

The Transfer of Sentenced Persons Agreement

The Agreement on the Transfer of Sentenced Persons between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Portuguese Republic will enter into force on 7 November 2004.

AGREEMENT BETWEEN

**THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE'S REPUBLIC OF CHINA**

AND

THE GOVERNMENT OF THE PORTUGUESE REPUBLIC

CONCERNING

TRANSFER OF SENTENCED PERSONS

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China and the Government of the Portuguese Republic,

Desiring to co-operate in the transfer of sentenced persons to facilitate their reintegration into society,

Have agreed as follows :

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement

- (a) "transferring Party" means the Party from whose jurisdiction the sentenced person may be, or has been, transferred;
- (b) "receiving Party" means the Party to whose jurisdiction the sentenced person may be, or has been, transferred;
- (c) "sentenced person" means a person who is required to be detained in a prison, a hospital or any other institution in the jurisdiction of the transferring Party to serve a sentence;

- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction.

ARTICLE 2

GENERAL PRINCIPLES

A sentenced person may be transferred from the jurisdiction of the transferring Party to the jurisdiction of the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him.

ARTICLE 3

CENTRAL AUTHORITIES

- (1) The Central Authorities of the Parties shall process requests for transfer in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Portuguese Republic is the Procuradoria-Geral da República. The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or an officer authorized by the Secretary for Justice. Either Party may change its Central Authority in which case it shall notify the other of the change.
- (3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.

ARTICLE 4

CONDITIONS FOR TRANSFER

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

- (a) the conduct on account of which the sentence has been imposed would constitute a criminal offence according to the law of the receiving Party if it had been committed within the jurisdiction of its courts;
- (b) where the Hong Kong Special Administrative Region is the receiving Party the sentenced person is a permanent resident of the Hong Kong Special Administrative Region or has close ties with the Hong Kong Special Administrative Region;

- (c) where the Portuguese Republic is the receiving Party the sentenced person is a Portuguese citizen or has permanent resident status in the Portuguese Republic or has close ties with the Portuguese Republic;
- (d) the sentence imposed on the sentenced person is one of imprisonment, confinement or any other form of deprivation of liberty in any institution:
 - (i) for life;
 - (ii) for an indeterminate period on account of mental incapacity; or
 - (iii) for a fixed period of which at least one year remains to be served at the time of the request for transfer;
- (e) the judgement is final and no further proceedings relating to the offence or any other offence are pending in the transferring Party;
- (f) the transferring and receiving Parties and the sentenced person all agree to the transfer, provided that, where in view of age or physical or mental condition either Party considers it necessary, the sentenced person's consent may be given by a person entitled to act on his behalf.

ARTICLE 5

PROCEDURE FOR TRANSFER

- (1) The Parties shall endeavour to inform sentenced persons of their right to transfer under this Agreement.
- (2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. If the sentenced person wishes to be transferred, he may express such a wish to the transferring Party or the receiving Party, which shall consider such an expressed wish against the criteria set out in Article 4 before deciding whether to request a transfer.
- (3) Where a request for transfer has been made the transferring Party shall provide the receiving Party with the following information :
 - (a) a statement of the facts upon which the conviction and sentence were based and the text of the legal provisions creating the offence;
 - (b) the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remissions to which he is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
 - (c) a copy of the certificate of conviction and sentence.

- (4) Either Party shall, as far as possible, 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 or not to agree to the transfer.
- (5) The transferring Party shall afford an opportunity to the receiving Party, if the receiving Party so desires, to verify through an official designated by the receiving Party, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(f) of this Agreement is given voluntarily and with full knowledge of the consequences thereof.
- (6) Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place within the jurisdiction of the transferring Party agreed upon by both Parties.

ARTICLE 6

ENFORCEMENT OF SENTENCE

- (1) The transferring Party shall retain jurisdiction for the review of convictions and sentences imposed by its courts.
- (2) Subject to paragraph (5), the receiving Party shall enforce the sentence as if the sentence had the same duration or termination date as advised by the transferring Party and had been imposed in the receiving Party.
- (3) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, 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.
- (4) If the sentence is by its 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 for a similar offence. The adapted sentence shall be no severer than that imposed by the transferring Party in terms of nature or duration.
- (5) The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring Party in accordance with paragraph (1) to pardon the sentenced person, or of any other decision or measure of the transferring Party that results in cancellation or reduction of the sentence.

- (6) The receiving Party may, if a sentenced person would be 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.
- (7) The receiving Party shall inform the transferring Party:
 - (a) when the sentenced person is discharged;
 - (b) if the sentenced person is granted conditional release; or
 - (c) if the sentenced person has escaped from custody before enforcement of the sentence has been completed.
- (8) The receiving Party shall, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence.

ARTICLE 7

TRANSIT OF SENTENCED PERSON

If either Party transfers a sentenced person to or from another jurisdiction, the other Party may co-operate in facilitating the transit through its territory of such a sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 8

LANGUAGE OF DOCUMENTATION

All requests for transfer submitted by one Party shall be in, or translated into, an official language of the other Party. All documents submitted by a Party in support of a request for transfer shall be accompanied, if so required by the other Party, by a translation into an official language of that other Party.

ARTICLE 9

EXPENSES

The expenses incurred in the transfer of the sentenced person or in the continued enforcement of the sentence after transfer shall be borne by the receiving Party. The receiving Party may, however, seek to recover all or part of the cost of transfer from the sentenced person.

ARTICLE 10**SETTLEMENT OF DISPUTES**

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE 11**FINAL PROVISIONS**

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been completed with.
- (2) Either Party may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect three months after the date of receipt of the notice.

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


Done at the Hong Kong Special Administrative Region, this twenty-fourth day of May in the year of two thousand and one in duplicate in the Chinese, Portuguese and English languages, each text being equally authentic.

**FOR THE GOVERNMENT OF
THE HONG KONG SPECIAL
ADMINISTRATIVE REGION
OF THE PEOPLE'S
REPUBLIC OF CHINA:**



Regina Ip

**FOR THE GOVERNMENT OF
THE PORTUGUESE
REPUBLIC:**



Jaime Gama