

## 資料文件

### 《逃犯(南非)令》及《刑事事宜相互法律協助(南非)令》 小組委員會

#### 二零一零年五月二十日小組委員會會議上 所提事項的回應

## 目的

在二零一零年五月二十日小組委員會會議上，委員要求當局就《逃犯(南非)令》提供補充資料。本文件提供委員要求的資料。

## 國際公約

2. 第二條第(1)款第 43 項中提及的“國際公約”的範圍只限於逃犯條例(第 503 章)附表 1 第 43 項所訂明的“多邊國際公約”，並不包括“雙邊協定”。

## 其他罪行

3. 第二條第(1)款第 47 項是一項“涵蓋性”條文，以涵蓋雙方將來可能影響有關罪行名單的任何法律修訂。這項“涵蓋性”條文可避免為修訂協定內有關罪行名單而重開談判。類似條文見與澳洲、荷蘭、菲律賓、美國、印尼、印度、新加坡、英國、新西蘭、葡萄牙、斯里蘭卡、芬蘭、德國、大韓民國及愛爾蘭簽訂的移交逃犯協定。

## 暫時移交

4. 第八條第(3)款是應南非的要求加入，並與逃犯條例第 15(3)條相符。南非方面對“服刑 (serving a sentence)”及“被羈押 (in custody)”的理解與香港的相同。

## 過境

5. 第二十條第(4)款是應南非的要求加入，並與逃犯條例第20(1)條相符。逃犯條例第20(1)條規定，獲授權人員可將逃犯羈押48小時。如須繼續羈押，則須獲得行政長官授權。

## 終止

6. 第二十二條第(3)款規定，在終止協定方面，如締約雙方同意，則可即時生效。香港與其他司法轄區簽訂的移交逃犯協定並無類似的條文。然而，由於這項終止協定的條文須在締約雙方同意下才生效，這不會產生遜於其他協定中有關終止協定的條文的情況。

## 逐條比較

7. 按委員的要求，與其他移交逃犯協定採用相應條文擬定的條文一覽表載於附件(只有英文版本)。

保安局

2010年5月

**Fugitive Offenders (South Africa) Order  
Article-by-Article Comparison**

**Article 2**

Paragraph (3)

Substantially same formulation in all orders.

Paragraph (4)

Substantially same formulation in Australia, Canada, Philippines, Indonesia, Singapore, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland and Ireland Orders.

**Article 6**

Paragraph (3)

United Kingdom: “general criminal law” Article 5(1)(b)

New Zealand, Finland, Ireland: substantially same formulation

**Article 8**

Paragraph (2)(a)

Substantially same as Malaysia Order Article 5(1)

Paragraph (2)(b)

Substantially same as Malaysia Order Article 5(3)

**Article 10**

Paragraph (1)

Substantially same formulation in the following Orders: Australia, Philippines, Indonesia, India, Singapore, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Germany, Ireland

Paragraph (2)

Substantially same formulation in the following Orders: Indonesia, Singapore, Portugal, Sri Lanka, Finland, Ireland

**Article 11**

Australia, Canada, Philippines, Singapore, New Zealand: “an official language of the requested party, to be specified by the requested Party in each case.”

Indonesia: “an official language of the Requested Party or any other language acceptable to the Requested Party, to be specified by the Requested Party in each case.”

Portugal, Ireland: “an official language of the requested Party.”

**Article 12**

Paragraph (2)

Australia, Philippines, Indonesia, Singapore, United Kingdom, New Zealand, Portugal, Sri Lanka, Korea, Ireland: same formulation.

**Article 15**

Paragraph (2)

Australia, Philippines, Indonesia, India, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Ireland : same formulation

Paragraph (4) latter part

New Zealand: “The Requesting Party shall bear all subsequent expenses including the costs of transporting the person from the jurisdiction of the Requested Party.”

**Article 16**

Paragraph (1)

Australia, Canada, Philippines, Indonesia, Singapore, New Zealand, Portugal, Sri Lanka, Finland, Ireland : same formulation

**Article 17**

Paragraph(3)

Canada, Indonesia, Portugal, Sri Lanka and Ireland: same formulation

## **Article 18**

### Paragraph (2)

Australia, Canada, Netherlands, Malaysia, Philippines, Indonesia, India, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Germany, Korea and Ireland: same formulation

### Paragraph (3)

Netherlands, Indonesia, India, Portugal, Sri Lanka, Germany and Ireland: same formulation

## **Article 19**

USA, Singapore and Ireland: “may surrender as expeditiously as possible”.

“shall, subject to its domestic law, surrender the person as expeditiously as possible” used in Agreement with South Africa at the request of South Africa. Although “shall” is used, but qualified by “subject to its domestic law” therefore no difference in effect.

## **Article 20**

USA, Indonesia and Malaysia: similar formulation, with certain changes to reflect the legal requirements of each party.

## **Article 22**

### Paragraph (2)

Australia, Canada, Philippines, Indonesia, Singapore, Portugal, Sri Lanka, Germany, Korea and Ireland: same formulation

### Paragraph (3)

“suspension” – Canada, Netherlands, Indonesia, India, United Kingdom, New Zealand, Portugal, Sri Lanka, Finland, Germany and Ireland: same formulation

“immediate termination by mutual consent” – included at the request of South Africa, no other provision in the other Orders but since it is by mutual consent of both parties, it is acceptable.