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TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON EXTRADITION

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, hereby referred to as "the Contracting Parties";

DESIRING to make more effective their co-operation in the prevention and suppression of crime by concluding a Treaty on Extradition;

AFFIRMING their respect for each other's legal systems and judicial institutions;

HAVE AGREED as follows:

ARTICLE 1

Obligation to Extradite

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, persons who are 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 purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting Parties that is punishable by deprivation of liberty for a maximum term of one year or more or by a more severe punishment.
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting State for an extraditable offence, extradition shall be granted if a period of at least six months of the sentence remains to be served.
3. For the purpose of this Article, in determining whether conduct is an offence against the law of the Requested State:
 - (a) it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology;
 - (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.
4. An offence of a fiscal character, including an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter, is an extraditable offence. Provided that the conduct for which extradition is sought is an offence in the Requested State, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of

the Requesting State.

5. An offence is extraditable whether or not the conduct on which the Requesting State bases its request occurred in the territory over which it has jurisdiction. However, where the law of the Requested State does not provide for jurisdiction over an offence in similar circumstances, the Requested State may, in its discretion, refuse extradition on this basis.

6. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:

(a) it was an offence in the Requesting State at the time of the conduct constituting the offence; and

(b) the conduct alleged would, if it had taken place in the Requested State at the time of the making of the request for extradition, have constituted an offence against the law of the Requested State.

7. If the request for extradition relates to a sentence of both imprisonment and a pecuniary sanction, the Requested State may grant extradition for the enforcement of both the imprisonment and the pecuniary sanction.

8. 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 paragraphs 1 and 2, the Requested State may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

ARTICLE 3

Mandatory Refusal of Extradition

Extradition shall be refused in any of the following circumstances:

1. Where the offence for which extradition is requested is considered by the Requested State to be a political offence or an offence of a political character. For the purpose of this paragraph, the following conduct does not constitute a political offence or an offence of a political character:

(a) conduct that constitutes an offence mentioned in a multilateral agreement to which Canada and the Republic of South Africa are parties and are obliged to extradite the person or submit the matter to appropriate authorities for prosecution;

(b) murder;

(c) inflicting serious bodily harm;

(d) sexual assault;

(e) kidnapping, abduction, hostage-taking or extortion;

(f) using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and

(g) an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (f).

2. Where there are substantial grounds for believing that the request for extradition is made for the purpose of prosecuting or punishing the person by reason of that person's race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.

3. Where the prosecution for the offence for which extradition is requested would be barred by prescription under the law of the Requesting State.

4. Where the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law.

5. Where the person sought has been finally acquitted or convicted in the Requested State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

ARTICLE 4

Discretionary Refusal of Extradition

Extradition may be refused in any of the following circumstances:

1. Where the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence.

2. Where the person sought is being prosecuted by the Requested State for the offence for which extradition is requested.

3. Where the offence carries the death penalty under the law of the Requesting State, unless that State undertakes that the death penalty will not be sought, or if a sentence of death is imposed it will not be carried out.

4. Where, in exceptional cases, the Requested State while also taking into account the seriousness of the offence and the interests of the Requesting State considers that because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

5. Where the person sought was a young offender within the meaning of the law of the Requested State at the time of the offence and the law that will apply to that person in the Requesting State is not consistent with the fundamental principles of the law of the Requested State dealing with young offenders.

6. Where the person sought has been convicted in absentia unless the Requesting State undertakes that the person may appeal against the conviction or have a retrial.

7. Where the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

ARTICLE 5

Nationality

Extradition shall not be refused on the ground of the nationality of the person sought.

ARTICLE 6

Presentation of Requests

1. Requests for provisional arrest or extradition shall be made:

(a) in the case of Canada, to the Minister of Justice;

(b) in the case of the Republic of South Africa, to the Minister for Justice and Constitutional Development.

2. (a) Requests for extradition shall be made in writing and communicated directly between the

Departments responsible for Justice of the Contracting States; however, use of the diplomatic channel is not excluded.

(b) Requests for provisional arrest shall be communicated as outlined in subparagraph (a) or through the facilities of the International Police Organization (INTERPOL).

ARTICLE 7

Documents to Submitted

1. The following documents shall be submitted in support of a request for extradition:

(a) in all cases, whether the person is sought for prosecution or the imposition or enforcement of sentence:

(i) information about the description, identity, location and nationality of the person sought;

(ii) a statement prepared by a public official, including a judicial, prosecuting or corrections official, which describes briefly the conduct constituting the offence for which the extradition is requested, indicating the place and the date of the commission of the offence and which provides a description or a copy of the text of the legal provisions describing the offence and the applicable penalty. This statement shall also indicate:

(aa) that these legal provisions were in force both at the time of the commission of the offence and at the time of the extradition request;

(bb) whether or not the prosecution of the offence, the imposition or the enforcement of any applicable penalty is barred by reason of prescription; and

(cc) where the offence occurred outside the territory of the Requesting State, the legal provisions establishing its jurisdiction; and

(b) in the case of a person sought for prosecution for an offence:

(i) the original or a certified true copy of the order of arrest or of any document having the same force and effect, issued in the Requesting State;

(ii) a copy of the indictment, charge sheet or other charging document; and

(iii) in the case of a request submitted by the Republic of South Africa, a record of the case comprised of a summary of the evidence available to the Requesting State, including identification evidence that would be sufficient to justify the committal for trial of the person sought, if the conduct had occurred in the Requested State. The record may include any report, statement or other relevant documentation.

