



**INTERVENTION BY THE REPUBLIC OF SOUTH AFRICA ON THE OCCASION
OF THE**

**15TH SESSION OF THE WORKING GROUP ON INTERNATIONAL
COOPERATION OF THE CONFERENCE OF THE STATES PARTIES TO THE
UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED
CRIME**

**AGENDA ITEM 3: LEGAL AND PRACTICAL CONSIDERATIONS REGARDING
INDICATIVE EXTRADITION ISSUES IN LIGHT OF THE ANTICIPATED WORK
UNDER THE MECHANISM FOR THE REVIEW OF THE IMPLEMENTATION OF
THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL
ORGANISED CRIME AND THE PROTOCOLS THERETO**

05 June 2024

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Co-Chair,

I wish to thank you for providing us with the opportunity to speak on this important agenda item & thank you to the panellists on the valuable presentations made.

South Africa is confident that discussions on the legal and practical considerations regarding extradition issues will significantly contribute to facilitating extradition and enhancing mutual legal assistance in the fight against transnational organised crime as well as contribute to resolving jurisdiction disputes.

We will now take the opportunity to share South Africa's practices and experiences on the indicative extradition issues.

Co-Chair,

South Africa has a human rights-based constitution that ensures the protection of individual's rights, including those of an accused. The Judicial Inspectorate for Correctional Services (JICS), an organ of the South African government, is mandated to uphold and protect the rights of all inmates who are incarcerated in South African correctional facilities. This includes fugitives sought for extradition, ensuring their rights are protected throughout the legal process.

The Extradition Act 67 of 1962 establishes the basis for South Africa's process of surrendering accused or sentenced persons to a requesting state. This process is contingent upon the existence of an extradition agreement with the requesting state, or, if the state is designated by the President or if the President has consented to the surrender. Additionally, the Extradition Act prohibits the surrender of fugitives to a requesting state if there is a possibility of gross violations of fundamental human rights of the person concerned.

In matters where a foreign state requests the extradition of a fugitive, South Africa is entitled to request an assurance from that state regarding the detention conditions, the

fugitive will face. This assurance is then included in the documentation submitted to court during the extradition hearing. This practice is in line with Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which stipulates that no state party shall extradite a person to another state where there are substantial grounds for believing that the individual would be in danger of being subjected to torture.

Co-Chair,

Extradition agreements entered into by South Africa make provisions for concurrent requests. If the extradition of the same person is requested concurrently by two or more foreign states either for the same offence or different offences, South Africa will determine to which State it will extradite the person. This determination is made by considering all relevant circumstances, including the seriousness of the offence(s), place where the offence(s) were committed, the respective dates of the requests, the nationality of the person sought and the possibility of subsequent extradition to another state.

We remain appreciative to the UNODC for developing the Model Treaty on Extradition, its Revised Manual and the Model Law on Extradition. These instruments assist in addressing concurrent extradition requests, by providing guiding criteria as stipulated in Section 18. These criteria include factors such as the accused or sentenced fugitive's ordinary place of residence, the likelihood of sentence prescription and the interest of justice in such matters.

Co-Chair,

With regard to the issue of dual nationality of individuals who are under a request for extradition, South Africa's Extradition Act does not make specific provision for such an event. In extradition cases, the judiciary determines the extradition of a fugitive with each case being adjudicated on its own merits. The final decision on the surrender of an individual is made by the Minister in accordance with the Act.

South Africa invites States Parties to seriously consider the practical application of the principle of effective nationality, which requires the accused or convicted fugitive to prove a meaningful connection to the state in question, such as family bonds. Equally, member states are called upon to pay particular attention to the principle of active personality to determine the nationality of the accused or fugitive. This principle would greatly assist in determining which states should enjoy jurisdiction in case of competing extradition requests.

In conclusion **Co-Chair**, South Africa strongly encourages the Working Group to continue exchanging best practices and lessons learned in the field of extradition with a view to overcoming challenges and barriers. This would establish an international framework to enhance international cooperation on mutual legal assistance in criminal matters, thereby strengthening global efforts to combat transnational organized crime.

I thank you.