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Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Democratic Socialist
Republic of Sri Lanka on the Transfer of Prisoners

London, 6 February 2003

[The Agreement entered into force on 24 March 2004]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 2004*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ON THE
TRANSFER OF PRISONERS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of The Democratic Socialist Republic of Sri Lanka (“the Parties”);

Desiring to facilitate the successful rehabilitation of prisoners into society; and

Considering that this objective should be fulfilled by giving foreigners who are deprived of their liberty as a result of their commission of a criminal offence the opportunity to serve their sentences within their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

- (a) ‘judgment’ means a decision or order of a court or tribunal imposing a sentence;
- (b) ‘national’ means, in relation to the United Kingdom, a British citizen or any person who has a right of residence in the United Kingdom; in relation to the Isle of Man a British citizen or any person who has a right of residence in the Isle of Man; in relation to the Democratic Socialist Republic of Sri Lanka, ‘national’ means a citizen of the Democratic Socialist Republic of Sri Lanka and in relation to any territory to which this Agreement is extended in accordance with Article 17, any person who is defined as a national in relation to that territory;
- (c) ‘prisoner’ means a person who is for the time being required to be detained in a prison, a hospital or any other institution by virtue of an order made, in the course of the exercise of its criminal jurisdiction, by a court or tribunal in the transferring State;
- (d) ‘receiving State’ means the State to which the prisoner may be, or has been, transferred in order to serve his sentence;
- (e) ‘sentence’ means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a limited or unlimited period of time on account of a criminal offence;
- (f) ‘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 Party may be transferred to the territory of the other Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express his interest to the transferring State or to the receiving State in being transferred under this Agreement.
2. Transfer may be requested by either the transferring State or the receiving State.

ARTICLE 3

Conditions for Transfer

A prisoner may be transferred under this Agreement only on the following conditions, namely that:

- (a) the prisoner is a national of the receiving State;
- (b) the judgment is final, or the prisoner has waived any rights of appeal;
- (c) at the time of receipt of the request for transfer, the prisoner still has at least six months of the sentence to serve or the sentence is indeterminate;
- (d) consent to the transfer is given by the prisoner or, where in view of his age or physical or mental condition either Party considers it necessary, by a person authorised to act on his behalf;
- (e) 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 a criminal offence if committed on its territory; and
- (f) the transferring and receiving State agree to the transfer.

ARTICLE 4

Obligation to Furnish Information

1. Any prisoner to whom this Agreement may apply shall be informed by the transferring State of the substance of this Agreement.
2. If the prisoner has expressed an interest to the transferring State in being transferred under this Agreement, that State shall so inform the receiving State as soon as practicable after the judgment becomes final.
3. The information shall include:
 - (a) the name, date and place of birth of the prisoner;
 - (b) his address, if any, in the receiving State;
 - (c) a statement of the facts upon which the sentence was based;
 - (d) the nature, duration and date of commencement of the sentence.
4. If the prisoner has expressed his interest to the receiving State, the transferring State shall, on request, communicate to that State the information referred to in paragraph 3 of this Article.
5. The prisoner shall be informed, in writing, of any action taken by the transferring State or the receiving State under the preceding paragraphs as well as of any decision taken by either State on a request for transfer.

ARTICLE 5

Request and Replies

1. Requests for transfer and replies shall be made in writing.
2. Requests shall be addressed by the relevant authority of the requesting State to the relevant authority of the requested State. Replies shall be communicated through the same channels.
3. For the purposes of paragraph 2 of this Article, the relevant authority shall be, in relation to the United Kingdom and the Isle of Man, the competent Secretary of State; in relation to the Democratic Socialist Republic of Sri Lanka, the Ministry of Justice and, in relation to any territory to which this Agreement is extended under Article 17, the person designated as the relevant authority for that territory.

4. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Supporting Documents

1. The receiving State, if requested by the transferring State, shall furnish it with the following documents:

- (a) a copy of the relevant law of the receiving State which provided 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;
- (b) a statement of the effect in relation to the prisoner of any law or regulation relating to his detention in the receiving State after his transfer.

