

**TREATY BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF INDIA  
AND THE GOVERNMENT OF MONGOLIA  
ON THE TRANSFER OF SENTENCED PERSONS**

The Government of Mongolia and the Government of the republic of India (hereinafter referred to as "the Contracting States").

On the basis of mutual respect for sovereignty, equality and mutual benefit.

In order to have sentenced persons to serve their sentences in their country of nationality to facilitate their social rehabilitation.

Have agreed as follows:

**Article 1**

**DEFINITIONS**

For the purpose of this Treaty:

(a) "Transferring State" means the State which may transfer or has transferred a sentenced person out of its territory;

(b) "Receiving State" means the State which may receive or has received a sentenced person into its territory;

(c) "Sentenced Person" means a person who has been sentenced to imprisonment by a court in the Transferring State;

(d) "Judgment" means a decision or order of court or tribunal imposing a sentence;

(e) "Sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;

**Article 2**

**GENERAL PRINCIPLES**

Each State may, in accordance with the provisions of this Treaty and subject to its domestic law, transfer a sentenced person to the other State to enforce the sentence imposed on the person by the court of the Transferring State in the territory of the Receiving State. To that end, the sentenced person or any other person who is entitled to act on the sentenced person's behalf may express the sentenced person's willingness to be transferred under this Treaty.

### Article 3

#### CENTRAL AUTHORITIES

1. For the purpose of implementing this Treaty, the Contracting States shall communicate with each other through the Central Authorities designated therefore.
2. The Central Authorities referred to in Paragraph 1 of this Article shall be the Ministry of justice for Mongolia and the Ministry of Home Affairs for the Republic of India.
3. Should either State change its designated Central Authority, it shall notify the other State of such a change in writing through diplomatic channels.

### Article 4

#### CONDITIONS FOR TRANSFER

1. A sentenced person may be transferred under this Agreement on the following conditions:
  - (a) The sentenced person is a national of the Receiving State;
  - (b) Death penalty has not been imposed on the sentenced person;
  - (c) No criminal proceedings are pending against the sentenced person;
  - (d) The conduct on account of which the sentenced was imposed on the sentenced person also constitutes a criminal offence under the laws of the Receiving State;
  - (e) The judgment imposed on the sentenced person is effective without any possibility of further appeals;
  - (f) At the time of the receipt of request for transfer, the sentence person still has at least one year left of the sentence to serve;
  - (g) The transfer is consented to in writing by the sentenced person, or by the person's legal representative when either State considers it necessary in view of the person's age, physical condition;
  - (h) Both Parties agree to the transfer; and
  - (i) 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.

2. In exceptional case, the Contracting States may agree to a transfer even if the period of time left to be served by the sentenced person is less than as specified in Paragraph 1(d) of this Article.

## **Article 5**

### **REQUIRED DOCUMENTS**

1. If a transfer is requested, the transferring State shall provide the following documents or statements to the Receiving State, unless the requested State has already indicated that it will not agree to the transfer:

- (a) a certified copy of the judgment, including the relevant provisions of law on which the judgment is based;
- (b) a statement indicating the nature, duration and date of commencement of sentence;
- (c) a statement describing the behavior of the person during the service of the sentence and the period of time already served and remaining to be served as well as time spent in pre-trial detention, any reduction of sentence and other factors relevant to enforcement of the sentence;
- (d) a written declaration of the consent to the transfer as referred to in Paragraph 1(e) of Article 4 of this Treaty; and
- (e) a statement indicating the physical and mental conditions of the sentenced person.

(2) The Receiving State shall provide the Transferring State with the following documents:

- (a) documents or statements certifying that the sentenced person is a national of the Receiving State;
- (b) relevant provisions of the law of the Receiving party stipulating that the conduct for which the sentence was imposed on the sentenced person also constitutes a criminal offence; and
- (c) information on the procedures of Receiving State, under its domestic law, to enforce the sentence imposed by the Transferring State.

## **Article 6**

### **REQUEST AND REPLIES**

1. A sentenced person may apply to either State for transfer under this Treaty. The State to which the sentenced person has made an application for transfer must notify the other State in writing, of the application.
2. A request for transfer may be made by either State. The requested State shall promptly inform the requesting State of its decision as to whether or not to agree to the requested transfer.
3. Requested for and replies to transfers shall be made in writing and transmitted through the channels as provided for in Paragraph 1 of Article 3 of this Treaty.

#### **Article 7**

##### **NOTIFICATION TO THE SENTENCED PERSONS**

1. Each State shall, within its territory, notify the sentenced persons, to whom this Treaty is applicable, that they may be transferred in accordance with provisions of this Treaty.
2. Each State shall inform in writing the sentenced persons concerned within its territory of the measures taken or decisions made by the Transferring State or the Receiving State upon request for transfer in accordance with Article 5 and 6 of this Treaty.

#### **Article 8**

##### **CONSENT OF THE SENTENCED PERSON AND ITS VERIFICATION**

1. The Transferring State shall in accordance with its law or the procedures thereof ensure that the sentenced person or his or her legal representative voluntarily gives consent to the transfer with full knowledge of the legal consequences of the transfer and confirms such knowledge in a declaration indicating consent to the transfer.
2. Where the Receiving State requests, the Transferring State shall afford the opportunity to the Receiving State to verify, through a designated official, that the sentenced person has expressed consent in accordance with the conditions set out in the paragraph above.

