

TREATY ON EXTRADITION BETWEEN CANADA AND THE REPUBLIC OF THE PHILIPPINES

CANADA AND THE REPUBLIC OF THE PHILIPPINES,
DESIRING to make more effective the co-operation of the two countries in the suppression of crime by
concluding a treaty on extradition,
HAVE AGREED as follows:

ARTICLE 1

Obligation to Extradite

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any person who is wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

ARTICLE 2

Extraditable Offences

1. For the purpose of this Treaty, extradition shall be granted for acts or omissions which are punishable under the laws of both Contracting States by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least six months of the penalty remains to be served.
2. For the purpose of this Article:
 - a) it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by different terminology;
 - b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account in determining the constituent elements of the offence in the Requested State.
3. Subject to paragraph 1, an offence of a fiscal character is an extraditable offence.
4. If the request for extradition relates to a number of offences, each of which is punishable under the laws 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

Mandatory Refusal of Extradition

Extradition shall not be granted in any of the following circumstances:

1. when the offence for which extradition is requested is considered by the Requested State to be a political offence. For the purpose of this paragraph, political offence shall not include:
 - a) the taking or attempted taking of the life of a Head of State or Head of Government or a member of his or her family;
 - b) an offence for which each Contracting State has the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to its competent authorities for the purpose of prosecution;
 - c) murder, manslaughter or other culpable homicide, malicious wounding or inflicting grievous bodily harm;
 - d) an offence involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage; and

- e) an offence involving the placing or use of automatic firearms, explosives, incendiaries or destructive devices or substances capable of endangering life or of causing grievous bodily harm or substantial property damage;
- 2. when there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that persons race, religion, nationality or political beliefs;
- 3. when the offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting States;
- 4. when final judgement has been passed in the Requested State in respect of the offence for which the person's extradition is requested; or
- 5. when the prosecution or the enforcement of the sentence for the offence identified in the request for extradition would be barred by lapse of time or for any other reason under the law of the Requested State.

ARTICLE 4

Discretionary Refusal of Extradition

Extradition may be refused in any of the following circumstances:

- 1. when the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State, it shall submit the case to its competent authorities in order that appropriate proceedings may be taken. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State. The Requesting State shall be informed of any action taken;
- 2. when the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age or health of the person whose extradition is requested, the extradition of that person would be unjust or incompatible with humanitarian considerations;
- 3. when the courts of the Requested State have jurisdiction to prosecute the person for the offence for which extradition is requested; or
- 4. when the offence was committed outside the territory of the Requesting State and the law of the Requested State does not, in corresponding circumstances, provide for the same jurisdiction.

ARTICLE 5

Capital Punishment

If the offence for which extradition is requested is punishable by death under the law of the Requesting State, and if in respect of such offence the death penalty is not provided for by the law of the Requested State or is not normally carried out, extradition may be refused unless the Requesting State gives such assurances as the Requested State considers sufficient, that the death penalty will not be carried out.

ARTICLE 6

Postponement of Surrender

When the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of any sentence that may have been imposed.

ARTICLE 7

Presentation of a Request and Documents To Be Submitted

- 1. Requests for extradition and all other documents shall be sent through diplomatic channels.
- 2. The following documents shall be submitted in support of a request for extradition:
 - a) in all cases:
 - i) information about the description, identity, location and nationality of the person sought;

ii) a statement prepared by a public official of the acts or omissions constituting each offence for which extradition is requested, including the place and date of the commission of the offence, the nature of the offence, the applicable legal provisions, and any provision relating to limitation of proceedings. A copy of the text of such legal provisions shall be appended.

b) in the case of a person accused of an offence:

i) the original or a certified true copy of the warrant of arrest and the criminal charge issued in the Requesting state;

ii) such evidence as would justify committal for trial of the person sought, including evidence to establish identity;

iii) for the purpose of paragraph 2 (b) (ii), the statement prepared under paragraph 2 (a) (ii), any statements or affidavits of witnesses or certified copies thereof and in the case of requests for extradition made by the Republic of the Philippines, the Resolution or Order prepared by the Prosecutor or Judge, shall be admitted in evidence as proof of the facts contained therein.

c) in the case of a person sought for the enforcement of a sentence:

i) the original or a certified copy of the judgement or document setting out the conviction and sentence to be served;

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 Canada, relating to a person who has been convicted but has not been sentenced, the original or a certified copy of the warrant 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. All documents submitted in support of a request for extradition and appearing to have been certified, signed or issued by a judicial or other public official of the Requesting State shall be admitted in extradition proceedings in the Requested State without proof of the signature or of the official character of the person appearing to have signed them.

4. No authentication or further certification of documents submitted in support of the request for extradition shall be required, except sworn statements offered in support of a request from Canada, which must be authenticated by the principal diplomatic or consular officer of the Republic of the Philippines in Canada.

ARTICLE 8

Additional Information

If the Requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfil the requirements of this Treaty, that State may request that additional information be furnished within such time as it specifies.

ARTICLE 9

Provisional Arrest

1. In case of urgency, the Requesting State may apply, in writing, through the International Criminal Police Organization (INTERPOL) or to the competent authorities of the Requested State for the provisional arrest of the person sought pending the presentation of the request for extradition.

