

Treaty Between The Republic of India and The Kingdom of Thailand on the Transfer of Sentenced Persons

UNION OF INDIA

India

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TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-THE-KINGDOM-OF THAILAND **of 2013**

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Treaty Between The Republic of India and The Kingdom of Thailand on the Transfer of Sentenced Persons Published vide Notification New Delhi, the 13th May, 2013 (CS Division) G.S.R. 321(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 having ratified the Agreement on 3rd May, 2013, hereby directs that the provisions of the said Act shall apply to the Kingdom of Thailand and notifies the full text of the Treaty Between the Government of the Republic of India and the Kingdom of Thailand on the Transfer of Sentenced Persons signed on 25th January 2012 for the propose of transfer of prisoners between that country and India as follows, namely: Treaty Between The Republic of India and The Kingdom of Thailand on the Transfer of Sentenced Persons The Republic of India and the Kingdom of Thailand, hereinafter referred to as "the Contracting States"; Desiring to co-operate in the enforcement of sentence and to facilitate the social rehabilitation of sentenced persons into their own countries; and Considering that this co-operation should serve the interests of the administration of justice and 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 sentence in their own society; Have agreed as follows: Article 1 Definitions For the purpose of this Treaty: (a) "judgment" means a decision or order of a criminal court or tribunal established under law imposing a sentence; (b) "receiving State" means the State to which the sentenced person may be, or has been, transferred in order to serve the remaining sentence thereof; (c) "transferring State" means the State in which the sentence was imposed on the sentenced person who may be, or has been transferred; (d) "sentence" means any punishment or measure involving deprivation of liberty ordered by a criminal court or tribunal

established under law of the transferring State for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;(e) "sentenced person" means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts or tribunals established under law in the Contracting States;Article 2General PrinciplesA 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 Treaty in order to serve the sentence imposed on the sentenced person. To that end, the sentenced person or any other person who is entitled to act on the sentenced person's behalf may express the sentenced person's willingness to be transferred under this Treaty.Article 3Central Authorities

1. Central Authorities in charge of the implementation of this Treaty for the Contracting States are:

- For the Republic of India: Ministry of Home Affairs.- For the Kingdom of Thailand: The Committee for Consideration of the Transfer of Prisoners.

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

Article 4Conditions for Transfer

1. A sentenced person may be transferred under this Treaty on the following conditions:

(a)the sentenced person is a national of the receiving State and is not a national of the transferring State;(b)the judgment is final;(c)the death penalty has not been imposed on the sentenced person, except that the death penalty has been commuted to a term of imprisonment or to life imprisonment;(d)no criminal proceedings are pending against the sentenced person in the transferring State;(e)the sentenced person has served in the transferring State any minimum period of imprisonment, confinement, or any other form of deprivation of liberty stipulated by the law of the transferring State;(f)at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve. In exceptional cases, the transferring State, at its discretion and to the extent permitted by its law, may agree to a transfer even if the time to be served by the sentenced person is less than one year;(g)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)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; and(i)the transferring and receiving States agree to the transfer.

2. A request for transfer of the sentenced person shall be refused under this Treaty on any of the following conditions:

(a) if the transfer of the sentenced person to the receiving State shall be prejudicial to the sovereignty, security, public order or any other essential interest of the transferring State; (b) if the sentenced person was sentenced in respect of an offence under the law of the transferring State: - against the internal or external security of the State; - against the Head of State or a member of his immediate family; or - against the legislation protecting national art treasures; (c) if the sentenced person has been convicted for an offence under the military law. Article 5 Obligation to Provide Information

1. If the sentenced person has expressed an interest to be transferred under this Treaty, the transferring State shall, upon request from the receiving State, provide the following information and documents to the receiving State:

(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) the written willingness of sentenced person to be transferred or of a person entitled to act on his behalf, if any; (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of the sentenced person's application or for deciding the nature of his confinement; (g) 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; (h) 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; and (i) a statement from the transferring State stating that the sentenced person is prima facie eligible to apply for transfer under this Treaty.

