

Agreement Between the Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka on the Transfer of Sentenced Persons

TREATY

India

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AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-INDIA-AND-THE-GOVERNMENT-OF-THE-DEMOCRATIC-SOCIALIST-REPUBLIC-OF-SRI-LANKA-ON-THE-TRANSFER-OF-SENTENCED-PERSONS-2010

- Published on 6 August 2010
- Commenced on 6 August 2010
- [This is the version of this document from 6 August 2010.]
- [Note: The original publication document is not available and this content could not be verified.]

Agreement Between the Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka on the Transfer of Sentenced Persons Published vide Notification New Delhi, the 6th August, 2010 Ministry of Home Affairs (CS Division) G.S.R. 661(E). - In exercise of the powers conferred by sub-sections (1) and (2) of section 30 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 Democratic Socialist Republic of Sri Lanka and notifies the text of the agreement entered into between the Government of the Republic of India and the Government of Democratic Socialist Republic of Sri Lanka for the transfer of prisoners between that country and India as follows, namely :- The Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka, 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 nationals of a Contracting State, who have been convicted and sentenced in the other Contracting State as a result of the commission of a criminal offence, the opportunity to serve the sentence in their own country; Have agreed as follows: Article 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 the sentence; (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 pursuant to a judgment by a criminal court including the courts established under the law for the time being in force in the transferring State;(e) "transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred; and(f) "national" means a citizen of either Contracting State.

Article 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 laws of the Contracting States and the provisions of this Agreement, in order to serve the sentence imposed on him. To that end, he may express either 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 by making an application to either of the Contracting States, in accordance with the laws of the concerned Contracting State and in the manner so prescribed.

Article 3 Conditions for transfer

A sentenced person may be transferred under this Agreement only 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 inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;(e)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;(f)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;(g)the sentenced person has not been convicted for an offence under the military law;(h)transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other 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 laws of the Contracting State; and(j)the transferring and receiving States agree to the transfer.

Article 4 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, nationality, date and place of birth of the sentenced person;(b)his address, if any, in the receiving State;(c)a statement of the facts upon which the sentence was based;(d)the nature, duration and date of commencement of the sentence;(e)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;(f)a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;(g)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 his transfer under its law;(h)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; and(i)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.

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 legal provisions of the receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the transferring State, also constitute a criminal offence in the receiving State or will constitute a criminal offence if committed on its territory;(c)a statement to the effect of any law or regulation in relation to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement to the effect of paragraph 2 of Article 8 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.

Articles
5Requests and replies

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

2. For the purpose of paragraph 1 of this Article, the Central Authority shall be:

- for the Republic of India, the Ministry of Home Affairs; and- for the Democratic Socialist Republic of Sri Lanka, the Ministry of Justice and Law Reforms.

3. The requested Contracting State shall promptly inform the requesting Contracting State of its decision whether or not to agree to the requested transfer.

Article 6 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 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof.

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 7 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 by an administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.

2. Subject to the provisions in Article 10 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 8 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, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by an order of a Court or by an administrative order, with the consent of the transferring State, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration, the punishment or measure 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 in the transferring State.

Article 9Effect of completion of sentence for the transferring StateWhen the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.**Article 10**Pardon, amnesty or commutation and review of judgment

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

2. Unless the transferring State agrees otherwise, the transferring State alone may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

Article 11Termination of enforcement of sentenceThe receiving State shall terminate enforcement of the sentence 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 12**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.

2. In the event of the occurrence of 1(b) above, the receiving State shall take measures necessary to secure his arrest for the purposes of serving the remainder of the sentence and to render him liable to the relevant laws of the receiving State. The transferring State shall be informed of the results of such measures.

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

Article 13Transit

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 to any sentenced person who is one of its own nationals.

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

Article 14 Costs Any costs incurred in the application and implementation 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, seek to recover all or part of the costs of transfer from the sentenced person or from some other source. Article 15 Language Requests and supporting documents shall be in English or accompanied by a translation into English. Article 16 Scope of application This Agreement shall be applicable to the enforcement of sentences imposed before or after the entry into force of this Agreement. Article 17 Amendments Any amendments or modifications to this Agreement mutually agreed by the Contracting States shall come into effect in the same manner as may be applicable for the entry into force of this Agreement. Article 18 Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.

2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.

3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons 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 this 9th day of June 2010 in two originals in the Hindi Sinhala and English languages, all texts being equally authentic. In the event of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of India

For the Government of the Democratic
Socialist Republic of Sri Lanka