

AGREEMENT
ON
TRANSFER OF OFFENDERS
BETWEEN
THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA
AND
THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

The Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Islamic Republic of Pakistan (hereinafter referred to individually as a "Party" and collectively as the "Parties").

Re-affirming the principles of sovereignty, territorial integrity and non-interference in internal affairs of States,

Desirous of strengthening cooperation and assistance in the administration of criminal justice,

Believing that such cooperation will promote the ends of justice, and the social rehabilitation of offenders,

Considering that these objectives can best be achieved by giving foreign nationals, deprived of their liberty as a result of the commission of an offence, the opportunity to serve sentence within their own society.

Have agreed as follows:-

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Article 1
Definitions

For the purposes of this Agreement:-

- a) "Sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal of the Transferring Party on account of an offence;
- b) "Transferring Party" means the Party in which the sentence was imposed on the offender who may be or has been transferred to serve the sentence;
- c) "Receiving Party" means the Party to which, the offender may be or has been transferred to serve the sentence;
- d) "Offender" means a person who is serving a sentence;
- e) "Judgment" means a final judicial decision or order by a court or tribunal imposing a sentence;
- f) "National" means a citizen of either of the Transferring/Receiving Party.

Article 2
General Principles

1. The Parties undertake to extend full cooperation in respect of the transfer of offenders in accordance with the provisions of their respective laws and this Agreement in order to serve the sentence imposed on them.

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2. The transfer may be requested either by the offender, the Transferring or the Receiving Party. In case the transfer is requested by the Transferring or the Receiving Party, the consent of the offender shall be obtained before a request for transfer is made.

Article 3

Conditions for Transfer

An offender may be transferred under this Agreement on the following conditions if :-

- a) he is a national of the Receiving Party;
- b) the judgement is final and definitive and no other legal proceedings relating to any other offence are pending in the Transferring Party;
- c) the act or omission on account of which the sentence has been imposed constitutes a criminal offence according to the laws of the Receiving Party or will constitute a criminal offence if committed on its territory;
- d) at the time of the making or receipt of the request for transfer, the offender still has at least six months of sentence to be served;
- e) the transfer has been consented to by the offender in writing or where in view of his age or physical or mental condition, either Party considers it necessary, by the offender's legal representative;
- f) the Transferring and the Receiving Parties agree to the transfer.



Article 4
Designation of Authority

Each Party shall designate an authority (the Authority) to perform the functions provided in this Agreement.

Article 5
Obligation to furnish information

1. Each Party shall bring the provisions of this Agreement to the notice of the offenders who are nationals of the other Party.
2. If an offender requests the Transferring Party or his transfer under this Agreement, that Party shall so inform the Receiving Party as soon as practical after the judgment becomes final.
3. The information shall include:
 - a) Name, date and place of birth of the offender;
 - b) his address, if any, in the Receiving Party;
 - c) a statement of facts upon which the sentence was based;
 - d) the nature, duration and date of beginning of the sentence;
 - e) a certified copy of the judgment, indicating that it is final;
 - f) a copy of the relevant legal provisions;
 - g) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention; remission, the period that remains to be served and any other factor relevant to the enforcement of the sentence;

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- i) a declaration containing the consent of the offender to be transferred; and
- i) any other information which the Receiving Party may specify as required in a case to enable it to consider the possibility of transfer and to enable it to inform the offender and the Transferring Party of the full consequences of transfer for the offender under its laws.

4. If the offender requests to the Receiving Party for his transfer that Party shall communicate to the Transferring Party the following information :

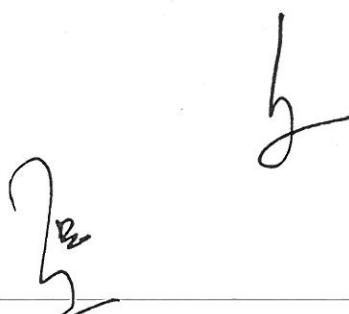
- a) Document indicating that the offender is a national of the Receiving Party;
- b) A copy of the relevant legal provisions which provide that the acts or omissions on account of which the sentence has been imposed also constitute a criminal offence in the Receiving Party or will constitute a criminal offence if committed on its territory;
- c) Information about the procedure for enforcement of the sentence;

5. The offender shall be informed, in writing of any action taken by the Transferring Party or the Receiving Party, with regard to his request for transfer as well as of any decision taken by either Party in this regard.

Article 6

Requests and Replies

1. The requests for transfer and reply shall be made in writing by the designated authorities through diplomatic channels.

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2. The offender shall be handed over by the authorities of the Transferring Party to those of the Receiving Party at the time and place agreed to by the Parties. The Receiving Party shall be responsible for the custody of the offender and his transport from the Transferring Party.
3. Either Party shall have discretion to refuse the transfer of the offender.
4. Where for any reason either Party does not approve the transfer of an offender, it shall notify the other Party of its decision without delay.

