



**TREATY ON EXTRADITION**  
**BETWEEN**  
**THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**REPUBLIC OF KOREA**

The Republic of South Africa and the Republic of Korea (hereinafter referred to as "the Parties");

Desiring to provide for more effective cooperation between the two countries in the prevention and suppression of crime, and to facilitate relations between the two countries in the area of extradition by concluding a treaty for the extradition of offenders;

Have agreed as follows:

### **Article 1** **Obligation to Extradite**

Each Party agrees to extradite to the other, upon request and subject to the provisions of this Treaty, any person who is wanted for prosecution, trial, or imposition or enforcement of a sentence in the territory of the Requesting Party for an extraditable offence and found in the territory of the Requested Party.

### **Article 2** **Extraditable Offences**

1. For the purposes of this Treaty, extraditable offences are offences which, at the time of the request, are punishable under the laws of both Parties by deprivation of liberty for a period of at least one (1) year or by a more severe penalty.
2. Where a request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months of the sentence remains to be served.

3. For the purposes of this Article, in determining whether an offence is an offence against the laws of both Parties:
- (a) it shall not matter whether the laws of both Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology; and
  - (b) the totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of both Parties, the constituent elements of the offence differ.
4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the ground that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or foreign exchange regulation of the same kind as the law of the Requesting Party.
5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.
6. If the request for extradition refers to several offences each of which is punishable under the laws of both Parties, but some of which do not fulfill the other conditions set out in paragraphs 1 and 2 of this Article, extradition may be granted for the latter offences, provided that the person is to be extradited for at least one extraditable offence.

**Article 3**  
**Mandatory Grounds for Refusal**

Extradition shall not be granted under this Treaty in any of the following circumstances:

- (a) when the Requested Party determines that the offence for which extradition is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the following offences:
  - (i) the taking or attempted taking of the life, or an attack on the person of a Head of State or a Head of Government or a Deputy Head of State or a Deputy Head of Government or a member of such person's family;
  - (ii) an offence in respect of which the Parties have the obligation to establish jurisdiction or extradite by reason of a multilateral international agreement to which they are both Parties, including, but not limited to, such agreements relating to genocide, terrorism or hostage-taking;
  - (iii) 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;
  - (iv) murder; and
  - (v) an attempt or conspiracy to engage in counseling, 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 sub-paragraphs (i) to (iv).

- (b) when the person sought is being proceeded against or has been tried and convicted or acquitted in the territory of the Requested Party for the offence for which extradition is requested;
- (c) when the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law; or
- (d) when 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, or sex.

#### Article 4

#### Discretionary Grounds for Refusal

Extradition may be refused under this Treaty in any of the following circumstances:

- (a) when the offence for which extradition is sought is subject to the jurisdiction of the Requested Party and that Party will prosecute that offence;
- (b) when 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;
- (c) when, in exceptional cases, the Requested Party, while also taking into account the seriousness of the offence and the interests of the Requesting Party, deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations;
- (d) when the prosecution or the punishment for the offence for which extradition is requested would be barred by reasons

prescribed under the law of either Party including a law relating to the lapse of time; or

- (e) when the offence carries the death penalty under the law of the Requesting Party, unless that Party undertakes that the death penalty will not be sought, or if the sentence of death is imposed, it will not be carried out.

### **Article 5** **Extradition of Nationals**

1. Neither of the Parties shall be bound to extradite its own nationals under this Treaty, but the Requested Party shall have the power to extradite such person, if, in its discretion, it be deemed proper to do so.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authorities for prosecution.
3. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

### **Article 6** **Request for Extradition and Required Documents**

1. A request for extradition shall be made in writing through the diplomatic channel.
2. The request for extradition shall in all cases be accompanied by:

- (a) documents, statements, or other information which describe the identity, including, if possible, a physical description, photograph, and/or fingerprint, the nationality and probable location of the person sought;
- (b) a statement of the facts of the case, including the time and place of the commission of the offence, and the procedural history of the case;
- (c) a statement of the laws describing the essential elements and the designation of the offence;
- (d) a statement of the laws describing the punishment for the offence;
- (e) a statement of the laws relating to the time limit on the prosecution or the execution of punishment of the offence;
- (f) the documents, statements, or other types of information specified in paragraph 3 or 4 of this Article, as applicable; and
- (g) the legal provisions establishing its jurisdiction, where the offence was committed outside the territory of the Requesting Party.