2. The application for provisional arrest shall be accompanied by a copy of the court decision or warrant of arrest, a description of the offence, when and where it was committed and the details of the

identity of the person sought, and shall contain a statement that an extradition request will be made subsequently.

3. On receipt of such an application for provisional arrest, the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its application.

4. A person arrested upon such application shall be released from custody upon the expiration of forty-five days from the date of that person's arrest if a request for that person's extradition, supported by the documents specified in Article 7, has not been received. In such case, the Requested State shall notify the Requesting State as soon as possible.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution or continuation of proceedings with a view to extraditing the person sought if the request and the supporting documents are received subsequently.

ARTICLE 10

Consent to Extradition

Extradition of a person sought may be granted pursuant to the provisions of this Treaty, notwithstanding that the requirements of Article 7 have not been met, provided that the person sought consents to an order for extradition being made.

ARTICLE 11

Competing Extradition Requests

1. When requests are received from a Contracting State and one or more other states for the extradition of the same person, the Requested State shall determine to which of those states the person is to be extradited and shall notify the other Contracting State of its decision.

2. In determining to which state a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:

- a) the relative seriousness of the offences, if the requests relate to different offences;
- b) the time and place of commission of each offence;
- c) the respective dates of the requests;
- d) the nationality of the person; and
- e) the habitual place of residence of the person.

ARTICLE 12

Surrender of Person to be Extradited

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through diplomatic channels. Reasons shall be given for any complete or partial rejection of an extradition request.

2. When extradition of a person for an offence is granted, that person shall be removed from a point of departure in the territory of the Requested State convenient to both Contracting States.

3. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the Requested State specifies. If the person is not removed within that period, the Requested State may refuse the surrender of such person for the same offence.

4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited, it shall notify the other State. The Contracting States shall agree upon a new period of time for surrender, and the provisions of paragraph 3 of this Article shall apply.

5. Where extradition is granted under this Treaty, the Requesting State shall ensure that the person extradited is brought to trial expeditiously.

ARTICLE 13

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 found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.
2. Subject to the provisions of paragraph 1 of this Article, the above mentioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition cannot be carried out.
3. Where the law of the Requested State or the rights of third parties so require, any property so surrendered shall be returned to the Requested State free of charge, if that State so requests.

ARTICLE 14

Rule of Specialty

A person who has been extradited shall not be proceeded against, sentenced or detained nor be subjected to any other restriction or personal liberty for any acts or omissions committed prior to that person's surrender, other than that for which the person was extradited, except in the following cases:

- a) when the Requested State consents. For the purpose of this paragraph, the Requested State may require the submission of the documents referred to in Article 7 and a copy of any statement made by the extradited person in respect of the offence for which consent is requested; or
- b) when that person, having had the opportunity to leave the territory of the Requesting State, has not done so within forty-five days of that person's final discharge, or has returned to that territory after leaving it.

ARTICLE 15

Re-Extradition to a Third State

1. When a person has been surrendered to the Requesting State by the Requested State, the Requesting State shall not extradite that person to any third state for an offence committed before that person's surrender unless:
 - a) the Requested State consents; or
 - b) the person, having had the opportunity to leave the territory of the Requesting State, has not done so within forty-five days of that person's final discharge, or has returned to that territory after leaving it.
2. Before responding to a request pursuant to paragraph (1) (a) of this Article, the Requested State may require the production of the documents in support of the request of the third state.

ARTICLE 16

Transit

1. When a third state has granted the extradition of a person to one of the Contracting States, that Contracting State shall seek transit permission for that person from the other Contracting State in the case of scheduled stopover in the latter State's territory.
2. The Contracting State requested for transit may require such documents as it considers necessary to make the decision on transit.

ARTICLE 17

Applicable Law

Unless there is provision to the contrary in this Treaty, proceedings relating to arrest and extradition shall be governed by the law of the Requested State.

ARTICLE 18

Language

All documents submitted in accordance with this Treaty shall be in an official language of the Requested State.

ARTICLE 19

Mutual Legal Assistance in Extradition

The Requested State shall, upon request and to the extent permitted by its law, gather evidence within its own territory for the Requesting State relating to the offence for which extradition has been requested.

ARTICLE 20

Conduct of Proceedings

1. In the case of a request for extradition presented by the Republic of the Philippines, the Attorney General of Canada shall represent the Republic of the Philippines in the proceedings.
2. In the case of a request for extradition presented by Canada, the extradition proceedings shall be conducted in accordance with Philippine law.

ARTICLE 21

Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition.
2. The Requested State shall bear the expenses incurred in its territory for the arrest and detention of the person whose extradition is requested, until the person is surrendered.
3. The Requesting State shall bear the expenses incurred in conveying the person extradited from the territory of the Requested State.

ARTICLE 22

Settlement of Disputes

Any dispute between the Contracting States arising out of the interpretation or implementation of this Treaty shall be settled by consultations or negotiations.

ARTICLE 23

Entry into Force and Termination

1. This Treaty shall enter into force thirty (30) days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been met.
2. This Treaty shall apply to any request presented after its entry into force, even if the offence for which extradition is requested was committed before that date.
3. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

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

DONE at Ottawa on the 7th day of November, nineteen hundred eighty-nine in duplicate, in the English and French languages, each version being equally authentic.

FOR CANADA

Joe Clark

FOR THE REPUBLIC OF THE PHILIPPINES

Raul Manglapus

