

LEGAL NOTICE NO. 96

REPUBLIC OF TRINIDAD AND TOBAGO

THE EXTRADITION (COMMONWEALTH AND FOREIGN TERRITORIES)  
ACT, 1985

ORDER

MADE BY THE ATTORNEY GENERAL UNDER SECTION 4 OF THE  
EXTRADITION (COMMONWEALTH AND FOREIGN TERRITORIES) ACT

THE EXTRADITION (THE KINGDOM OF THE NETHERLANDS)  
ORDER, 2003

1. This Order may be cited as the Extradition (The Kingdom of the Netherlands) Order, 2003. Citation

2. The Kingdom of the Netherlands is declared to be a foreign Declaration of  
territory in relation to which the Extradition (Commonwealth and foreign  
Foreign Territories) Act applies following the conclusion, between territory  
Trinidad and Tobago and the Kingdom of the Netherlands, of the Act No. 36  
Extradition Treaty recited in the Schedule. of 1985

SCHEDULE



TREATY BETWEEN  
THE REPUBLIC OF TRINIDAD AND TOBAGO  
AND  
THE KINGDOM OF THE NETHERLANDS  
ON  
EXTRADITION

The Government of the Republic of Trinidad and Tobago and the Government of the Kingdom of the Netherlands;

Respecting each other's judicial institutions and desiring to make more effective the co-operation between the two countries in the suppression of crime by making provisions for the extradition of offenders;

Have contracted as follows:

#### ARTICLE 1

##### OBLIGATION TO EXTRADITE

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any person within its territory who is accused of an extraditable offence or sought for the purpose of imposition or enforcement of a sentence by the authorities of the other State.

#### ARTICLE 2

##### EXTRADITABLE OFFENCES

(1) Extradition shall be granted for conduct which, under the law of both States, constitutes an offence punishable by a term of imprisonment of not less than twelve months or by a more severe penalty. In addition, where a sentence of imprisonment or other deprivation of liberty has been imposed by the courts of the Requesting State, the portion of the sentence that remains to be served must be at least six months.

(2) An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit, aiding or abetting, counseling or procuring the commission of, or being an accessory before or after the fact to an offence described in paragraph (1).

(3) If the request for extradition relates to a sentence of both imprisonment or other deprivation of liberty as provided in paragraph (1) and a pecuniary sanction, the Requested State may also grant extradition for the enforcement of the pecuniary sanction.

(4) If the request for extradition relates to a number of offences, each of which is punishable under the law of both States, but some of which do not meet the other requirements of paragraph (1), the Requested State may also grant extradition for such offences.

#### ARTICLE 3

##### EXTRADITION OF NATIONALS

(1) A request for extradition of a person accused of an offence shall not be refused solely on the basis of the nationality of the person sought.

(2) The Requested State shall not be bound to extradite its own nationals for the purpose of enforcing a sentence.

(3) If extradition is refused under paragraph (2), the Requested State shall, at the request of the Requesting State and if the law of the Requested State so permits, refer the matter to its authorities for the purpose of enforcing the sentence imposed in the Requesting State.

#### ARTICLE 4

##### MANDATORY REFUSAL OF EXTRADITION

Extradition shall not be granted:

- (a) if the offence for which extradition is requested is considered by the Requested State to be an offence of a political nature, or an offence connected with such an offence. The taking or attempted taking of the life of the Head of State or the Head of Government or a member of their families shall not be considered to be an offence of a political nature;

- (b) if the offence for which extradition is requested is an offence under military law and is not an offence under the general criminal law of both States;
- (c) if the person sought has been finally acquitted or convicted in the Requested State for conduct constituting the same offence for which extradition is requested; or
- (d) if the right to prosecute the offence or to enforce the sentence for which extradition is requested would be barred by lapse of time under the law of the Requested State.

