

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF THE REPUBLIC OF INDIA
CONCERNING TRANSFER OF SENTENCED PERSONS**

(Canberra, 18 November 2014)

Not yet in force
[2014] ATNIF 30

The Government of Australia and the Government of the Republic of India (“the Contracting States”);

Taking into consideration the laws and regulations in force regarding law enforcement of the Contracting States and the desirability of enhancing their co-operative efforts in law enforcement and the administration of justice;

Desiring to co-operate in the enforcement of penal sentences; and

Desiring to facilitate the rehabilitation and reintegration of sentenced persons into society;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

- (a) “judgement” means a decision or order of a court or tribunal imposing a sentence;
- (b) “receiving State” means the State to whose jurisdiction the sentenced person may be, or has been, transferred in order to serve his or her sentence or remainder thereof;
- (c) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court, tribunal or otherwise 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 judgement passed by a criminal court including the courts established under the law for the time being in force in the jurisdiction of the Contracting States, and also includes a person who has been conditionally released or on whom a suspended sentence has been imposed; and
- (e) “transferring State” means the State from whose jurisdiction the sentenced person may be, or has been, transferred.

ARTICLE 2

GENERAL PRINCIPLES

- (1) The Contracting States undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Agreement.
- (2) A sentenced person may be transferred from the territory of the transferring State to the territory of the receiving State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him or her.

ARTICLE 3

COMPETENT AUTHORITIES

- (1) The Competent Authorities in charge of the implementation of this Agreement for the Contracting States are:

For Australia: Australian Government Attorney-General's Department.

For the Republic of India: Ministry of Home Affairs.
- (2) The Competent Authorities of the Contracting States shall process requests for transfer in accordance with the provisions of this Agreement.
- (3) The Competent Authorities may communicate directly with each other for the purposes of this Agreement.
- (4) Either Contracting State shall notify the other of any change of its Competent Authority in writing through diplomatic channels.

ARTICLE 4

CONDITIONS FOR TRANSFER

A sentenced person may be transferred under this Agreement only on the following conditions:

- (a) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving State, or would constitute such a criminal offence if committed within the jurisdiction of the receiving State on the day of receipt of the request for transfer. If both Contracting States agree, this requirement may be waived in a specific case;
- (b) where India is the receiving State the sentenced person is a citizen of India;
- (c) where Australia is the receiving State, the sentenced person is an Australian citizen. An Australian citizen, for the purposes of this Agreement, is deemed to include a person who is permitted to travel to, enter and remain indefinitely in Australia in accordance with Australian law and has community ties with a State or Territory of Australia provided he or she is not an Indian citizen;
- (d) on the day of receipt of the request for transfer, the sentenced person has at least six months of the sentence remaining to be served. This requirement may be waived in a particular case if both Contracting States agree;
- (e) the judgement is final;
- (f) no other legal proceedings are pending against the sentenced person in the transferring State in which his or her presence is required;

- (g) the transferring and receiving States agree to the transfer;
- (h) the sentenced person agrees to the transfer. Where the sentenced person is incapable of giving consent under the law of either Contracting State, consent may be given by a person entitled to act on his or her behalf in accordance with the law of that Contracting State;
- (i) 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;
- (j) the sentenced person has not been convicted of an offence under military law, except in circumstances where the Contracting States agree otherwise; and
- (k) 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.

ARTICLE 5

RELATIONSHIP WITH MULTILATERAL CONVENTIONS

This Agreement shall not affect any obligations of the Contracting States arising under multilateral conventions to which one or both Contracting States are party.

ARTICLE 6

PROCEDURE FOR TRANSFER

- (1) The Contracting States shall take reasonable steps to inform sentenced persons of the substance of this Agreement after their conviction.
- (2) If the sentenced person wishes to be transferred, he or she, or someone on their behalf, may express such a wish to the transferring State or the receiving State, either of whom shall inform the other Contracting State in writing.
- (3) Upon receiving an application from a sentenced person, either the transferring or the receiving State may make a request for transfer in writing through diplomatic channels.
- (4) Requests for transfer shall be in writing and shall include the following information:
 - (a) the name, date and place of birth of the sentenced person;
 - (b) a statement of the citizenship, nationality or residence status of the sentenced person; and
 - (c) the location of the sentenced person and current address.
- (5) Where a request for transfer has been made, the transferring State shall provide the receiving State with the following information unless either the receiving or transferring State has already decided that it will not agree to the transfer:
 - (a) a statement of the facts upon which the conviction and sentence were based;

- (b) a statement of the relevant law creating the offence;
 - (c) the commencement and termination dates of the sentence, if applicable and the nature of the sentence;
 - (d) the length of time already served by the sentenced person;
 - (e) any remissions to which he or she is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
 - (f) the first possible date on which the sentenced person became or will become eligible for release or is to be considered for release, and any conditions or supervision the sentenced person is subject to or will be subject to on release, if applicable;
 - (g) a copy of the certificate or record of conviction and sentence and, if available, copies of any judgements and sentencing remarks;
 - (h) any correctional facility, medical or social reports on the sentenced person and, if applicable, information about the sentenced person's medical treatment in the transferring State and any recommendation for further treatment in the receiving State; and
 - (i) as far as possible, 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 or her under its law.
- (6) The receiving State shall provide the transferring State with the following information before transfer, if requested by the transferring State, unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) a document or statement indicating that the sentenced person complies with the conditions in Article 4(b) or 4(c);
 - (b) a copy of the relevant law and a statement that the acts or omissions on account of which the sentence has been imposed constitute the essential elements of a criminal offence according to the law of the receiving State, or would constitute such essential elements of a criminal offence if committed within the jurisdiction of the receiving State, on the day of receipt of the request for transfer, unless the condition in Article 4(a) has been waived;
 - (c) a statement describing how the sentenced person's sentence would be enforced by the receiving State in accordance with the continued enforcement method (Article 10), including any adaptation made to the sentence and potential entitlements to remissions or early release;
 - (d) a statement that the sentenced person will not be tried or sentenced in the receiving State for the acts or omissions on account of which the sentence was imposed in the transferring State and shall not be detained for those acts or omissions except in accordance with this Agreement; and

