons (Rule of speciality)⁵³

1. A person who has been extradited from a foreign State to [country adopting the law] shall not be proceeded against, sentenced, detained, subjected to any other restriction of personal liberty in the territory of [country adopting the law] or re-extradited to a third State for any offence committed prior to his surrender other than that for which he was extradited, unless:

a) the [competent authority of the foreign State]⁵⁴ has expressly given its consent; or

b) the extradited person, having had an opportunity to voluntarily leave the territory of [country adopting the law], has not done so within [30/45] days of his final discharge in respect of the offence for which he was extradited or if he has voluntarily returned to that territory after leaving it; or

c) extradition was accomplished in accordance with section 27 of the present law and the extradited person has expressly renounced his entitlement to the rule of speciality.

2. [Any proceedings brought against the extradited person in the territory of [country adopting the law] in violation of subsection (1) [shall] [may] be declared to be void].

[3. A request for the consent of the foreign State to be given under subsection (1)(a) may be accompanied, as appropriate, by documents referred to in section 16 of the present law and a legal record of any statement made by the extradited person with respect to the offence.]⁵⁵

⁵³ See also paragraphs 206-231 of the Revised Manual on the Model Treaty on Extradition.

⁵⁴ National legislation shall identify whether the executive or the judicial authority is authorized to give this consent. It is recommended that the executive authority be preferred, since once the person had been surrendered to the requesting State, the judicial branch no longer has jurisdiction over the matter.

⁵⁵ Countries may wish to waive the requirement for the provision of some or all of these documents.

4. When the description of the offence charged is altered in the course of proceedings in [country adopting the law], the extradited person may only be proceeded against, sentenced, detained or subjected to any other restriction of personal liberty in so far as the offence is based on the same facts and under its new description is shown to be offence which would allow extradition carrying out the same or lesser penalty as the original offence for which extradition to [country adopting the law] was granted.

Section 35: Temporary detention of surrendered person pending a decision on the waiver of the rule of speciality

1. Where the charge or charges for which the person has been extradited have been dismissed in [country adopting the law] following surrender from a foreign State, and that person has been discharged from custody for such charge or charges, the [competent executive authority of country adopting the law] may authorize the [competent prosecutorial authority of country adopting the law] to apply to the [competent judicial authority of country adopting the law] for issuing a detention warrant for a period of up to [60/90/120 days] [time necessary] in order to enable the submission of a request to the [competent authority of the foreign State] to give its consent on the waiver of the rule of speciality and, if the request is granted, to allow the initiation of proceedings against the person for charges other than those for which he was extradited.

2. The application for issuing a detention warrant made in accordance with subsection (1) shall set forth the charge or charges for which waiver of the rule of speciality is sought, an explanation of the evidence in support of such charge or charges, and such other information as may be relevant to the determination of the [competent judicial authority of country adopting the law] that there is just cause to issue the warrant. The [competent judicial authority of country adopting the law] shall consider the totality of the relevant circumstances in determining whether to grant the warrant and the duration thereof.

3. If the request for consent on the waiver of the rule of speciality is denied, the person shall be discharged. If the consent has not been granted within the period specified in subsection (1), an application may be made for, and the [competent judicial authority of country adopting the law] may grant, extension of the warrant where there is just cause for doing so.

Section 36: Persons surrendered temporarily

1. Where a person was serving a term of imprisonment or has otherwise lawfully been deprived of his liberty in a foreign State and has been temporarily surrendered to [country adopting the law] for the purpose of prosecution or appeal, the [competent judicial authority of country adopting the law] shall, on ex parte application of the [competent prosecutorial authority of country adopting the law] made at any time before the temporary surrender, order the detention in custody of that person.

2. The order referred to in subsection (1) shall contain a provision that the person shall not be detained in custody after:

a) a date specified in the order; or

b) in the case of surrender for a trial, [30/45] days after the completion of the trial; or

c) in the case of surrender for an appeal, [30/45] days after the completion of the proceedings for which the presence of the person is required.

3. An order made under subsection (1) shall prevail over an order made by any judicial authority in [country adopting the law], in respect of anything that occurred before the person is transferred to [country adopting the law].

4. Upon completion of the proceedings in [country adopting the law] for which the person was temporarily surrendered or on the expiry of the period set out in the order referred to in subsection (2), whichever is sooner, the person shall be returned to the competent authorities of the foreign State.

5. The enforcement of a sentence imposed on the person who has been temporarily surrendered and convicted in [country adopting the law] shall not commence until his final extradition to [country adopting the law].