ARTICLE 5

DISCRETIONARY REFUSAL OF EXTRADITION

Extradition may be refused:

- (a) if the person sought is being prosecuted by the Requested State for the offence for which extradition is requested or if the competent authorities of the Requested State have decided, in accordance with the law of that State, not to prosecute or to terminate the prosecution that has been instituted;
- (b) if the person sought has been finally acquitted or convicted in a third State for conduct constituting the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable;
- (c) if the offence for which the extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offence, unless the Requesting State furnishes such assurances as the Requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed;
- (d) if, in the opinion of the Requested State, the offence was committed outside the territory of the Requesting State and law of the Requested State does not, in the corresponding circumstances, provide for the same jurisdiction; or
- (e) if the Requested State, taking into account the nature of the offence and the interest of the Requesting State, considers that the extradition of the person sought would be incompatible with humanitarian considerations, particularly in view of that person's age or health.

ARTICLE 6

DOCUMENTS TO BE SUBMITTED

- (1) All requests for extradition shall be made through the diplomatic channels.
- (2) The following documents shall be submitted in support of a request for extradition:
  - (a) in all cases:
    - (i) information about the identity, nationality and, if possible, the description and the location of the person sought;
    - (ii) a statement prepared by a magistrate or public official of the conduct constituting the offence for which the extradition is requested, indicating the place and time of its commission, the designation of the offence and the legal provisions describing the offence and the applicable punishment;
  - (b) in the case of a person who is accused of an offence:
    - (i) the original or certified copy of the warrant of arrest, issued in the Requesting State;

- (ii) such evidence as, according to the laws of the Requested State, would justify the issue of a warrant for arrest if the offence had been committed in the Requested State.
- (c) in the case of a person sought for the enforcement of a sentence:
  - (i) the original or a certified copy of the judgment or other document setting out the conviction and sentence imposed;
  - (ii) if a portion of the sentence has already been served, a statement by a public official specifying the portion of the sentence which remains to be served;
- (d) in support of a request from Trinidad and Tobago, relating to a person who has been convicted but has not been sentenced, the original or a certified copy of the order of arrest and the original or a certified copy of a document establishing that the person has been convicted and that a sentence is to be imposed.

(3) In the case of a person convicted in absentia, the requirements relating to the submission of documents referred to in subparagraphs (a) and (b) of paragraph (2) shall apply. If, however, it is established that the charge, containing notice of the date and place of trial, or the judgment rendered in absentia has been personally served on the person sought, and that person has not appeared or availed himself or herself of the rights to appeal and retrial, the requirements relating to the submission of documents referred to in subparagraphs (a) and (c) of paragraph (2) shall apply.

(4) To be admissible in extradition proceedings a document submitted in support of a request for extradition, shall be certified by a judge, magistrate or officer in the Requesting State, to be the original document containing or recording the evidence or to be a true copy of such document. Every document shall be authenticated either by the oath of a witness or by the official seal of a Minister, or a secretary or other officer administering a department of Government of the Requesting State.

(5) The requirements of paragraph (4) may be simplified due to changes in the national laws of the Contracting States. Such simplifications shall be notified through an exchange of Diplomatic Notes.

(6) Any translation of documents submitted in support of a request for extradition provided by the Requesting State, shall be admitted for all purposes in extradition proceedings.

## ARTICLE 7

### ADDITIONAL INFORMATION

(1) If the competent authorities of the Requested State consider, at any stage of the extradition process, that the information provided by the Requesting State is insufficient to make a decision under this Treaty, the Requested State may ask for additional information. The Requested State may set a time limit of a maximum of thirty (30) days for the submission of such information and, upon application of the Requesting State, may grant a reasonable extension of the time limit.

(2) If the additional information is considered to be insufficient or is not received within the time specified by the Requested State, the person sought, if in custody, may be released and the case against such person may be terminated. Release of the person sought shall not preclude the continued consideration of the request nor shall the termination of the case preclude the subsequent submission of a new request for the same offence.

ARTICLE 8

PROVISIONAL ARREST

(1) In cases of urgency, the competent authorities of the Requesting State may request the provisional arrest of the person sought.

(2) The request for provisional arrest shall include:

- (a) information concerning the identity, nationality and, if possible, a description and the location of the person sought;
- (b) an indication of the intention to request extradition;
- (c) the name, date and place of the offence and a brief description of the facts of the case;
- (d) a statement attesting to the existence and terms of an order of arrest or a judgment of conviction;
- (e) a statement of maximum penalty that can be imposed or the sentence that has been imposed for the offence.

