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TREATY
ON THE TRANSFER OF SENTENCED PERSONS
BETWEEN
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA
AND
THE SOCIALIST REPUBLIC OF VIET NAM

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The Democratic Socialist Republic of Sri Lanka and the Socialist Republic of Viet Nam (hereinafter referred to individually as the Party and collectively as the Parties),

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries,

Considering that this objective should be fulfilled by giving foreign nationals, who have been convicted and sentenced as a result of their commission of an offence, the opportunity to serve their sentences in their own country,

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Treaty:

- (a) "judgment" means a decision or order of a court or tribunal imposing a sentence;
- (b) "Receiving Party" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof;
- (c) "Transferring Party" means the State from which the sentenced person may be, or has been transferred;

(d) "sentence" means imprisonment imposed by a court or tribunal 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 court established under the law for the time being in force in the Parties.

ARTICLE 2

General Principles

1. The Parties shall afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Treaty and the national law of each Party.

2. A person sentenced in the territory of one Party may be transferred under this Treaty, to the territory of the other Party in order to serve the whole or part of the sentence imposed on such person. For this purpose, such person should express the willingness to such transfer.

3. Transfer may be requested by any sentenced person who is a citizen of a Party or by any other person who is also a citizen of a Party and who is entitled to act on behalf of the sentenced person by making an application to either Party and in accordance with the laws of that Party.

4. The transfer of a sentenced person may also be requested by either the Transferring Party or the Receiving Party.

ARTICLE 3

Central Authorities

1. For the purpose of implementing this Treaty, each Party shall designate a Central Authority.

2. Central Authorities in charge of the implementation of this Treaty for the Parties are:

- For the Socialist Republic of Viet Nam: the Ministry of Public Security;
- For the Democratic Socialist Republic of Sri Lanka: the Ministry in charge of the subject of Justice.

3. In case either Party changes its Central Authority, it shall notify the other Party as soon as practicable of the same through diplomatic channels.

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4. Unless otherwise required by this Treaty, the Central Authorities may communicate directly with each other for the purposes of this Treaty.

ARTICLE 4

Conditions for Transfer

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

- (a) the person is a citizen of the Receiving Party;
- (b) the judgment is final and no other legal proceedings are pending against the sentenced person in the Transferring Party;
- (c) the sentenced person has not been convicted for an offence in the military field;
- (d) at the time of receipt of the request for transfer, the sentenced person has still at least six (06) months of the sentence to serve or is undergoing a sentence of life imprisonment;
- (e) the acts or omissions for which the sentence has been imposed would constitute a criminal offence under the law of the Receiving Party; this condition shall not be interpreted to require that the offence described in the laws of both Parties be identical with respect to matters that do not affect the essential nature of the offence;
- (f) the transfer of the sentenced person shall not be prejudicial to the sovereignty, national security or any other essential interest of the Parties;
- (g) consent to the transfer is given by the sentenced person or, where in view of his/her age or physical or mental condition either Party considers it necessary, that the consent be given by any other person entitled to act on his/her behalf in accordance with the national laws of the Party; and
- (h) the Transferring Party and the Receiving Party agree to the transfer.

2. The request for the transfer of a sentenced person may be refused if there exists in the opinion of the Transferring Party, grounds to believe that the sentenced person would be subjected to torture, inhuman or degrading treatment or punishment in the Receiving Party.

ARTICLE 5

Procedures for Transfer

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1. The Parties shall endeavour to inform sentenced persons of the substance of this Treaty.

