

Agreement Between The Government of India and The Government of The Federal Republic of Somalia On The Transfer of Sentenced Persons

UNION OF INDIA

India

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AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-INDIA-AND-THE-GO of 2019

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Agreement Between The Government of India and The Government of The Federal Republic of Somalia On The Transfer of Sentenced Persons Published vide Notification No. G.S.R. 811(E), dated 24.10.2019 Last Updated 1st November, 2019 Ministry of Home Affairs (Women Safety Division) G.S.R. 811(E). - In exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Repatriation of Prisoners Act, 2003 (49 of 2003), the Central Government hereby directs that the provisions of the said Act shall apply to the Government of the Federal Republic of Somalia. The full text of the Agreement on Transfer of Sentenced Persons signed by the Government of the Republic of India and the Government of the Federal Republic of Somalia on 1.8.2017 is given below. The Agreement was ratified by the Government of the Republic of India on 1.9.2017 and by the Government of the Federal Republic of Somalia on 14.10.2017. The Government of the Republic of India and the Government of the Federal Republic of Somalia, hereinafter referred to as the Contracting States; Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and Considering that this objective should be fulfilled by giving foreign nationals, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their own society; Have agreed as follows: Article 1

1. Definitions.

- For the purpose of this Agreement:(a)"judgment" means a decision or order of a court or tribunal imposing a sentence;(b)"receiving State" means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof;(c)"sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;(d)"sentenced person" means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;(e)"transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred.Article 2

2. General Principles.

- 1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.

2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

Article 3

3. Central Authorities.

- 1. Authorities in charge of the implementation of this Agreement for the Contracting States are:-
For the Republic of India: Ministry of Home Affairs.- For the Federal Republic of Somalia: Ministry of Justice

2. In case either Contracting State changes its competent authorities, it shall notify the other State of the same through diplomatic channels.

Article 4

4. Conditions for transfer.

- 1. A sentenced person may be transferred under this Agreement on the following conditions:(a)the person is a national of the receiving State;(b)the death penalty has not been imposed on the

sentenced person;(c)the judgment is final;(d)no criminal proceedings are pending against the sentenced person in the transferring State in which his presence is required;(e)the sentenced person has not been convicted for an offence under the military law;(f)at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;(g)that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;(h)transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other essential interest of the transferring State;(i)consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and(j)the transferring and receiving States agree to the transfer.

2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

Article 5

5. Obligation to furnish information.

- 1. If the sentenced person has expressed an interest to the transferring State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:(a)the name and nationality, date and place of birth of the sentenced person and his address, if any, in the receiving State along with a copy of his passport or any other personal identification documents, and Fingerprints of the Sentenced Person, as possible;(b)a statement of the facts upon which the sentence was based;(c)the nature, duration and date of commencement of the sentence;(d)a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;(e)a medical, social or any other report regarding the antecedents and character of the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;(f)any other information which the receiving State may specify as required, to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;(g)the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State;(h)a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence; and(i)A statement from the Transferring State agreeing to the transfer of the Sentenced Person.

2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:

(a) a statement or document indicating that the sentenced person is a national of the receiving State; (b) a copy of the relevant law of the receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the transferring State constitute a criminal offence according to the law of the receiving State, or would constitute a criminal offence if committed on its territory; (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer; (d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and (e) any other information or document which the transferring State may consider necessary. Article 6

6. Requests and replies.

- 1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed by the Central authority of the transferring State through diplomatic channels to the Central Authority of the receiving State. Replies shall be communicated through the same channels.

2. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.

Article 7

7. Consent and its verification.

- 1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 4 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.

2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

Article 8

8. Effect of transfer for the receiving State.

- 1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.

2. Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

Article 9

9. Continued enforcement of sentence.

- 1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.

2. If the sentence is by its nature or duration, or both, incompatible with the law of the receiving State, that State may, with the prior consent of the transferring State, by court or administrative order, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed by the transferring State.

Article 10

10. Effect of completion of sentence for the transferring State.

- When the receiving State notifies the transferring state under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging the sentence in the transferring state. Article 11

11. Review of judgment and Pardon, amnesty or commutation.

- 1. The transferring State alone shall decide on any application for review of the judgment.

2. Either of the contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.

Article 12

12. Termination of enforcement of sentence.

- 1. The Transferring State shall promptly notify the Receiving State of any decisions taken in its territory which entails terminating the enforcement of the sentence or part thereof.

2. The receiving State shall terminate enforcement of the sentence or part thereof as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 13

13. Information on enforcement of sentence.

- 1. The receiving State shall notify the transferring State:(a)when the enforcement of the sentence has been completed; or(b)If the sentenced person escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State shall take measures to secure his arrest for the purposes of serving the remainder of his sentence and to render him/ her liable for committing an offence under the relevant law of the receiving State.

2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

Article 14

14. Transit.

- 1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit;(a)if the sentenced person is one of its own nationals;(b)if the request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State.

2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

Article 15

15. Costs.

- Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, demand or seek to recover all or part of the costs of transfer from the sentenced person or from some other source. Article 16

16. Language.

- Requests and supporting documents shall be in English or shall be accompanied by a translation into English. Article 17

17. Scope of Application.

- This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement. Article 18

18. Settlement of Disputes.

(1) The Central Authorities shall endeavor to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement. (2) If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels. Article 19

19. Handing Over of Sentenced Persons.

- The handing over of the transferred person by the transferring State to the receiving State shall occur at a place to be agreed upon between the transferring and receiving State. The receiving State shall be responsible for the transport of the prisoner from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State. Article 20

20. Amendments.

- Any amendment or modification to this Agreement agreed to by the Contracting States shall come into force in the same manner as the Agreement itself. Article 21

21. Final Provisions.

- 1. This Agreement shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its legal procedures required for the entry into force of this Agreement. The Agreement shall come into force on the first day of the second month of the date of the last notification.

2. The Agreement shall remain in force for an indefinite period. It may, however, be terminated by either of the Contracting State by giving a written notice of termination to the other Contracting State. The termination shall take effect after six months of the date of such notice.

3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoners who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement. Done at New Delhi on the 1st day of August 2017, in two originals each in Hindi and English languages, all texts being equally authentic. In case of differences in interpretation the English text shall prevail.

For the Government of the Republic of India For the Government of the Federal Republic of Somalia

Name :

Name :

Designation :

Designation :