(3) A request for provisional arrest shall be sent to the competent authorities of the Requested State either through diplomatic channels or directly or through the International Criminal Police Organization (Interpol), or by any other means affording evidence in writing or accepted by the Requested State. The Requested State shall inform the Requesting State without delay of the action taken on the request for provisional arrest.

(4) A provisional arrest shall terminate if, within a period of forty (40) days following the arrest, the Requested State has not received the request for the extradition and the supporting documents referred to in Article 6 and the person sought is still detained under the provisional arrest warrant. The competent authorities of the Requested State may release a person provisionally arrested at any time, subject to such conditions as are considered necessary to ensure that such person does not leave the country.

(5) Release from custody of the person sought at the end of the forty (40) day time limit shall not prevent subsequent arrest and extradition if the request for extradition and the supporting documents referred to in Article 6 are subsequently received.

ARTICLE 9

CONCURRENT REQUESTS

(1) If extradition of the same person is requested by two or more States, the Requested State shall determine to which of these States the person will be extradited and shall inform the Requesting State of its decision.

(2) Paragraph (1) shall apply *mutatis mutandis* where there is a concurrent request for surrender by the International Criminal Court.

ARTICLE 10

SURRENDER

(1) The Requested State shall inform the Requesting State of its decision with respect to the extradition.

(2) Reasons shall be given for any refusal of the request in whole or in part.

(3) In the event that extradition is granted, the Requesting State shall be informed of the place and date of the surrender, and of the length of time that the person sought was detained in custody for the purpose of extradition.

(4) If the person sought has not been surrendered at the appointed date, that person may be released upon the expiration of fifteen (15) days from that date, and may be discharged upon the expiration of thirty (30) days.

#### ARTICLE 11

##### POSTPONEMENT OF SURRENDER AND TEMPORARY SURRENDER

(1) The Requested State may postpone the surrender of the person sought in order to prosecute the person or to require the person to serve a sentence for an offence other than the offence for which extradition has been granted, and shall inform the Requesting State of its decision.

(2) The Requested State may temporarily surrender the person sought to the Requesting State solely for the purpose of prosecution. The person so surrendered shall be kept in custody while in the Requesting State and returned at the conclusion of proceedings against that person in accordance with conditions to be determined by mutual agreement between the Contracting States.

#### ARTICLE 12

##### SURRENDER OF PROPERTY

(1) To the extent permitted under the law of the Requested State and subject to the rights of third parties, all property acquired as a result of the offence or which may be used as evidence shall, if found, upon request, be surrendered to the Requesting State if extradition is granted or consented to.

(2) The property referred to in paragraph (1) shall be surrendered even if, extradition having been granted or consented to, the surrender of the person sought cannot take place as a result of the person's death or escape.

#### ARTICLE 13

##### RULE OF SPECIALTY

(1) A person extradited under this Treaty shall not be prosecuted, detained, tried or punished in the territory of the Requesting State for an offence other than that for which extradition has been granted unless:

- (a) that person has left the territory of the Requesting State after extradition and has voluntarily returned to it;
- (b) that person has not left the territory of the Requesting State within thirty (30) days after being free to do so; or
- (c) the Requested State has consented thereto. For this purpose, the Requested State may require the submission of any document or statement referred to in Article 6, including any statement made by the extradited person with respect to the offence concerned.

(2) Paragraph (1) shall not apply to offences committed after extradition.

(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 new description is:

- (a) based on substantially the same facts contained in the extradition request and its supporting documents; and
- (b) punishable by the same maximum penalty as, or a lesser maximum penalty than, the offence for which that person was extradited.

#### ARTICLE 14

##### RE-EXTRADITION TO A THIRD STATE

A person extradited under this Treaty shall not be subsequently extradited to a third State without the consent of the Requested State, except in cases provided for in subparagraphs (a) and (b) of paragraph (1) of Article 13. The Requested State may require the production of the documents received from the third State supporting the latter's request for subsequent extradition, and any statement made by the extradited person on the matter.

#### ARTICLE 15

##### CONSENT TO EXTRADITION

(1) A person whose extradition is sought and who has been arrested pursuant to this Treaty shall be informed by the competent authority of the Requested State, in accordance with its national law, of the request relating to him and of his right to consent to be returned to the Requesting State without further formal proceedings, as well as of the legal consequences thereof.