2. If a sentenced person expresses an interest to the Transferring Party to be transferred, and the Transferring Party is prepared, in principle, to approve the request for transfer, the Transferring Party shall as soon as practicable inform the Receiving Party in writing, and provide the following information:

(a) the name, citizenship, date and place of birth of the sentenced person and his/her last location or last permanent address (if available), in the Receiving Party along with a copy of his/her passport or any other personal identification documents, and fingerprints of the sentenced person, if possible;

(b) a statement of the facts upon which the conviction and sentence were based;

(c) the nature, duration and date of commencement of the sentence, the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remission to which he or she is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;

(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) if available, 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/her application or for deciding the nature of his/her confinement;

(f) any other information which the Receiving Party 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/her under its laws; and

(g) the request of the sentenced person to be transferred or of a person entitled to act on his/her behalf in accordance with the laws of the Transferring Party.

3. If a sentenced person expresses an interest to the Receiving Party to be transferred, the Receiving Party shall so inform the Transferring Party. If the Transferring Party is prepared, in principle, to approve the request for transfer,

the Transferring Party shall as soon as practicable inform the Receiving Party in writing, and provide the information referred to in paragraph 2 of this Article.

4. If the Receiving Party, having considered the information which the Transferring Party has provided, is willing to proceed with the transfer, it shall as soon as practicable inform the Transferring Party in writing, and provide the following information:

(a) a statement indicating that the sentenced person is a citizen of the Receiving Party for the purposes of this Treaty; and

(b) a copy of the relevant law of the Receiving Party which provides that the acts or omissions on account of which the sentence has been imposed in the Transferring Party constitute a criminal offence according to the law of the Receiving Party, and would constitute an offence if committed on its territory; and

(c) a statement on the effect, in relation to the sentenced person, of any law or regulation relating to that person's detention in the Receiving Party after that person's transfer, including a statement, if applicable, of the effect on paragraph 2 of Article 8 of this Treaty upon that person's transfer; and

(d) the willingness of the Receiving Party 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 Party may consider necessary.

5. If the Transferring Party is willing to proceed with the transfer, it shall as soon as practicable provide the Receiving Party with the following:

(a) a declaration containing the sentenced person's consent to the transfer;

(b) written confirmation of the Transferring Party's consent to the transfer.

6. Where the Parties have agreed to the transfer, they shall make arrangements for the transfer of the sentenced person. Delivery of the sentenced person by the competent authorities of the Transferring Party to those of the Receiving Party shall occur on a date and at a place within the territory of the Transferring Party agreed upon by both Parties.

7. If either Party decides not to agree to the transfer, it shall as soon as practicable inform the other Party of its decision in writing.

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8. The Transferring Party shall inform the sentenced person in writing of any action taken by the Transferring Party or the Receiving Party under the provisions of this Article.

ARTICLE 6

Verification of Consent

1. The Transferring Party shall ensure that the sentenced person required to give consent to the transfer in accordance with paragraph 1(g) of Article 4 of this Treaty, does so voluntarily and with full knowledge of the legal consequences thereof. The procedures for giving such consent shall be governed by the law of the Transferring Party.

2. The Transferring Party shall afford an opportunity to the Receiving Party to verify whether the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of Transfer on the Receiving Party

1. The competent authorities of the Receiving Party shall continue the enforcement of the sentence through a court or administrative order, as may be required in accordance with its national laws and under the conditions set out in Article 8 of this Treaty.

2. Subject to the provisions of Article 10 of this Treaty, the enforcement of the sentence shall be governed by the laws of the Receiving Party and that Party alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued Enforcement of Sentence

1. The Receiving Party shall be bound by the legal nature and duration of the sentence as determined by the Transferring Party.

2. If the sentence is by its nature or duration incompatible with the laws of the Receiving Party, that Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the Receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction,

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judgment, or sentence imposed in the Transferring Party. The adapted sentence shall be no more severe than that imposed by the Transferring Party in terms of nature or duration, nor exceed the maximum penalty prescribed by the law of the Receiving Party. When adapting the sentence, the competent authority of the Receiving Party may, however, not convert a sentence of imprisonment to a pecuniary sanction.