3. When the request for extradition relates to a person who has not yet been convicted, it shall also be accompanied by:

- (a) a copy of the warrant of arrest or detention issued by a judge or other competent judicial authority of the Requesting Party;
- (b) information establishing that the person sought is the person to whom the warrant of arrest or detention refers; and
- (c) a statement of the acts or omissions alleged to constitute the offence and supporting evidence thereto such as

would provide a reasonable ground to suspect that the person sought has committed the offence for which extradition is requested.

4. When the request for extradition relates to a person who has been convicted, it shall also be accompanied by:
  - (a) a copy of the judgement rendered by a court of the Requesting Party, setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;
  - (b) a copy of the warrant of arrest, or a statement that the person is subject to detention on the basis of the judgement of conviction;
  - (c) information establishing that the person sought is the person convicted; and
  - (d) a statement of the acts or omissions constituting the offence for which the person was convicted.
  
5. All the documents to be submitted by the Requesting Party in support of the request for extradition shall be certified and accompanied by a translation into an official language of the Requested Party.
  
6. A document is certified for the purposes of this Treaty, if it has been:
  - (a) signed by a judge or other officer of the Requesting Party; and
  - (b) sealed by the official seal of the competent authorities of the Requesting Party.



**Article 7**  
**Additional Information**

1. If the Requested Party 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 Party may request that additional information be furnished within such reasonable time as it specifies.
  
2. If the person whose extradition is 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, that person may be released from custody. Such release shall not preclude the Requesting Party from making a new request for the extradition of that person.
  
3. Where the person is released from custody in accordance with paragraph 2 of this Article, the Requested Party shall so notify the Requesting Party as soon as practicable.

**Article 8**  
**Provisional Arrest**

1. In case of urgency, a Party may request the provisional arrest of the person sought pending the presentation of a request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between Department of Justice and Constitutional Development of the Republic of South Africa and the Ministry of Justice of the Republic of Korea.
  
2. The request for provisional arrest shall be in writing and contain:

- (a) a description of the person sought, including information about the nationality of that person;
  - (b) a statement of the location, if known, of the person sought;
  - (c) a brief statement of the facts of the case, including, if possible, the time and place of the commission of the offence;
  - (d) a description of the laws violated;
  - (e) a statement of the existence of a warrant of arrest or detention, or conviction of the person sought; and
  - (f) a statement that a request for extradition for the person sought will follow.
3. The Requesting Party shall be notified without delay of the disposition of its application and the reasons for any denial.
4. A person who is provisionally arrested may be discharged from custody upon the expiration of forty-five (45) days from the date of provisional arrest pursuant to this Treaty, if the Requested Party has not received the formal request for extradition and the supporting documents required in Article 6 of this Treaty.
5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

#### Article 9

#### Simplified Extradition

When a person sought advises a court or other competent

authorities of the Requested Party that the person consents to an order for extradition being made, the Requested Party may take all necessary measures to expedite the extradition to the extent permitted under its laws.

## Article 10 Concurrent Requests

1. Where requests are received from two or more States, including the other Party, for the extradition of the same person either for the same offence or for different offences, the Requested Party 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 Party shall consider all relevant factors, including but not limited to:
  - (a) the nationality and the ordinary place of residence of the person sought;
  - (b) whether the requests were made pursuant to a treaty;
  - (c) the time and place where each offence was committed;
  - (d) the respective interests of the requesting States;
  - (e) the gravity of the offences;
  - (f) the nationality of the victim;
  - (g) the possibility of further extradition between the requesting States; and
  - (h) the respective dates of the requests.

### Article 11

#### Decision on the Request

1. The Requested Party shall deal with a request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the Requesting Party through the diplomatic channel.
2. Reasons shall be given for any complete or partial refusal of the request for extradition.

### Article 12

#### Surrender of the Person

1. The Requested Party shall surrender the person sought to the competent authorities of the Requesting Party at a location in the territory of the Requested Party acceptable to both Parties.
2. The Requesting Party shall remove the person sought from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if that person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.
3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall so notify the other Party, and in this case the provisions of paragraph 2 of this Article shall not apply. The two Parties shall mutually decide upon a new date of surrender or removal on the conditions of this Article.

### Article 13

#### Postponed or Temporary Surrender

1. When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may, after making its decision on a request for extradition, postpone the surrender of that person until the conclusion of the criminal proceedings or the service of the whole or any part of the sentence imposed. The Requesting Party shall be informed of such postponement.