(2) Where the national law of the Requested State so provides, the consent constitutes a waiver of the protections provided for under Articles 13 and 14.

(3) The consent of the person shall be given in writing before a competent authority of the Requested State. When such consent has been given, the Requesting State shall, without delay, take all steps as are necessary to receive the person sought.

#### ARTICLE 16

##### TRANSIT

(1) When a third State has granted the extradition of a person to one of the Contracting States, the Contracting State shall seek the transit permission for that person from the other Contracting State in the case of a scheduled landing, on the latter State's territory, of an aircraft with that person on board.

(2) The request for transit permission shall include such information as specified in subparagraphs (a) and (c) of paragraph (2) of Article 8.

(3) The Contracting State requested for transit may refuse to give its permission on any grounds provided by its law.

## ARTICLE 17

## LANGUAGES

Requests under this Treaty may be made in the English language. All supporting documents shall be translated into an official language of the Requested State.

## ARTICLE 18

## EXPENSES

(1) Expenses related to the translation of documents and the transfer of the person extradited from the territory of the Requested State to that of the Requesting State shall be borne by the Requesting State.

(2) All other expenses incurred by the Requested State by reason of extradition shall be borne by that State.

(3) Expenses related to transit incurred by the transit State shall, at its request, be reimbursed by the Contracting State of destination.

## ARTICLE 19

## CONDUCT OF PROCEEDINGS

(1) In the case of a request for extradition presented by the Kingdom of the Netherlands, the Attorney General of the Republic of Trinidad and Tobago or his duly appointed representative shall conduct the extradition proceedings in accordance with the laws of Trinidad and Tobago.

(2) In the case of a request for extradition presented by the Republic of Trinidad and Tobago, the competent authorities in the Kingdom of the Netherlands shall conduct the extradition proceedings in accordance with the laws of the Kingdom of the Netherlands, without further representation of the Republic of Trinidad and Tobago.

## ARTICLE 20

## ENTRY INTO FORCE

(1) This Treaty shall enter into force on the first day of the second month following the date on which the Contracting States shall have notified each other that their legal requirements have been complied with.

(2) This Treaty shall be provisionally applied as from the first day of the sixth month following signature, unless either of the Contracting States notifies the other Contracting State before that date that it will not apply the Treaty provisionally.

(3) As regards the Kingdom of the Netherlands, this Treaty shall apply to the part of the Kingdom in Europe, to the Netherlands Antilles and to Aruba, unless the notification referred to in paragraph (1) provides otherwise. In the latter case the Kingdom of the Netherlands may extend the application of this Treaty at any time to one or more of its constituent parts, by notification to and with the consent of the Republic of Trinidad and Tobago.

(4) This Treaty shall apply to any request presented after its entry into force, or, in case this Treaty is applied provisionally in accordance with paragraph (2), after the date of commencement of such application, even if the offence for which extradition is requested was committed before that date.

ARTICLE 21

TERMINATION

(1) Either Contracting State may terminate this Treaty at any time by written notification to the other State. The termination shall be effective one year after the date of receipt of such notice.

(2) Subject to the period mentioned in paragraph (1), the Kingdom of the Netherlands and the Republic of Trinidad and Tobago shall be entitled to terminate the application of this Treaty separately in respect of any of the constituent parts of the Kingdom of the Netherlands.

IN WITNESS WHEREOF, the representatives of the two Governments, being authorised for this purpose, have signed this Treaty.

DONE at Port-of-Spain this 7th day of February, 2003, in duplicate in the English and Dutch languages, each version being equally authentic.

KNOWLSON GIFT  
For the Government of the  
Republic of Trinidad and Tobago

ARJEN J. VAN DEN BERG  
For the Government of  
the Kingdom of the Netherlands

Made this 16th day of May, 2003.

G. MOREAN  
*Attorney General*

Laid in the House of Representatives this 23rd day of May,  
2003.

J. SAMPSON-JACENT  
*Clerk of the House*

Laid in the Senate this 27th day of May, 2003.

D. DOLLY  
*Clerk of the Senate*