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TREATY BETWEEN THE REPUBLIC OF KOREA AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Signed at Algiers March 12, 2006

The Republic of Korea and the People's Democratic Republic of Algeria (hereinafter referred to as "the Parties"),

Desiring to strengthen friendly relations existing between the two countries,

Desiring to establish a more effective cooperation in the field of mutual legal assistance in criminal matters,

Have agreed as follows:

Article 1

Scope of Application

1. The Parties shall, in accordance with this Treaty, grant each other assistance in criminal matters the possible widest measure in investigation or judicial proceedings related to the offences which fall, at the time of request for mutual legal assistance within the jurisdiction of the judicial authorities of the Requesting Party.

2. Assistance shall include:

- (a) taking evidence or statements from persons;
- (b) providing documents, records, files and other elements of evidence;
- (c) locating, identifying persons or items;
- (d) serving judicial documents;
- (e) executing requests for search and seizure;
- (f) transferring detained persons or appearance of other persons as witnesses in order to give evidence or assist in investigations;
- (g) identifying, locating, seizing, forfeiting and returning of proceeds of crime; and
- (h) any other form of assistance compatible with the object of this Treaty and not prohibited by the laws of the Requested Party.

Article 2

Other Arrangements

This Treaty shall not affect obligations that arise from other treaties or arrangements to which they are both parties.

Article 3

Central Authority

1. Each Party shall have the Central Authority to make or receive requests for the purposes of this Treaty. The Central Authority for the Republic of Korea shall be the Minister of Justice or an official designated by that Minister. The Central Authority for the People's Democratic Republic of Algeria shall be the Ministry of Justice of the People's Democratic Republic of Algeria.
2. The Central Authorities shall communicate through the diplomatic channel or directly with each other for the purposes of this Treaty.

Article 4

Refusal or Postponement of Assistance

1. Assistance shall be refused if, in the opinion of the Requested Party:
 - (a) the request relates to an offence, considered by the Requested Party as a political offence;
 - (b) the offence for which assistance is requested contains solely of a violation of military obligations;
 - (c) the execution of the request would impair its sovereignty, security, public order;
 - (d) the request relates to the prosecution of a person for an offence in respect of which the person has been finally acquitted or pardoned or has served the sentence imposed in the Requested Party; or
 - (e) the request relates to the prosecution of a person for an offence for which the person could no longer be prosecuted by reason of lapse of time.
2. Assistance may be refused if, in the opinion of the Requested Party:
 - (a) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting or punishing a person by reason of that person's race, sex, religion, nationality or political opinions or that that person's position may be prejudiced for any of those reasons;
 - (b) the request relates to the prosecution or punishment of a person for conduct that would not, if it had taken place within the jurisdiction of the Requested Party, have constituted an offence;
3. Assistance may be postponed by the Requested Party if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
4. Before refusing a request or postponing its execution, the Parties shall consult each other in order to determine whether assistance may be granted to such terms and conditions as the Requesting Party deems necessary.
5. If the Requested Party refuses or postpones assistance, it shall inform the Requesting Party of reasons for the refusal or postponement.

Article 5

Request for Assistance

1. A request for assistance shall be made in writing. In urgent circumstances the Requested Party may accept a request in another form letting a written proof, but such request shall be confirmed in writing promptly thereafter unless the Requested Party agrees otherwise.
2. A request for assistance shall include:
 - (a) the name of the competent authority conducting the investigation, prosecution or proceeding to which the request relates;
 - (b) the purpose of the request and the description of the assistance sought;
 - (c) a description of facts alleged which would constitute an offence as well as the texts and laws related to.

3. A request for assistance, to the extent necessary and possible, shall also include:

(a) information on the identity, nationality and location of any person or persons who are the subject of the investigation, prosecution or proceeding in the Requesting Party and of any person from whom evidence is sought;

(b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(c) information on the identity and whereabouts of a person to be located;

(d) a description of the person or place to be searched and of the items to be seized;

(e) the reasons and details of any particular procedure or requirement that the Requesting Party wishes to be followed in executing the request;

(f) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;

(g) the need for confidentiality and the reasons therefor; and

(h) such other information as is necessary for the proper execution of the request.