2. To the extent permitted by its law, where a person has been found extraditable, the Requested Party may, instead of postponing surrender, temporarily surrender the person sought for the purposes of prosecution to the Requesting Party in accordance with conditions to be determined between the Parties. A person who is returned to the Requested Party following a temporary surrender may be finally surrendered to serve any sentence imposed, in accordance with the provisions of this Treaty.

### Article 14

#### Surrender of Property

1. To the extent permitted under the laws of the Requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested Party that has been acquired as a result of the offence or that may be required as evidence may, if the Requesting Party so requests, be surrendered if extradition is granted.

2. Subject to paragraph 1 of this Article, the above-mentioned property may, if the Requesting Party so requests, be surrendered to

the Requesting Party even if the extradition cannot be carried out owing to the death, disappearance, or escape of the person sought.

3. The Requested Party may temporarily postpone the surrender of property referred to in paragraph 1 of this Article if it is required for proceedings instituted in connection with other criminal cases until the completion of such proceedings.

4. Where the law of the Requested Party or the protection of the rights of third parties so requires, any property so surrendered shall be returned to the Requested Party free of charge after the completion of the proceedings, if that Party so requests.

#### Article 15

##### Rule of Specialty

1. A person extradited under this Treaty shall not be detained, tried, or punished in the Requesting Party except for:

- (a) the offence for which extradition has been granted or a differently denominated offence based on the same facts on which extradition was granted, provided that such offence is extraditable, or is a lesser included offence;
- (b) an offence committed after the surrender of the person; or
- (c) an offence for which the Requested Party consents to the person's detention, trial, or punishment for an offence.

For the purposes of subparagraph (c) of this paragraph:

- (i) the Requested Party may require the submission of the documents referred to in Article 6;
- (ii) a legal record of statements made by the extradited person with respect to the offence, if any, shall be submitted to the Requested Party; and

- (iii) the person extradited may be detained by the Requesting Party for such a period of time as the Requested Party may authorize, while the request is being processed.

2. A person extradited under this Treaty shall not be re-extradited to a third State for an offence committed prior to the surrender of that person unless the surrendering Party consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the re-extradition of that person to a third State, if:

- (a) that person has voluntarily returned to the territory of the Requesting Party after leaving it; or
- (b) that person does not leave the territory of the Requesting Party within forty-five (45) days from the date on which that person is free to leave.

#### **Article 16**

##### **Notification of the Results**

The Requesting Party shall, if the Requested Party so requests, notify the Requested Party of the information relating to the proceedings against or the execution of punishment upon the person extradited or the re-extradition of that person to a third State.

#### **Article 17**

##### **Transit**

1. To the extent permitted by its law, transportation of a person surrendered from a third State to either Party through the territory of

the other Party may be authorized upon request in writing made through the diplomatic channel or directly between the Department of Justice and Constitutional Development of the Republic of South Africa and the Ministry of Justice of the Republic of Korea. The request shall contain a description of the person being transported, including his or her nationality, and a brief statement of the facts of the case. A person in transit may be held in custody during the period of transit.

2. Authorization for transit shall not be required when air transport is used and no landing is scheduled in the territory of the Party of transit. If an unscheduled landing occurs in the territory of that Party, it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article. To the extent permitted by its laws, the Party of transit shall detain the person to be transported until the transportation is continued provided that the request is received within ninety-six (96) hours of the unscheduled landing.

3. Authorization for transit shall include authorization for accompanying officials to obtain assistance from authorities in the Party of transit in maintaining custody.

4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Party in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.

## Article 18

### Costs

1. The Requested Party shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.



2. The Requested Party shall bear the cost incurred in its territory in connection with the arrest and detention of the person whose extradition is sought, or the seizure and surrender of property.

3. The Requesting Party shall bear the cost incurred in conveying the person whose extradition is granted from the territory of the Requested Party and the cost of transit.

### **Article 19** **Consultations**

1. The Parties shall consult, at the request of either Party, concerning the interpretation and the application of this Treaty.

2. The competent authorities of both Parties may consult with each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

### **Article 20** **Entry into Force and Termination**

1. This Treaty shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

2. This Treaty shall apply to offences committed before as well as after the date on which it enters into force.

3. Either Party may terminate this Treaty by notice in writing through the diplomatic channel at any time. Termination shall take effect six (6) months after the date on which the notice is given.

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

DONE in duplicate at *Seoul* on this *3rd* day of *May* 2007, in the English and Korean languages, both texts being equally authentic.

FOR THE REPUBLIC OF  
SOUTH AFRICA



FOR THE REPUBLIC OF  
KOREA