#### **Article 9**

##### **DELIVERY OF THE TRANSFERRED PERSON**

Where an agreement is reached on a transfer, Parties shall determine the time, place and procedure for transfer, by means of consultation through the channels as provided for in Paragraph 1 of the Article 3 of the this Treaty.

## Article 10

### CONTINUED ENFORCEMENT OF THE SENTENCE

1. After receiving the sentenced person, the Receiving State shall continue to enforce the sentence pursuant to the nature and duration of the sentence determined by the Transferring State.
2. If, the sentence as determined by the Transferring State is by its nature or duration incompatible with the domestic law of Receiving State, the Receiving State with the prior consent of Transferring State may adapt the sentence to a sentence prescribed in accordance with the sentence prescribed by its own domestic law for a similar offence. When adapting the sentence:
  - (a) The Receiving State shall be bound by the findings of facts insofar as they appear from the judgment imposed by the Transferring State;
  - (b) The Receiving State shall not adapt a penalty of imprisonment to a pecuniary penalty;
  - (c) The adapted sentence shall, as far as possible, correspond with the sentence imposed by the courts of the Transferring State.
  - (d) The adapted sentence shall be no more severe than that imposed by the Transferring State in terms of the nature or duration, nor exceed the maximum duration of penalty applicable to a similar criminal offence prescribed by the law of the Receiving State;
  - (e) The adapted sentence is not bound by the minimum duration of penalty applicable to a similar criminal offence prescribed by the law of Receiving State; and
  - (f) The period of time already served by the sentenced person under a sentence of imprisonment in the territory of the Transferring State shall be deducted.
3. The continued enforcement of the sentence after the transfer shall be governed by the laws and procedures of the Receiving Parry, including those providing for the reduction of sentence and parole and those governing other measures adopted during the enforcement of sentence.

## Article 11

### EFFECT ON COMPLETION OF SENTENCE FOR THE TRANSFERRING STATE

When the Receiving State notifies the Transferring State under Article 13 (a) 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 JUDGEMENT AND PARDON, AMNESTY OR COMMUTATION**

1. The Transferring State alone should decide on any application for review of the judgement.
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**

##### **INFORMATION ON THE ENFORCEMENT OF THE SENTENCE**

The Receiving State shall provide information to the Transferring State concerning the enforcement of the sentence when:

- (a) The enforcement of the sentence has been completed
- (b) The sentenced person has escaped from custody or died before the enforcement of the penalty has been completed; or
- (c) The Transferring State requests a specific statement.

#### **Article 14**

##### **TRANSIT**

1. When one party is to implement an agreement with a third country on the transfer of sentenced persons through the territory of the other State, the former State shall request permission from the State such a transit.
2. Such permissions are not required where air transportation is used and no landing in the territory of the other party is scheduled.
3. The requested State shall, insofar as it is not contrary to its domestic law, grant the request for transit made by the requesting State.

#### **Article 15**

##### **LANGUAGES**

For the purpose of this Treaty, the Central Authorities of the Contracting States may communicate with each other in English. However, supporting materials shall be provided in the official language of one State, and translated into the official language of the other State.

#### **Article 16**

#### **EXEMPTION FROM LEGALIZATION**

For the purpose of this Treaty, any document made by competent authorities of the Contracting States and transmitted through the channels provided for in paragraph 1 of Article 3 of this Treaty, affixed with the signature or seal of the competent authorities of one State, may be used in the territory or the Other State without any form of legalization.

#### **Article 17**

#### **COSTS**

1. The Receiving State shall bear the costs of:
  - (a) The transfer of the sentenced person, except the costs incurred exclusively in the territory of the Transferring State, and
  - (b) The continued enforcement of the sentence after the transfer.
2. The Receiving party has the right to recover all or part of the costs from the sentenced person.

#### **Article 18**

#### **SETTLEMENT OF DISPUTES**

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

#### **Article 19**

#### **ENTRY INTO FORCE AND TERMINATION**

1. This Treaty is subject to ratification. The instrument of ratification shall be exchanged at New Delhi. This shall enter into force on the thirtieth day after the date of the exchange of the instrument of ratification.

2. Either State may terminate this Treaty at any time by notice in writing to the other State through diplomatic channels. Termination shall take effect on the one hundred and eighteen is day after the date on which the notification is given.

3. This Treaty applies to any requests for transfer presented after its entry into force even if the relevant criminal offence before the entry into force of this Treaty.

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

Done in duplicate at Ulaanbaatar on this 17<sup>th</sup> day of May 2015, in Hindi, Mongolian and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

**ON BEHALF OF THE GOVERNMENT  
OF THE REPUBLIC OF INDIA**



**(SOMNATH GHOSH)**

**AMBASSADOR EXTRAORDINARY &  
PLENIPOTENTIARY OF THE  
REPUBLIC OF INDIA TO MONGOLIA**

**ON BEHALF OF THE GOVERNMENT  
OF MONGOLIA**



**(D. DORLIGJAV)**

**MINISTER FOR JUSTICE OF  
MONGOLIA**