

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND REPUBLIC OF KAZAKHSTAN ON TRANSFER OF SENTENCED PERSONS

The Republic of India and the Republic of Kazakhstan (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 foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own country ;

Have agreed as follows:

Article 1-Definitions

- (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 or remainder thereof;
- (c) "sentence" means any final court decision imposing a penalty of imprisonment for a determinate period of time or for life imprisonment for committing an offence;
- (d) "sentenced person" means a person undergoing a sentence of imprisonment under an order passed by a court in the Contracting States;
- (e) "Transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred.

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 provisions of this Agreement so as to serve the sentence imposed. To that end, he/she may express to the Transferring State or the Receiving State his/her 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 in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Laws of that Contracting State.

Article 3-Central Authorities

1. Central Authorities in charge of the implementation of this Agreement are;

- For the Republic of India: Ministry of Home Affairs, Government of India.
- For the Republic of Kazakhstan : General Prosecutor's Office of Republic of Kazakhstan

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

Article 4-Conditions for transfer

1. A sentenced person may be transferred under this Agreement 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 criminal or other proceedings are pending against the sentenced person in the Transferring State in which his presence is required.
- (e) The Sentenced person has not been convicted for a military offence
- (f) 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;
- (g) that 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) transfer and 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 legal representative or other person entitled to act on his behalf in accordance with the law of the Contracting State; and
- (j) the Transferring and Receiving States agree to the transfer.

2. In exceptional cases, the Transferring and Receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

Article 5 -Obligation to furnish information

1. If the sentenced person has expressed an interest to the Transferring State 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 and surname, 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) 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 application or for deciding the nature of his confinement;
- (f) any other information which the Receiving State may specify as

required in all cases 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;

- (g) the statement related to 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;
- (h) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission of punishment, 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 certified copy of 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 of paragraph 1 (c) of Article 10 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.

Article 6 - Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed by central authority of the Transferring State through diplomatic channels to the central authority of the Receiving State. Replies shall be communicated through the same channels.
2. The Receiving State shall promptly inform the Transferring State of its decision whether or not to agree to the requested transfer.

Article 7 - 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 4 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent, if provided, 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 8 -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 administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.
2. Subject to the provisions of Article 12 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 9- Handing over of sentenced persons

The handing over of the transferred person by the Transferring State to the Receiving State shall occur at a place to be agreed upon between the Transferring and Receiving State. The Receiving State shall be responsible for the transport of the prisoner from the Transferring State and

shall also be responsible for custody of the sentenced person outside the territory of the Transferring State.

Article 10-Continued enforcement of sentence

Upon receiving the sentenced person, the Receiving State shall observe the following:

- (a) Manner and procedures of execution of the sentence shall be in accordance with its applicable national laws;
- (b) Execution of the sentence shall be as provided for in the judgment, without amendment to its term or nature. In any event, the sentence may not be aggravated;
- (c) If national legislations of the Receiving State provide for a maximum term for the punishment which is less than the term rendered by the Transferring State, the Receiving State shall adhere to the maximum term provided in its national legislations for the same offence. In case of such adaptation, the Receiving State shall promptly transmit a copy of the legal document on the adaptation to the Transferring State;
- (d) The period of time served within the territory of the Transferring State by the sentenced person shall be deducted;
- (e) The Receiving State undertakes not to substitute an imprisonment for a financial penalty (Compounding the offence).

Article 11- Effect of completion of sentence for the Transferring State

When the Receiving State notifies the Transferring State under paragraph 1(a) of Article 15 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the Transferring State.

Article 12- Review of judgment and Pardon, amnesty or commutation

1. The Transferring State alone shall decide on the review of the judgment or any application.
2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

Article 13- 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 14- Non bis in idem

After transfer, the sentenced person shall not be prosecuted or proceeded against in Receiving State for the same criminal acts as the ones on account of which the sentence was imposed in the Transferring State.

Article 15 -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 persons escape from custody before enforcement of the sentence has been completed. In such cases the Receiving State shall take measure to secure his arrest for the purposes of serving the remainder of his sentence and to render him/her liable for committing an offence under the relevant law of the Receiving State.
 - (c) In case of death of the sentenced person before the completion of the sentence
2. The Receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the Transferring State

Article 16-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.
- (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 17- Costs

Any costs incurred in the application of this Agreement shall be borne by the Receiving State, except costs incurred exclusively in the territory of the Transferring State.

In case the Receiving State is India it may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

Article 18-Languages

For purposes of this Agreement, the Parties shall use their respective official languages and provide a translation into the official language of the other Party or into English.

Article 19- Scope of Application

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

Article 20- Settlement of Disputes

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

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

Article 21-Amendments

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

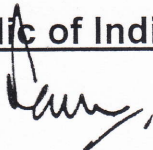
Article 22- Final Provisions

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 procedures required for the entry into force of this Agreement. The Agreement shall come into force on the first day of the second month of the date of the last notification.
2. The Agreement remain in force for an indefinite period. It may, however, be terminated by either of the Contracting State by giving a written notice of termination to the other Contracting State through diplomatic channels. The termination shall take effect after six months of the date of such notice.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoners 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 Contracting States, have signed this Agreement.

Done in Astana on the 8th day of July 2015 in duplicate each in Hindi, Kazakh and English languages, the three texts being equally authentic. In case of divergence in the interpretation of this Agreement the English text shall prevail.

For the Republic of India



For the Republic of Kazakhstan