2. For the purposes of enabling a decision to be made on a request under this Treaty, the receiving State shall send the following information and documents to the transferring State:

(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 Article 9 paragraph 2 of this Treaty on the sentenced person's transfer;(d)the written 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;(e)copy of the documents received from the transferring State as mentioned in paragraph 1 of this Article; and(f)any other information or document which the transferring State may consider necessary.Article 6Requests and Replies

1. Both Contracting States shall inform the sentenced person within the scope of this Treaty of the substance of the Treaty.

2. Every transfer under this Treaty shall be commenced through diplomatic channels by a written request in the prescribed proforma, if any, from the receiving State to the transferring State.

The transferring State shall inform the receiving State through the same channels and without delay of its decision on whether to approve or to refuse the request for transfer. If the transferring State approves the request, both Contracting States shall take all measures necessary for effectuating the sentenced person's transfer.Article 7Consent and Its Verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with Article 4 paragraph 1(h) of this Treaty 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 8Effect 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 Treaty.

2. Subject to the provisions of Article 11 of this Treaty, the enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving State.

3. The receiving State may treat under its law relating to juveniles any sentenced persons so categorized under its law regardless of that person's status under the law of the transferring State.

Article 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 of 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 Effect of Completion of Sentence for the Transferring State When the receiving State notifies the transferring State under Article 14 paragraph 1(b) of this Treaty that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State. Article 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 Termination of Enforcement of Sentence

1. The transferring State shall promptly notify the receiving State of any decision 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 Modification of Enforcement of Sentence If the transferring State revises or modifies enforcement of the sentence, the receiving State shall, upon being notified of the decision, give effect thereto in accordance with the provisions of this Treaty as a result of which the sentence is revised or modified.

Article 14 Information on Enforcement of Sentence

1. The receiving State shall notify the transferring State:

(a) if the sentenced person is granted conditional release; (b) when the enforcement of the sentence has been completed; or (c) 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 the sentenced person's arrest for the purposes of serving the remainder of his sentence and to render the sentenced person's liable for committing an offence under the relevant law of the receiving State.

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

Article 15 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; or (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 16 Costs The costs incurred in the transfer of the sentenced person or in the enforcement of the sentence after transfer 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.

Article 17 Language

1. Requests and supporting documents, including certified summary of the judgment, shall be in English or shall be accompanied by a translation into English.

2. In case of translation of judgment, if required, the transferring State may convey the cost of such translation to the receiving State which may in turn be borne by the sentenced person or from any other source.

Article 18 Scope of Application This Treaty shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Treaty. Article 19 Consultations The Contracting States shall endeavor to mutually resolve any issue arising out of the interpretation, application or implementation of this Treaty through mutual consultations. Article 20 Handing Over of Sentenced Persons The handing over of the sentenced person by the transferring State to the receiving State shall occur at a place to be agreed upon between the transferring and receiving States within the territory of the transferring State. The receiving State shall be responsible for the transport of the sentenced person from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State. Article 21 Amendments

1. The Contracting States may mutually agree to amend this Treaty at any time.

2. Any amendments or modifications to this Treaty agreed by the Contracting States shall come into effect when confirmed by the exchange of diplomatic notes.

Article 22 Final Provisions

1. This Treaty shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged. This exchange of instruments shall take place as soon as possible.

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

3. Notwithstanding any termination, this Treaty shall continue to apply to the enforcement of sentences of the sentenced persons who have been transferred under this Treaty 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 Treaty. Done in duplicate at New Delhi on the 25th day of January,

2012, in the Hindi, Thai and English languages, all texts being equally authentic. In case of differences in interpretation, the English text shall prevail.

Sd/-P. Chidambaram For the Republic
of India

Sd/-Surapong Tovichakchaikul For the Kingdom of
Thailand