BILATERAL

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE PEOPLE’S REPUBLIC OF CHINA

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The Republic of the Philippines and the People's Republic of China (hereinafter referred to as the "Parties")

Desiring to provide for more effective cooperation between the Parties in the repression of crime on the basis of mutual respect for sovereignty and equality and of mutual benefit; and

Desiring to conclude a Treaty for the reciprocal extradition of offenders;

Have agreed as follows

ARTICLE 1

OBLIGATION TO EXTRADITE

The Parties agree to extradite to each other, subject to the provisions laid down in this Treaty, any person who is found in the territory of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offense described in Article 2 of this Treaty.

ARTICLE 2

EXTRADITABLE OFFENSES

(1) An offense shall be an extraditable offense if it is punishable under the laws of both Parties by imprisonment for a period of more than one year, or by a more severe penalty.

(2) Where extradition is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment, at least six months remain to be served.

(3) For the purpose of this Article, in determining whether an offense is an offense punishable under the laws of both Parties, it shall not matter whether the laws of both Parties place the act or omission within the same category of offense or denominate the offense by the same terminology.

(4) If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's imprisonment, provided that all other requirements of extradition are met.

ARTICLE 3

EXTRADITION OF NATIONALS

(1) The. Parties reserve the right to refuse the extradition of its nationals.

(2) Where the requested Party exercises this right, the requesting Party may request that the case be submitted to

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the competent authorities of the requested Party in order that proceedings for prosecution of the person may be instituted in accordance with the laws of the requested Party.

ARTICLE 4

MANDATORY GROUNDS FOR REFUSAL

OF EXTRADITION

(1) The person sought shall not be extradited if the requested Party has substantial grounds for believing:

(a) that the offense for which the extradition is requested is a political offense;

(b) that the request for extradition is in fact made for the purpose of prosecution or punishment on account of the person's race, religion, gender, nationality or political opinion; or

(c) that the offense for which the extradition is requested is a purely military offense.

(2) The person sought shall not be extradited if the requested Party has already rendered a final Judgment or terminated the proceedings against the person in respect of the offense for which the extradition is requested.

(3) The person sought shall not be extradited if he has been acquitted or pardoned or if his prosecution is barred or his conviction set aside for any reason provided for under the laws of the requesting Party or the requested Party.

ARTICLE 5

DISCRETIONARY GROUNDS FOR REFUSAL

OF EXTRADITION

(1) Extradition may be refused if the requested Party considers that:

(a) it has jurisdiction over the offense for which extradition is sought and will prosecute the person sought for the offense; or

(b) in the circumstances of the case, including the age, health or other personal circumstances of the person sought, the extradition of that person would be incompatible with humanitarian considerations.

ARTICLE 6

POSTPONED AND TEMPORARY SURRENDER

(1) If the person sought is being proceeded against or is under punishment in the territory of the requested Party for any other offense, surrender shall be deferred until the conclusion of the proceedings or the execution of any punishment imposed.

(2) If the postponement of the surrender mentioned in paragraph (1) of this Article would cause the lapse of time for prosecution or impede the investigation by the requesting Party of the offense for which extradition is requested, the requested Party may, to the extent permitted by its laws, temporarily surrender the person sought to the requesting Party according to the terms and conditions agreed upon by both Parties.

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ARTICLE 7

THE REQUEST AND SUPPORTING DOCUMENTS

(1) A request for extradition and related documents shall be conveyed through 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 that person's identity, nationality and location;

(b) a statement of each offense for which extradition is sought and a statement of the acts and omissions which are alleged against the person in respect of each offense including an indication of the time and place of its commission; and

(c) the text of the legal provisions, if any, creating the offense, and a statement of the punishment which can be imposed therefore and any time limit on the institution of proceedings, or on the execution of any punishment for that offense.

(3) If the request relates to an accused person, it shall also be accompanied by a copy of the warrant of arrest issued by a judge or other competent authority of the requesting Party.

(4) If the request relates to a person already found guilty by a final judgment, it shall also be accompanied by:

(a) a copy of the judgment; and

(b) a statement indicating that the judgment is enforceable and the sentence to be served.

ARTICLE 8

AUTHENTICATION

(1) Any document that, in accordance with Article 7 and Article 11 of this Treaty, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any proceedings for the extradition in the territory of the requested Party.

(2) A document is authenticated for the purpose of this Treaty if;

(a) signed or certified by a judge or other officer of the requesting Party, or sealed with an official seal of the competent authority of the requesting Party; and

(b) certified by a diplomatic or consular officer of the requested Party accredited to the requesting Party.

ARTICLE 9

LANGUAGE OF DOCUMENTATION

A request and all supporting documents submitted in accordance with this Treaty shall be in, or translated into, an official language of the requested Party or the English language.

ARTICLE 10

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PROVISIONAL ARREST

(1) In case of urgency, a Party may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channels or directly between the Department of Justice of the Republic of the Philippines and the Ministry of Public Security of the People's Republic of China.

(2) The application for provisional arrest shall contain:

(a) a description of the person sought;

(b) the location of the person sought, if known;

(c) a brief statement of the facts of the case, including, if possible, the time and location of the offense;

(d) the text of the laws violated;

(e) a statement of the existence of a warrant of arrest or judgment of conviction against the person sought, accompanied by a copy of the warrant of arrest or copy of judgment of conviction; and

(f) a statement that a request for extradition for the person sought will follow.

