

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND CANADA

The Republic of the Philippines and Canada,

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 person's 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 proceeding 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 offense and the interests of the Requesting State, consider 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 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 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.