Article 7
Certification of Documents

Subject to their respective laws unless the Parties decide otherwise, a request for transfer, and the documents in support thereof as well as the documents and other material supplied in response to such a request, shall require certification or authentication by the Authority.

Article 8
Consent for Transfer

1. The Transferring Party shall ensure that the person required to give consent to the transfer in accordance with the provisions of this Agreement does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving consent shall be governed by the laws of the Transferring Party.

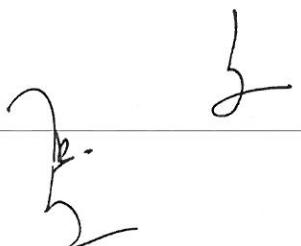
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2. Before the transfer takes place, the Transferring Party shall, if the Receiving Party so requests, afford the latter the opportunity to verify, through an official appointed in accordance with the laws of the Receiving Party that the consent of the offender was given voluntarily and with full knowledge of the legal consequences inherent therein.

Article 9

Procedures for Enforcement of Sentence

1. The Authority of the Receiving party shall enforce or continue the enforcement of the sentence immediately through an order in accordance with the provisions of laws of its country and this Agreement. It shall be bound by the duration of the remaining sentence or measure of deprivation of liberty and shall not convert the sentence or deprivation of liberty into a pecuniary sanction.
2. The Receiving Party, if requested, shall inform the Transferring Party of the procedures to be followed.
3. In the case of continued enforcement, the Receiving Party shall be bound by the legal nature and duration of the sentence as determined by the Transferring Party.
4. If the sentence, by its nature or duration, is incompatible with the laws of the Receiving Party, or laws so require, that Party may, through a court order, adopt such sentence to make it compatible with those laws. It shall not aggravate by its nature or duration the sentence imposed in the Transferring Party nor exceed the maximum prescribed by the law of the Receiving Party.

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Article 10
Remission and Commutation

Each Party may grant remission and commutation of the sentence in accordance with its laws.

Article 11
Termination of Sentence

The Receiving Party shall terminate enforcement of sentence on intimation from the Transferring Party of any decision or measure as a result of which it ceases to be enforceable.

Article 12
Information on Enforcement

The Receiving Party shall provide information to the Transferring Party concerning the enforcement of the sentence:-

- a) when it considers enforcement of the sentence to have been completed;
- b) if the offender escapes before enforcement of the sentence has been completed; or (c) if the Transferring Party requests for a special report.

Article 13
Suspended Sentence and Parole

1. An offender with a suspended sentence or on parole may serve such sentence under the surveillance of the authorities of the Receiving Party.

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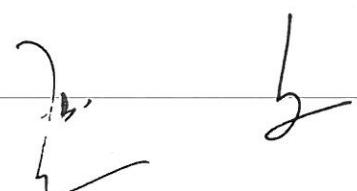
2. The Receiving Party shall take the surveillance measures, keep the Transferring Party informed about their implementation and shall notify any failure on the part of the offender to fulfill the obligations.

Article 14
Transit Facilities

1. If either Party transfers an offender from any third State, the other Party shall cooperate in facilitating the transit through its territory of such an offender. The Party intending to make such a transfer shall give advance notice to the other party of such transit.
2. Either Party may refuse to grant transit if :-
 - a) The offender is its national ; or
 - b) The act for which the sentence was imposed, does not constitute a criminal offence under its laws.

Article 15
Costs

All costs incurred in the application of this Agreement shall be borne by the receiving Party, except costs incurred exclusively in the territory of the Transferring Party. The Receiving Party may, however, seek to recover all or part of the cost of transfer from the offender or from some other source.

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Article 16
Language

The requests for transfer and all other documents shall be in the English language.

Article 17
Temporal application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

Article 18
Disputes

Any dispute regarding to the interpretation and application of this Agreement shall be settled through negotiations between the Parties.

Article 19
Final Provisions

1. Each Party shall notify the other Party upon completion of its respective internal constitutional and legal procedures required to allow this Agreement to enter into force. This Agreement shall enter into force on the date of the receipt of latter notification.
2. Either Party may terminate this Agreement by means of written notification to the other Party. Such termination shall become effective on the expiration of a six months period after the date of receipt of the notification.

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3. Notwithstanding its termination, the provision of this agreement shall continue to apply to the enforcement of sentences of offenders who have been transferred under this Agreement before the date on which its termination takes effect.

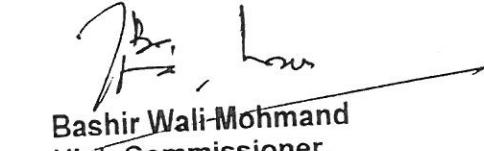
In Witness Whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Colombo on this first day of December 2004, in the English language.



H.M.G.S. Palihakkara
Secretary
Ministry of Foreign Affairs

For the Government of the
Democratic Socialist Republic
of Sri Lanka



Bashir Wali-Mohmand
High Commissioner,

For the Government of the
Islamic Republic of
Pakistan