- (e) as far as possible, any other additional information relevant to the potential transfer requested by the transferring State.
- (7) Delivery of the sentenced person by the authorities of the transferring State to those of the receiving State shall occur on a date and at a place within the territory of the transferring State as agreed upon by both Contracting States. 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 7

CONSENT OF THE SENTENCED PERSON

- (1) The transferring State shall take reasonable steps to ensure that the sentenced person consents to the transfer voluntarily and with full knowledge of the legal consequences. The procedure for giving such consent shall be governed by the law of the transferring State.
- (2) Prior to transfer, the transferring State shall afford an opportunity to the receiving State, if the receiving State so desires, to verify that the sentenced person's consent to the transfer in accordance with Article 4(h) is given voluntarily and with full knowledge of the legal consequences, including recovery of costs in accordance with Article 14(1).

ARTICLE 8

CONSENT OF CONTRACTING STATES

The Contracting States shall consent in writing to the transfer of the sentenced person.

ARTICLE 9

JURISDICTION

- (1) The transferring State shall retain exclusive jurisdiction for the review, revision, modification or cancellation of convictions imposed by its courts.
- (2) Following transfer, either Contracting State may grant pardon, amnesty, commutation of, or reductions or remissions to, convictions and sentences in accordance with its Constitution or other laws and shall notify the other Contracting State in writing of this decision.

ARTICLE 10

CONTINUED ENFORCEMENT OF SENTENCE

- (1) The receiving State shall enforce the sentence as if the sentence had the same duration or termination date as imposed by the transferring State and as if the sentence had been imposed in the receiving State.

- (2) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving State, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.
- (3) If the sentence is by its nature or duration incompatible with the law of the receiving State, the receiving State may, in proposing terms to the transferring State, 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 State shall be bound by the findings of fact, insofar as they appear from the conviction, judgement, or sentence imposed by the transferring State. The adapted sentence shall be no more severe than that imposed by the transferring State in terms of nature or duration.
- (4) The receiving State shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring State in accordance with Article 9.
- (5) The Contracting States shall take reasonable steps to inform the sentenced person in writing of any action or decisions taken by the transferring State or the receiving State under this Article or Article 9.

ARTICLE 11

INFORMATION ON ENFORCEMENT OF SENTENCE

The receiving State shall provide information to the transferring State concerning enforcement of the sentence:

- (a) if the sentenced person is granted conditional release;
- (b) when it considers enforcement of the sentence to have been completed;
- (c) if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- (d) if the transferring State requests a report.

ARTICLE 12

TRANSIT OF SENTENCED PERSON

- (1) If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall, subject to its domestic law, co-operate in facilitating the transit through its territory except that it may refuse to grant transit if the:
 - (a) sentenced person is one of its own nationals; or
 - (b) 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 in writing to the Competent Authority of the other Contracting State.
- (3) The Contracting State intending to make such a transfer may ask the other Contracting State to give an assurance that the sentenced person will not be prosecuted or detained, other than for the purpose of facilitating transit, or otherwise subjected to any restriction on his or her liberty for any offence committed or sentence imposed prior to his or her departure from the territory of the third State in which the sentence was imposed.

ARTICLE 13

LANGUAGE

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

ARTICLE 14

EXPENSES

- (1) The receiving State shall bear the expenses of:
 - (a) the transfer of the sentenced person, except the expenses incurred exclusively in the territory of the transferring State; and
 - (b) the continued enforcement of the sentence after transfer.

The receiving State may, however, seek to recover all or part of the cost of transfer from the sentenced person.

- (2) The costs of translation of requests, documents or information referred to under Article 13 shall be borne by the Contracting State sending the request, document or information.

ARTICLE 17

AMENDMENTS

Any amendments or modifications to this Agreement agreed to by the Contracting States shall come into force in the same manner as the Agreement itself.

ARTICLE 18

ENTRY INTO FORCE AND TERMINATION

- (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 procedure required for the entry into force of this Agreement. The Agreement shall come into force thirty days after the date of last notification.
- (2) This Agreement shall be applicable to the enforcement of sentences imposed before or after the entry into force of this Agreement.
- (3) The Agreement shall remain in force for an indefinite period. It may, however, be terminated by either of the Contracting States by giving written notice of termination through diplomatic channels. The termination shall take effect after six months of the date of such notice.
- (4) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons transferred under this Agreement before the date on which termination takes effect.

In witness whereof the undersigned, being duly authorised by their respective Governments have signed this Agreement.

Done in duplicate at Canberra, this 18th day of November, two thousand and fourteen, in English and Hindi, each text being equally authentic. In case of differences in interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF
AUSTRALIA**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF INDIA**

**Michael Keenan
Minister for Justice**

**Biren Nanda
High Commissioner**