V. PART 4: TRANSIT PROCEEDINGS

Section 37: Principle

Where a person is being extradited from a third State (transferring State) to a foreign State (receiving State) through the territory of [country adopting the law], the [competent executive authority of country adopting the law] may permit, upon request of the receiving State, the transit of that person through the territory of [country adopting the law]⁵⁶.

⁵⁶ See also paragraphs 232-235 of the Revised Manual on the Model Treaty on Extradition.

Section 38: Allowability of transit⁵⁷

Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], transit of a person through the territory of [country adopting the law] shall be allowed under section 37 of the present law, unless:

a) the conduct that constitutes the offence in respect of which transit permission is requested would not, if committed in [country adopting the law], constitute an offence, which, however described, is punishable under the law of [country adopting the law]; and

b) the essential interests of [country adopting the law] would be prejudiced⁵⁸.

⁵⁷ See also paragraphs 236-244 of the Revised Manual on the Model Treaty on Extradition.

⁵⁸ Given the divergent national approaches on this issue, States may wish to make reference to specific grounds for refusal of a transit request, which may also warrant refusal for extradition. However, it is recommended that transit not be denied on the basis of nationality.

Section 39: Detention during transit⁵⁹

1. After transit permission has been granted under section 37 of the present law, the transferee shall be held in custody in [country adopting the law] for a period not exceeding [24] hours or for a longer period, if so requested by the transferring or receiving State pursuant to subsection (2). Law enforcement officers of [country adopting the law] may provide such assistance as is reasonable and necessary to facilitate the transporting of the transferee in custody.

2. Upon application of the transferring or receiving State, the [competent judicial authority of country adopting the law], on ex parte application of the [competent executive authority of country adopting the law], shall issue a warrant authorizing further custody of the transferee for such period as deemed to be necessary to facilitate his transporting to the receiving State. The warrant shall include information on the transferee, the State that extradited him, the receiving State and the reason for the extension of his detention.

3. The [competent executive authority of country adopting the law] may authorize the [competent prosecutorial authority of country adopting the law] to direct any person having custody of the transferee under subsections (1) and (2) to discharge him where the conditions of transfer imposed on the transferring or receiving State are not fulfilled.

⁵⁹ See also paragraphs 245-248 of the Revised Manual on the Model Treaty on Extradition.

Section 40: Unscheduled landing

1. Section 37 of the present law shall not apply where air transport is used for the transit and no landing in the territory of [country adopting the law] is scheduled. Where, however, an unscheduled landing occurs, the transferee may, upon request of the escorting officer, be held in custody in the territory of [country adopting the law], in accordance with section 39(1) of the present law, for a maximum period of [24/48/96] hours pending receipt of the transit request from the receiving State.

2. Section 39(3) of the present law shall apply accordingly where the competent authorities of the receiving State do not submit a formal transit request within the period defined in subsection (1)⁶⁰.

⁶⁰ See also paragraphs 249-252 of the Revised Manual on the Model Treaty on Extradition.

VI. PART 5: FINAL PROVISIONS

Section 41: Costs of extradition proceedings⁶¹

Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of its domestic legislation, [country adopting the law] shall meet the normal costs of any proceedings within its jurisdiction arising out of a request for extradition, as well as the costs incurred in its territory in connection with seizure and surrender of property or the arrest and detention of the person sought. The requesting State shall bear the costs related to the translation of documents, as well as the costs incurred in conveying that person from the territory of [country adopting the law], including transit costs⁶².

⁶¹ See also paragraphs 258-263 of the Revised Manual on the Model Treaty on Extradition.

⁶² It is understood that potential extraordinary costs in the context of extradition proceedings shall be paid by the requesting State. What falls within the meaning of “extraordinary costs” is an issue of bilateral consultations and not of domestic legislation.

Section 42: Regulations

The [competent executive authority of country adopting the law] may promulgate any regulation considered necessary to give effect to the present law. The regulations may provide for modifications, which, without being inconsistent with the provisions of this law, shall be convenient for its implementation in [country adopting the law].

Section 43: Entry into force - Retrospectivity

1. The present law may be cited as Extradition Act..... Its entry into force shall take place according to the existing national procedure provided for under the domestic legislation of [country adopting the law].

2. Without prejudice to applicable treaty obligations, or in the absence of an extradition treaty or agreement or where such treaty or agreement refers to the requirements of the domestic legislation of [country adopting the law], extradition may be granted in respect of an offence or conviction occurred before or after the present law or the relevant extradition treaty or agreement comes into force.

3. The present law shall apply to extradition requests made after its entry into force. Nevertheless, section 3 shall apply to requests pending before the competent authorities of [country adopting the law] at the time the present law enters into force.