

TREATY
BETWEEN
THE SOCIALIST REPUBLIC OF VIET NAM
AND
MONGOLIA
ON
THE TRANSFER OF SENTENCED PERSONS

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The Socialist Republic of Viet Nam and Mongolia (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 nationals, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their own society;

HAVE AGREED as follows:

ARTICLE 1

Definitions

For the purposes of this Treaty:

1. "Transferring Party" means the Party in which the sentence was imposed and from which the sentenced person who may be, or has been transferred.

2. "Receiving Party" means the Party to which the sentenced person may be, or has been, transferred in order to continue serving his or her sentence.

3. "Sentence" means any punishment or measure involving deprivation of liberty ordered by a court of the Transferring Party for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction.

4. "Sentenced person" means a person who is serving a sentence of imprisonment in a prison, temporary detention or any other place in the territory of the Transferring Party under a sentence imposed by a court in the jurisdiction of the Transferring Party.

5. "National" means a person who has the nationality of Viet Nam or Mongolia.

6. "Central Authorities" mean the authorities duly authorized by the Parties for implementation of this Treaty.

7. "Competent authorities" mean the authorities duly authorized by each Party for performance of this act requested.

ARTICLE 2

General Principles

1. The Parties undertake to afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Treaty.

2. A sentenced person may be transferred from the territory of the Transferring Party to the territory of the Receiving Party in accordance with the provisions of this Treaty in order to continue serving the sentence imposed on him or her by a court of the Transferring Party.

3. Transfer may be requested by either the Transferring Party or the Receiving Party or the sentenced person.

4. Under this Treaty, the person transferred shall not be prosecuted, judged or sentenced in the Receiving Party for the same acts as the ones on account of which the sentence was imposed in the Transferring Party.

ARTICLE 3

Central Authorities

1. For the purpose of this Treaty, the Parties shall communicate directly with each other through their Central Authorities except provided otherwise in this Treaty.

(a) The Central Authority for the Socialist Republic of Viet Nam shall be the Ministry of Public Security; and

(b) The Central Authority for Mongolia shall be the Ministry of Justice and Home Affairs.

2. The Central Authorities of the Parties shall process requests for transfer in accordance with the provisions of this Treaty and the law of each Party.

3. In case either Party changes its Central Authority, it shall promptly notify in writing the other Party through the diplomatic channel.

ARTICLE 4

Conditions for Transfer

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

- (a) The sentenced person is a national of the Receiving Party;
- (b) The judgment over the sentenced persons must be final and no procedural proceedings are pending in the territory of the Transferring Party;
- (c) That, at the time of receipt of the request for transfer, the sentenced person has still at least one (01) year, exemption for special cases at least six (06) months of the sentence to serve;
- (d) The transfer is consented to by the sentenced person or, if he or she is incapacitated, by his or her legal representative;
- (e) The acts or omissions of the sentenced person on account of which the sentence has been imposed would constitute a criminal offence according to the law of the Receiving Party; this condition shall not be interpreted to require that the definition of the offence according to the law of the Parties be identical;
- (f) The Transferring and Receiving Parties both agree to transfer;
- (g) The sentenced person has completed the civil liabilities, the service of any additional penalty that may be a fine, confiscation of property and other legal liabilities specified in the judgment.

2. The Parties may agree to apply the provisions of this Treaty to sentences and necessary measures imposed upon minors, under their respective legislations. In any case, it is necessary to obtain the consent of the person legally authorized to act on the minor's behalf.

ARTICLE 5

Refusal of Transfer

The request for transfer for the sentenced person shall be refused under this Treaty, *inter alia*, in any of the following circumstances:

- 1. There exist grounds to believe that the sentenced person would be

subjected to torture, retaliation, treated or punished brutally and inhumanly in the Receiving Party after being transferred; or

2. The transfer of the sentenced person would impair the sovereignty, national security, public order or other essential interests of the Receiving Party.

ARTICLE 6

Procedures for Transfer

1. The Parties shall endeavor to inform the sentenced person or his or her legal representative if he or she is incapacitated, of their right to transfer under this Treaty.

2. If the sentenced person has expressed an interest to either Party to be transferred, that Party shall inform the other Party in writing of the interest as soon as practicable.

3. Where the request for transfer has been made, the Transferring Party shall, to the extent practicable, provide the Receiving Party in writing with the following information and documents:

(a) The full name, gender, nationality, photo, finger prints, date and exact place of birth of the sentenced person;

(b) A document indicating the nationality status of the sentenced person, if available;

(c) The last place of residence of the sentenced person in the Receiving Party, if available;

(d) The nature, duration and date of commencement of the sentence, the termination date of the sentence, and the length of time already served and any remission to which he or she is entitled, accompanying decisions, documents proving exemption for sentence, if any;

(e) A copy of the judgment and sentence against the sentenced person and the law on which it is based;

(f) A declaration containing the consent to the transfer as referred in Article 4.1 (d) of this Treaty;

(g) Medical or social reports on the sentenced person, if available, the treatment information of such person in the Transferring Party and treatment recommendation in the Receiving Party;

(h) Any other additional information requested by the Receiving Party.

4. If the sentenced person has expressed an interest to the Receiving Party in being transferred under this Treaty, the Transferring Party shall, on request, communicate to the mentioned Party the information referred to in paragraph 3 of this Article.

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

(a) A copy of the document or statement indicating that the sentenced person complies with the conditions in Article 4.1 (a) of this Treaty;

(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, or would constitute a criminal offence if committed in the Receiving Party's territory;

(c) A statement describing how the sentenced person's sentence would be enforced by the Receiving Party; and

(d) Any other additional information.

6. Either Party shall, to the extent practicable, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether to agree to the transfer.