4. If the Requested Party considers that the information contained in a request for assistance is not sufficient to enable the request to be dealt with, it may request additional information.

Article 6

Language

Requests for assistance, supporting documents and other communications are made in the language of the Requesting Party, accompanied by a translation either into the language of the Requested Party or into English or French language.

Article 7

Execution of Request

1. The mutual legal assistance request shall be promptly executed in accordance with the legislation of the Requested Party.

2. If so requested expressly by the Requesting Party, the Requested Party may inform the Requesting Party the date and place of execution of the mutual legal assistance request.

Article 8

Service of Objects and Documents

1. Articles of evidence, as well as original records or documents, handed over in execution of request for mutual assistance shall be kept by the Requesting Party unless the Requested Party asked for the return thereof.

2. The Requested Party may delay the handing over of articles of evidence, records or documents requested, if it requires the said articles of evidence, records or documents in connection with pending criminal proceedings.

Article 9

Protection of Confidentiality

1. The Requested Party, if so requested, shall use its best efforts to keep confidential a request for assistance, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party, if so requested, shall keep confidential the information and evidence provided by the Requested Party, except to the extent the information and evidence is needed for the investigation and proceedings described in the request.

Article 10

Limitation on Use

The Requesting Party shall not use or transfer any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in a request for assistance without the prior written consent of the Requested Party.

Article 11

Taking of Evidence

1. The Requested Party shall, in conformity with its law and upon request, take testimony, or otherwise obtain statements of persons or require them to prepare and/or items of evidence for transmission to the Requesting Party.

2. Upon the request of the Requesting Party, the Requested Party shall give a sufficient prior notice of the date and place where the hearing will be held.

3. Upon the request of the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives and representatives of the Requesting Party may, subject to the laws and procedures of the Requested Party, be present at the proceedings.

4. The Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and, to the extent permitted by its law, may allow such persons to question the person whose testimony or evidence is being taken. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the persons whose testimony or evidence is being taken.

5. A person who is required to give evidence in the Requested Party pursuant to a request under this Article may decline to give evidence where the law of the Requested Party permits that person not to give evidence in similar circumstances in proceedings originating in the Requested Party.

6. Where a person who is required to give evidence in the Requested Party under this Article claims that there is a right to decline to give evidence under the laws of the Requesting Party, the Requested Party shall either:

(a) request the Requesting Party to provide a certificate as to the existence of that right; or

(b) nevertheless require the person to give the evidence and transmit the evidence to the Requesting Party for its determination as to the existence of the right claimed by the person.

Article 12

Availability of Persons to Give Evidence or to Assist in Investigations

1. The Requesting Party may request the assistance of the Requested Party in inviting a person to appear as a witness or an expert in the proceedings or assist in the investigations. That person shall be informed of any expenses and allowances payable.

2. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 13

Availability of Persons in Custody to Give Evidence or to Assist in Investigations

1. A person in custody in the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the Requesting Party to assist in investigations or proceedings provided that

both the person and the Requested Party consent to the transfer.

2. Where the person transferred is required to be held in custody under the laws of the Requested Party, the Requesting Party shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.

3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in Article 12 of this Treaty.

4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested Party for time served in the custody of the Requesting Party.

Article 14

Safe Conduct

1. Subject to paragraph 2 of this Article, where a person is in the Requesting Party pursuant to a request made under Article 12 or 13 of this Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the Requesting Party in respect of any acts or omissions or convictions that preceded the person's departure from the Requested Party;

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if that person, being free to leave, has not left the Requesting Party within a period of fifteen (15) consecutive days after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to Article 12 or accept an invitation pursuant to Article 13 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons

Article 15

Provision of Publicly Available Documents and Other Records

1. The Requested Party shall provide copies of documents and records that are open to public access as part of a public register or otherwise, or that are available to the public.

