

March 12, 2004

## **EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF INDIA**

The Government of the Republic of the Philippines and the Government of the Republic of India, hereinafter referred to as the Contracting States;

Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of criminal offenders;

Recognizing that concrete steps are necessary to combat crime;

Have agreed as follows:

### **ARTICLE 1 OBLIGATION TO EXTRADITE**

(1) Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or having been convicted of an extraditable offence as described in Article 2 committed within the territory of the Requesting State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Treaty.

(2) Extradition shall also be available in respect of an extraditable offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction, if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence.

(3) Extradition shall be available for an extraditable offence as described in Article 2 if it is committed in a third State by a national of the Requesting State and the Requesting State bases its jurisdiction on the nationality of the offender.

### **ARTICLE 2 EXTRADITABLE OFFENCES**

(1) An offence shall be an extraditable offence if it is punishable under the laws of both Contracting States by imprisonment for a period of at least one year.

(2) An offence may be an extraditable offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

(3) An offence shall also be extraditable notwithstanding that any or all of the essential elements or acts constituting the offence were committed in the territory of the Requested State.

### **ARTICLE 3 EXTRADITION OF NATIONALS**

Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals in respect of an extraditable offence.

## Article 4 The Political Offence Exception

- (1) Extradition may be refused if the offence involved is of a political character.
- (2) For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:
  - a) an offence for which both Contracting States have the obligation, pursuant to an international treaty/agreement to which both are Parties, to extradite the person sought or to submit the case of their competent authorities for decision as to prosecution;
  - b) 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;
  - c) murder, manslaughter or 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;
  - e) an offence involving the placing or use of firearms, explosives, incendiaries or destructive devices or substances capable of endangering life or of causing grievous bodily harm or substantial property damage;
  - f) the unlawful making or possession of an explosive substance, firearm or ammunition; and
  - g) abetting, attempting to commit, or inciting to commit any of the foregoing offences or participating as an accomplice of a person who commits or attempts to commit such an offence.

## **ARTICLE 5 EXTRADITION AND PROSECUTION**

- (1) The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extraditable offence in the courts of that State.
- (2) Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
- (3) If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

## **ARTICLE 6 GROUNDS FOR REFUSAL OF EXTRADITION**

- (1) A person may not be extradited:
  - a) if the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law;

b) if the person sought to be extradited was previously tried for the same offence for which extradition is requested and was acquitted or was convicted and had completed the sentence or is undergoing it;

c) if the person whose extradition is requested cannot, according to the laws of either Contracting State, be prosecuted or punished by reason of lapse of time;

d) if a person whose extradition is sought is being investigated or tried in the Requested State for the same offence for which his extradition is requested.

(2) If a person convicted of such an offence is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six (6) months of the imprisonment remains to be served.

(3) A person may not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

## **ARTICLE 7 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 8 EXTRADITION PROCEDURES**

(1) The request for extradition under this Treaty shall be made through the diplomatic channels.

(2) The request shall be accompanied by:

a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality, and residence;

b) a statement of the facts of the offence for which extradition is requested; and

c) the text, if any, of the law:

(i) defining that offence; and

(ii) prescribing the punishment for that offence.

(3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been

committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.

(4) If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certificate of the conviction and sentence.

(5) In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he had been accused of the offence for which he was convicted.

(6) If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.

## **ARTICLE 9 PROVISIONAL ARREST**

(1) In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and shall be accompanied by a copy of the judgment of conviction or warrant of arrest, as the case may be, a description of the offence, when and where it was committed and the details of the identity of the person sought.

(2) The request for provisional arrest may be made through diplomatic channels or directly between the Department of Justice of the Philippines and the Ministry of Home Affairs of India or through the International Criminal Police Organization (INTERPOL) by any means acceptable to the Requested State, such as post, telegraph or facsimile machine, etc.

(3) A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if the request for his extradition is not received by the Ministry/Department of Foreign Affairs of the Requested State. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

## **ARTICLE 10 RULE OF SPECIALITY**

(1) Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than:

a) the offence in respect of which he was returned;

b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made; or

c) any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.