ARTICLE 9

Effect of Completion of Sentence on the Transferring Party

When the Receiving Party notifies the Transferring Party under paragraph 1 (a) of Article 12 of this Treaty that the sentence has been completed, such notification shall have the effect of discharging the sentence of the sentenced person in the Transferring Party.

ARTICLE 10

Review of Judgment and Pardon, Amnesty or Commutation

1. The Transferring Party alone shall decide on any application for review of the judgment.

2. The Transferring Party or the Receiving Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution and other laws.

ARTICLE 11

Termination of Enforcement of Sentence

1. The Transferring Party shall as soon as practicable notify the Receiving Party of any decision taken in its territory which entails terminating the enforcement of the sentence or part thereof.

2. The Receiving Party shall terminate enforcement of the sentence or part thereof as soon as it is informed by the Transferring Party 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 Party shall notify the Transferring Party:

(a) when the enforcement of the sentence has been completed; or

(b) if the sentenced person escapes from custody or dies before enforcement of the sentence has been completed. In the case of an escape of the prisoner, the Receiving Party shall take measures to secure his/her arrest and to render him/her liable for escaping under the relevant laws of the Receiving Party.

2. The Receiving Party shall furnish a special report concerning the enforcement of the sentence, if so required by the Transferring Party.

ARTICLE 13

Transit

1. If either Party enters into any arrangement for the transfer of sentenced persons with any third State, the other Party shall, in accordance with its laws, cooperate in facilitating as soon as practicable the transit through its territory of the sentenced person(s) being transferred pursuant to such arrangement. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

2. Each Party may refuse to grant transit:

(a) if the sentenced person is one of its own citizens.

(b) if the request may infringe upon the sovereignty, national security, public order or any other essential interest of the Party.

ARTICLE 14

Costs

Any cost incurred in relation to the transfer of the sentenced person or the continued enforcement of the sentence after transfer shall be borne by the Receiving Party, except costs incurred by the Transferring Party exclusively within the territory of the Transferring Party. The Receiving Party may, however, seek to recover all or a part of the costs of transfer from the sentenced person or some other source.

ARTICLE 15

Language

Requests and supporting documents shall be furnished in English or shall be accompanied by a certified translation into English.

ARTICLE 16**Obligations under other International Agreements**

This Treaty shall not affect the rights or obligations of the Parties under other international Agreements or other Agreements to which they are a party.

ARTICLE 17**Settlement of Disputes**

1. The Central Authorities shall endeavour to mutually resolve any dispute arising out of the interpretation, application or implementation of this Treaty.

2. If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.

ARTICLE 18**Handing Over of Sentenced Persons**

1. The handing over of the sentenced person by the Transferring Party to the Receiving Party shall occur at a place and time to be agreed upon between the Parties. The Receiving Party shall be responsible for the transfer of the prisoner from the Transferring Party and shall also be responsible for custody of the sentenced person outside the territory of the Transferring Party.

2. The handing over of the sentenced person shall be made in writing in duplicate in the English language.

ARTICLE 19**Amendments**

Any amendment or modification to this Treaty agreed to by the Parties shall come into force in the same manner as the Treaty itself.

ARTICLE 20**Final Provisions**

1. This Treaty shall be subject to ratification under the laws of each Party. Each Party shall notify the other as soon as practicable, in writing, through diplomatic channels, upon the completion of its legal procedures required for the entry into force of this Treaty. The Treaty shall come into force on the first day of the second month of the date of the last notification.

2. The Treaty shall remain in force for an indefinite period. It may, however, be terminated by either of the Parties giving a written notice of termination to other Party. The termination shall come into effect six (06) months after the date on which such notice is received by the other Party. 1/2

3. Notwithstanding any termination, this Treaty shall continue to apply to the requests for the transfer of sentenced persons made before the date on which such termination comes into effect.

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

Done in duplicate at Colombo on the 7th day of the month of April in 2014, in the Sinhala, Vietnamese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.



FOR THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA



FOR THE SOCIALIST
REPUBLIC OF VIET NAM