A judicial or prosecutorial authority shall certify that the evidence summarized or contained in the record of the case is available for trial and is sufficient under the law of the Requesting State to justify prosecution; or

(iv) in the case of a request submitted by Canada, a certificate issued by the prosecutor in charge of the prosecution of the case containing a summary of the available evidence and a statement that the evidence is sufficient under the law of the Requesting State to warrant the prosecution of the person sought.

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

(i) a statement by a judicial, prosecuting or corrections official describing the conduct for which the person was convicted and attaching a copy of the document that records the conviction and, where applicable, sentence of the person. This statement shall be certified by the judicial, prosecuting or corrections official to be accurate; and

(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.

2. In the case of a person convicted in absentia, the requirements relating to the submission of documents referred to in subparagraphs (a) and (b) of paragraph 1 shall apply. If, however, it is established that the charge, containing notice of the date and place of trial, or the judgement rendered in absentia has been personally served on the person sought, and that person has not appeared or availed himself or herself of the rights to appeal and retrial, the requirements relating to the submission of documents referred to in subparagraphs (a) and (c) of paragraph 1 shall apply.

3. Any translation produced in the Requesting State of documents submitted in support of a request for extradition shall be admitted for all purposes in extradition proceedings.

ARTICLE 8

Authentication of Supporting Documents

Where the law of the Requested State requires authentication, documents shall be authenticated by a statement by the Minister responsible for Justice or a person designated by her or him under the seal of that Minister identifying the person who has signed the document, including that person's position or title.

ARTICLE 9

Language

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

ARTICLE 10

Additional Information

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

ARTICLE 11

Waiver

Extradition of a person may be granted pursuant to the provisions of this Treaty notwithstanding that the requirements of Article 7 have not been complied with provided that the person sought consents to being extradited.

ARTICLE 12

Provisional Arrest

1. In case of urgency, the competent authorities of the Requesting State may apply by any means which allows for a written record for the provisional arrest of the person sought.

2. An application for provisional arrest shall include the following:

- (a) information about the description, identity, location and nationality of the person sought;
- (b) a statement that a request for extradition will follow;

- (c) a description of the nature of the offence and applicable penalty, with a brief summary of the facts of the case, including date and place of the offence;
 - (d) a statement attesting to the existence of a warrant of arrest or a conviction to which this Treaty applies and details thereof;
 - (e) any other information which would justify provisional arrest in the Requested State.
3. The Requested State shall promptly inform the Requesting State of the measures taken pursuant to the application for provisional arrest.
4. Provisional arrest shall be terminated if the Requested State has not received the request for extradition and supporting documents through the channel provided for in Article 6 within sixty (60) days after the arrest. The competent authorities of the Requested State, insofar that it is permitted by the law of that State, may extend that delay with regards to the reception of the documents referred to in Article 7. However, the person sought may be granted bail at any time, subject to the conditions deemed necessary to ensure that the person does not leave the country.
5. The expiry of the sixty (60) day period does not preclude subsequent arrest and extradition if a request for extradition is subsequently received.

ARTICLE 13

Competing Requests

1. Where requests are received from two or more states for the extradition of the same person either for the same offence or for different offences, the Requested State shall determine to which of those States the person is to be extradited and shall notify those States of its decision.
2. In determining to which State a person is to be extradited, the Requested State shall have regard to all the relevant circumstances, and, in particular, to:
- (a) if the requests relate to different offences, the relative seriousness of those offences;
 - (b) the time and place of commission of each offence;
 - (c) the respective dates of the requests;
 - (d) the nationality of the person sought;
 - (e) the ordinary place of residence of the person;
 - (f) whether the requests were made pursuant to an extradition treaty;
 - (g) the interests of the respective States; and
 - (h) the nationality of the victim.

ARTICLE 14

Surrender

Surrender

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. Reasons shall be given for any complete or partial refusal of an extradition request.
2. Where extradition is granted, the Requested State shall surrender the person in accordance with arrangements agreed to between the competent authorities of the Contracting Parties.
3. The Requesting State shall receive the person within such reasonable period as the Requested

State specifies and, if the person is not removed within that period, the Requested State may refuse to extradite that person for the same offence.

4. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited it shall notify the other Contracting Party. The Contracting Parties shall decide upon a new date of surrender and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 15

Postponed or Temporary Surrender

1. Where 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 the whole or any part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.