7. The Parties shall inform the sentenced person in writing of any action taken by the Transferring Party or the Receiving Party under the preceding paragraphs of this Article, if possible.

ARTICLE 7

Requests and Replies

1. Requests for transfer and replies shall be made in writing or by any means enabling proof thereof, and shall be addressed to the Central Authorities designated in this Treaty.

2. Replies shall be communicated through the same channels.

3. The Receiving Party shall promptly inform the Transferring Party of its

decision whether or not to agree to the request for transfer.

ARTICLE 8

Consent and its Verification

1. The Transferring Party shall ensure that the sentenced person required to give consent to the transfer in accordance with Article 4.1(d) of this Treaty does so voluntarily.

2. The Transferring Party shall permit an official designated by the Receiving Party to verify, prior to the transfer that the sentenced person's consent to the transfer with full knowledge of the legal consequences thereof has been given in accordance with paragraph 1 of this Article.

ARTICLE 9

Continued Enforcement of Sentence

1. The continued enforcement of the sentence after transfer shall be governed by the law and procedures of the Receiving Party, including those governing conditions of imprisonment and those providing for the reduction of the term of imprisonment and termination of the enforcement of the sentence.

2. 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.

3. If the sentence is by its legal nature or duration incompatible with the law of the Receiving Party, that Party may adapt the sentence in accordance with the sentence prescribed by its own law. 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, judgment, or sentence imposed by the Transferring Party. The adapted sentence shall be no severer 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 non-deprivation of liberty sanction.

4. The Receiving Party may, if a sentenced person is a juvenile according to its law, treat the sentenced person as a juvenile regardless of his or her status under the law of the Transferring Party.

5. The Receiving Party shall reduce or terminate enforcement of the sentence as soon as it is informed of any decision by the Transferring Party in accordance with Article 10 of this Treaty.

6. The Parties shall inform the sentenced person in writing of any actions or decisions taken by the Transferring Party or the Receiving Party under paragraphs 1 to 5 of this Article.

ARTICLE 10

Retention of Jurisdiction

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

2. Either Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws and shall inform the other Party of this decision as soon as possible.

ARTICLE 11

Transit

1. If either Party enters into arrangements for the transfer of sentenced persons with any third Party, the other Party shall, in accordance with its law, cooperate in facilitating the transit through its territory of the sentenced person(s) 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 other essential interests of the Party.

2. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 12

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 demand

or seek to recover all or part of the costs of transfer from the sentenced person or from some other sources.

ARTICLE 13

Languages

1. The request for transfer and information under Articles 6 and 7 of this Treaty shall be furnished in the language of the Party to which it is addressed or in English.

2. Communication between the Central Authorities referred to in Article 3 of this Treaty shall take place in the mutually agreed language or in English.

ARTICLE 14

Information on Enforcement of the Sentence

The Receiving Party shall provide the Transferring Party with the information in relation to the enforcement of the sentence in the following cases:

1. The sentenced person is reduced the term of imprisonment or paroled with some conditions.

2. Where the Receiving Party has realized that the enforcement of the sentence has been completed.

3. The sentenced person has fled from the place of detention or died before completing the sentence.

4. The Transferring Party would require a report.

ARTICLE 15

Handing Over of Sentenced Persons

1. The handing over of the sentenced person by the Transferring Party to the Receiving Party shall occur on a date and at a place to be agreed upon between the Transferring and Receiving Parties. The Receiving Party shall be responsible for the transport of the sentenced person 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 (02) in English and all texts being equally authentic. Each Party shall keep one text.

ARTICLE 16**Settlement of Disputes**

Any dispute arising out of the interpretation or implementation of this Treaty shall be resolved through negotiation between the Central Authorities. If the Central Authorities are unable to reach an agreement, the dispute shall be resolved by the Parties through the diplomatic channel.

ARTICLE 17**Relationship with other Treaties**

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

ARTICLE 18**Consultation**

1. According to request of either Party, the Parties shall mutually consult on issues relating to interpretation and application of this Treaty.

2. The Central Authorities of the Parties may consult directly together on processing specific cases and maintain, improve procedures for implementation of this Treaty.

ARTICLE 19**Entry into Force, Amendment and Termination**

1. Each Party shall inform the other, in writing, of the completion of its necessary procedures required for the entry into force of this Treaty. The Treaty shall come into force on the thirtieth (30th) day from the date of receipt of the last notification.

2. This Treaty shall be applicable to the sentenced persons whose sentences are imposed before or after the entry into force of this Treaty.

3. This Treaty may be amended in writing by mutual consent. Any amendment to this Treaty shall come into force in the same manner as the Treaty itself.

4. This Treaty shall remain in force for an indefinite period. However, either Party may, by notice in writing through the diplomatic channel, terminate this Treaty at any time. The termination shall take effect on the one hundred and

eightieth (180th) day after the date on which it is notified to the other Party. Termination shall not affect the processing of any request for transfer received prior to such termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized by the Socialist Republic of Viet Nam and Mongolia, have signed this Treaty.

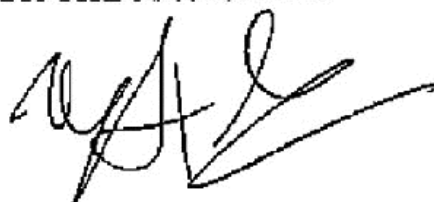
DONE in duplicate at Ha Noi on the 16th day of October, 2018 in the Vietnamese, Mongolian and English languages, each language version being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

**FOR THE SOCIALIST REPUBLIC
OF VIET NAM**



TO LAM
Senior Lieutenant-General
Minister of Public Security

FOR THE MONGOLIA



TS. NYAMDORJ
Minister of Justice and Home Affairs