2. The Requested Party may provide copies of any other official document or record in the same manner and under the same conditions as they may be provided to its own law enforcement and judicial authorities.

Article 16

Service of Judicial Documents

1. The Requested Party shall effect service of judicial documents delivered by the competent authorities which are transmitted to it for this purpose by the Requesting Party.

2. This service may be effected by the mere transmission of the judicial documents to the person to be served. If the Requesting Party expressly so requests, service shall be effected by the Requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

3. Proof of service shall be given by means of a receipt of dated and signed by the person served or by means of declaration made by the Requested Party that service has been effected and stating the form or date of such service. One or other of these documents shall be sent immediately to the Requesting Party. The Requested Party shall, if the Requesting Party so requests, state whether service has been

effected in accordance with the law of the Requested Party. If service cannot be effected, the reasons shall be communicated immediately by the Requested Party to the Requesting Party.

4. The summons to appear shall be transmitted to the Requested Party not less than forty-five (45) days before the date on which the appearance is required. In urgent cases, the Requested Party may waive this requirement.

Article 17

Search and Seizure

1. The Requested Party shall, to the extent its laws permit, execute a request for search and seizure and delivery of any material to the Requesting Party, provided that the request includes the information justifying such action under the laws of the Requested Party.

2. The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the material seized.

3. The Requested Party may require that the Requesting Party agree to terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 18

Proceeds of Crime

1. The Requested Party shall, upon request, endeavor to ascertain whether any proceeds of crimes are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in the jurisdiction of the Requested Party.

2. Where, pursuant to paragraph 1 of this Article, suspected proceeds of crimes are found, the Requested Party shall take such measures as are permitted by its law to restrain, forfeit or confiscate such proceeds.

3. The Requested Party in control of forfeited proceeds shall dispose of them in accordance with its law.

4. When an offence has been committed and a conviction has been imposed on the territory of the Requesting Party, the forfeited proceeds may be returned to the Requesting Party for the purpose of forfeiture.

5. Nothing in this article shall prejudice the rights of bona-fide of the third parties.

Article 19

Certification and Authenticatio

1. Subject to paragraph 2 of this Article, a request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require any form of certification or authentication.

2. Insofar as not prohibited by the law of the Requested Party, documents, records or other materials shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting Party in order to make them admissible according to the law of the Requesting Party.

Article 20

Expenses

1. The Requested Party shall meet the cost of executing a request for assistance, except that the Requesting Party shall bear:

(a) the expenses associated with conveying any person to or from the territory of the Requested Party at the request of the Requesting Party, and any allowances or expenses payable to that person

while in the Requesting Party pursuant to a request under Article 12 or 13; and

(b) the expenses and fees of experts.

2. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

Article 21

Consultations

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the implementation of this Treaty either generally or in relation to a particular case.

Article 22

Ratification

This Treaty shall be ratified in accordance with the constitutional requirements of both Parties.

Article 23

Entry into force

1. This Treaty shall enter into force thirty (30) days after the exchange of the instruments of ratification.

2. This Treaty shall apply to any requests presented after its entry into force, even if the relevant acts or omissions occurred prior to its entering into force.

Article 24

Termination

1. Subject to paragraph 2 of this Article, this Treaty shall remain in force for an unlimited period of time.

2. Either of Parties may terminate this Treaty at any time.

3. The termination shall take effect six (6) months from the date on which the decision to terminate the Treaty was notified in writing to the other.

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

DONE in duplicate at Algiers on this Twelfth day of March 2006, in the Korean, Arabic, English languages, all texts being equally authentic.

FOR THE REPUBLIC

FOR THE PEOPLE'S DEMOCRATIC

OF KOREA

REPUBLIC OF ALGERIA

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