2. If a transfer is requested, the transferring State shall provide the following documents to the receiving State, unless either State has already indicated that it will not agree to the transfer:

- (a) a certified copy of the judgment and the law on which it is based;
- (b) a statement indicating how much of the sentence has already been served, including information of any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;
- (c) a declaration containing the consent to the transfer referred to in paragraph (d) of Article 3; and
- (d) whenever appropriate, any medical or social reports on the prisoner, information about his treatment in the transferring State and any recommendation for his further treatment in the receiving State.

3. Either State may ask to be provided with any of the documents or statements referred to in paragraphs 1 or 2 of this Article before making a request for transfer or taking a decision on whether or not to agree to the 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 (d) of Article 3 does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.

2. The transferring State shall afford an opportunity to the receiving State to verify through a Consul or other official agreed upon with the receiving State that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 8

Effect of Transfer for Transferring State

1. The taking into charge of the prisoner by the authorities of the receiving State shall have the effect of suspending the enforcement of the sentence in the transferring State.

2. The transferring State may no longer enforce the sentence if the receiving State considers enforcement of the sentence to have been completed.

ARTICLE 9

Effect of Transfer for Receiving State

1. The competent authority of the receiving State shall continue the enforcement of the sentence immediately without further order or through a judicial or administrative order as provided for by the law of the receiving State, under the conditions set out in Article 10 of this Agreement.
2. 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 10

Continued Enforcement

1. Subject to paragraph 2 of this Article, the receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, this sentence is by its nature or duration incompatible with the law of the receiving State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall as far as possible correspond with that imposed by the sentence to be enforced. It shall not aggravate by its nature or duration the sanction imposed in the transferring State nor exceed the maximum prescribed by the law of the receiving State.

ARTICLE 11

Pardon, Amnesty, Commutation

1. Either party may grant amnesty or commutation of sentence in accordance with its Constitution or other laws. The prisoner shall be entitled to the benefit of any remission of sentence of imprisonment which he may have become entitled to on the date of his transfer in the transferring country.
2. Unless the transferring and receiving States agree otherwise, the transferring State alone may grant pardon in accordance with its Constitution or other laws.

ARTICLE 12

Review of Judgment

The transferring State alone shall have the right to decide on any application for review of the judgment.

ARTICLE 13

Termination of Enforcement

The receiving State shall terminate enforcement of the sentence 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

Information on Enforcement

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

- (a) when it considers enforcement of the sentence to have been completed;
- (b) if the prisoner has escaped from custody before enforcement of the sentence has been completed; or
- (c) if the transferring State requests a special report.

ARTICLE 15

Transit

If either Party enters into arrangements for the transfer of prisoners with any third State, the other Party shall co-operate in facilitating the transit through its territory of prisoners being transferred pursuant to such arrangements. The Party intending to make such a transfer will give advance notice to the other Party of such transit.

ARTICLE 16

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

ARTICLE 17

Territorial Application

1. This Agreement shall apply:
 - (a) in relation to the United Kingdom, to Great Britain and Northern Ireland, the Isle of Man, and to any territory for the international relations of which the United Kingdom is responsible and to which the Agreement shall have been extended by agreement in an Exchange of Notes between the Parties; and
 - (b) in relation to the Democratic Socialist Republic of Sri Lanka, the territory of the Republic as defined in the Constitution of the Democratic Socialist Republic of Sri Lanka;
 - (c) and references to the territory of a Party shall be construed accordingly.
2. The application of this Agreement to any territory, in respect of which extension has been made in accordance with paragraph 1 of this Article, may be terminated by either Party giving six months' notice to the other through the diplomatic channel.

ARTICLE 18

Temporal Application

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

ARTICLE 19

Final Provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.
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 thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London on this Sixth day of February 2003, in the English language.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

MIKE O'BRIEN

For the Government of the Democratic
Socialist Republic of Sri Lanka:

T. FERNANDO



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