(3) The provisional arrest of the person sought shall be terminated upon the expiration of thirty days from the date of arrest if the request for extradition has not been received, unless the requesting Party can justify continued provisional arrest of the person sought in which case the period of provisional arrest shall be terminated upon the expiration of a reasonable time not being more than a further fifteen days. This provision shall not prevent the re-arrest or extradition of the person sought if the request for his extradition is received subsequently.

ARTICLE 11

ADDITIONAL INFORMATION

(1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision pursuant to this Treaty, the latter Party shall request the necessary supplementary information and may fix a time limit for receipt thereof in accordance with its laws. Where duly requested by the requesting Party, the time limit may be extended for further fifteen days.

(2) If the person sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified in paragraph (1) of this Article, the person may be discharged from custody. Such discharge shall not preclude the requesting Party from making another request for extradition of the person.

ARTICLE 12

CONCURRENT REQUESTS

If the extradition of a person is requested concurrently by one of the Parties and a third State, the requested Party shall make its decision having regard to all the circumstances, including the existence of any extradition arrangements in force between the requested Party and the third State, the relative seriousness and place of commission of the offenses, the respective dates of the requests, the nationality and habitual place of residence of the person sought and the possibility of subsequent extradition to another State. In such a case, it shall furnish the other Party with information justifying its decision in the event of extradition of the person to the third State.

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ARTICLE 13

COSTS

(1) The requested Party shall meet the costs of any proceedings arising out of a request for extradition conducted in its territory.

(2) If it becomes apparent that exceptional expenses may be incurred as a result of a request for extradition, the Parties shall consult with a view to deciding how these expenses will be met.

(3) The requesting Party shall bear the costs incurred in conveying the person extradited from the territory of the requested Party, including transit costs.

ARTICLE 14

ARRANGEMENTS FOR SURRENDER

(1) The requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the requesting Party.

(2) When a person is to be extradited, that person shall be sent by the authorities of the requested Party to such convenient place of departure within that Party's territory as both Parties may agree upon.

(3) Subject to the provisions of paragraph (4) of this Article, the requesting Party shall remove the person within the period agreed upon by both Parties and if the person is not removed within that period, the requested Party may refuse to surrender that person for the same offense.

(4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In that case, the two Parties shall agree upon a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 15

SURRENDER OF PROPERTY

(1) When a request for extradition is granted, and insofar as its laws allow, the requested Party shall hand over, upon request, to the requesting Party all articles, including sums of money:

(a) which may serve as proof of the offense; or

(b) which have been acquired by the person sought as a result of the offense and are in that person's possession or discovered subsequently.

(2) The requested Party may temporarily retain any property mentioned in paragraph (1) of this Article if it is the subject of, or is required for, proceedings in its territory, or it may temporarily surrender it on condition that it be returned free of charge.

(3) These provisions shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist, the articles shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

(4) The property mentioned in paragraph (1) of this Article shall, if the requesting Party so requests, be surrendered even though the person cannot be extradited due to death, disappearance or escape.

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ARTICLE 16

RULE OF SPECIALITY

(1) A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of any sentence for any offense committed prior to extradition other than:

(a) the offense in respect of which extradition is granted;

(b) any lesser offense, however described, disclosed by the facts in respect of which extradition is granted, provided such an offense is an extraditable offense under this Treaty; or

(c) any other offense being an offense for which extradition may be granted under this Treaty in respect of which the requested Party consents to the person being dealt with.

(2) Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the requesting Party and has not done so within forty-five days of having been free to leave or has returned after having left.

(3) A Party whose consent is requested under paragraph (1) (c) of this Article may require the submission of any document or statement mentioned in Article 7 of this Treaty.

ARTICLE 17

RE-EXTRADITION

(1) Where a person has been extradited to the requesting Party by the requested Party, that person is not liable to extradition or rendition to any other State for an offense committed before that person's extradition unless:

(a) the requested Party consents to that extradition or rendition; or

(b) the person has had an opportunity to leave the requesting Party and has not done so within forty- five days of having been free to leave or has returned after having left.

(2) A Party whose consent is requested under paragraph (1) (a) of this Article may require the submission of any document or statement mentioned in Article 7 of this Treaty.

ARTICLE 18

TRANSIT

(1) To the extent permitted by its laws, transit through the territory of a Party may be granted upon written request. This does not apply where air transport is used and no landing in the territory of that Party is scheduled.

(2) Permission, if given, for the transit of a person shall include permission for the person to be held in custody during transit.

ARTICLE 19

RELATION WITH OTHER TREATIES

This Treaty shall not affect any rights enjoyed and any obligations undertaken by the Parties under any other treaties.

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ARTICLE 20

CONSULTATION

Any dispute arising from the implementation or interpretation of this Treaty shall be settled by consultation through diplomatic channels.

ARTICLE 21

ENTRY INTO FORCE AND TERMINATION

(1) This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Manila. This Treaty shall enter into force thirty days after the date of the exchange of the instruments of ratification.

(2) The provisions of this Treaty shall apply to requests made after its entry into force regardless of the date of commission of the offense or offenses set out in the request.

(3) Either Party may terminate this Treaty at any time by giving written notice to the other through the diplomatic channels. In that event, the Treaty shall cease to have effect six months after the receipt of notice by the other Party.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

Done at Beijing on this 30th day of October 2001, in duplicate in English and Chinese, both texts being equally authentic.

For the Republic of the

For the People’s Republic

Philippines

of China

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