2. To the extent permitted by its law, where a person referred to in paragraph 1 of this Article has been found extraditable, the Requested State may temporarily surrender the person sought for the purposes of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting Parties. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person. A person who is returned to the Requested State following a temporary surrender shall be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty.

ARTICLE 16

Surrender of Property

1. The Requested State shall, in so far as its law permits and at the request of the Requesting State, seize and surrender property that may be used in the prosecution of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

2. The property mentioned in paragraph 1 of this Article shall be surrendered even if extradition having been granted, cannot be carried out owing to the death or escape of the person sought.

3. Where the property referred to in paragraphs 1 and 2 of this Article is required in the Requested State in connection with civil or criminal proceedings, the Requested State may temporarily retain or surrender it over on condition that it be returned.

4. Any rights that the Requested State or third parties may have acquired in the property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial.

ARTICLE 17

Rule of Specialty

1. A person who has been extradited shall not be prosecuted, sentenced or detained for any offence committed prior to the surrender other than that for which that person was extradited, nor shall the person's liberty be restricted for any other reason, except in the following cases:

(a) where the Requested State consents;

(b) where the person, having had an opportunity to leave the Requesting State, has not done so within thirty (30) days of final discharge, or has voluntarily returned to that State after having left it; or

- (c) where the person extradited consents before a judicial authority in the Requesting State.
2. A request for the consent of the Requested State under paragraph 1 of this Article shall, if required by the Requested State, be accompanied by the relevant documents required by Article 7 as well as a record of any statement made by the extradited person in respect of the offence concerned.
3. If the charge for which the person was extradited is subsequently changed, that person may be prosecuted or sentenced provided the offence under its revised description is:
- (a) based on substantially the same facts contained in the extradition request and its supporting documents;
- (b) punishable by the same maximum penalty as, or a lesser maximum penalty than, the offence for which the person was extradited; and
- (c) substantially the same in nature to the original offence.

ARTICLE 18

Re-extradition to a Third State

1. Where a person has been surrendered to the Requesting State, that State shall not extradite the person to any third State for an offence committed before that person's surrender unless:
- (a) the Requested State consents to that extradition; or
- (b) the person has had an opportunity to leave the Requesting State and has not done so within thirty (30) days of final discharge in respect of the offence for which that person was surrendered by the Requested State or if the person has voluntarily returned to the Requesting State after having left it.
2. The Requested State may request the production of the documents submitted by the third State in relation to any consent pursuant to sub-paragraph 1(a) of this Article.

ARTICLE 19

Transit

1. To the extent permitted by its law, transit through the territory of one of the Contracting Parties shall be granted on a request in writing by the other Contracting Party. The request for transit:
- (a) may be transmitted by any means affording a record in writing; and
- (b) shall contain the information referred to in paragraph 2 of Article 12, and the particulars of the transit and ultimate proposed surrender.
2. No authorization for transit shall be necessary when air travel is used and no landing is scheduled in the territory of the transit State. In the case of an unscheduled landing, the transit State may require the request for transit provided for in paragraph 1. To the extent permitted by its law, the transit State shall detain the person in transit until the request is received and the transit is carried out, provided that the request is received within twenty four (24) hours after the unscheduled landing.

ARTICLE 20

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 in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until surrender to the Requesting State.

3. The Requesting State shall bear the expense incurred in conveying the person extradited from the territory of the Requested State.

ARTICLE 21

Conduct of Proceedings

1. In the case of a request for extradition presented by the Republic of South Africa, the Attorney General of Canada shall conduct the extradition proceedings before Canadian courts.

2. In the case of a request for extradition presented by Canadian authorities, the extradition proceedings shall be conducted in accordance with the law of the Republic of South Africa.

ARTICLE 22

Entry into Force, Amendment and Termination

1. This Treaty shall enter into force on the date on which the Contracting Parties have notified each other in writing that their respective legal requirements have been met. The effective date of entry into force will be the date of last notification.

2. This Treaty shall apply to any offence specified in Article 2 committed before or after this Treaty enters into force.

3. This Treaty may be amended by mutual consent.

4. Either Contracting Party may terminate this Treaty. The termination shall take effect six (6) months from the date on which it was notified to the other Contracting Party.

5. The Parties may also terminate this Treaty by mutual consent on such terms and conditions as may be agreed to between the Parties.

ARTICLE 23

Consultation

The Department of Justice of Canada and the Department for Justice and Constitutional Development of the Republic of South Africa or persons designated by the respective Departments may consult with each other directly or through the facilities of the International Police Organization (INTERPOL) in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

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

DONE in duplicate at Durban, on this 12th day of November 1999, in the English and French languages, each language version being equally authentic.

FOR THE GOVERNMENT OF CANADA

Lloyd Axworthy

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Nkosazana Dlamini-Zumma

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