



Treaty Series No. 45 (2003)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of Peru

on the

Transfer of Sentenced Persons

Lima, 7 March 2003

[The Agreement entered into force on 11 September 2003]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 2003*

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND
THE GOVERNMENT OF THE REPUBLIC OF PERU ON THE
TRANSFER OF SENTENCED PERSONS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Peru (hereinafter called “the Parties”),

Desiring, through the adoption of appropriate methods, to facilitate the social rehabilitation of sentenced persons;

Considering that these objectives should be fulfilled by giving foreign nationals who are deprived of their liberty as a result of a criminal offence the opportunity to serve their sentences within their own society;

Have agreed to sign the following Agreement on the Transfer of Sentenced Persons.

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) “judgment” shall mean a judicial decision or ruling by a court or tribunal imposing a sentence;
- (b) “national” shall mean, in relation to the United Kingdom, a British citizen or any person whose transfer the Government of the United Kingdom consider appropriate having regard to any close ties which that person has with the United Kingdom; in relation to Peru, “national” shall mean any person to whom the Political Constitution of Peru confers Peruvian nationality or any person whose transfer the Government of the Republic of Peru consider appropriate having regard to any close ties which that person has with Peru;
- (c) “sentenced person” shall mean a person who is serving a final sentence;
- (d) “Receiving State” shall mean that State to which the sentenced person may be, or has been, transferred in order to serve the sentence imposed on him;

- (e) "Transferring State" shall mean the State in which the sentence was imposed and from which the sentenced person may be, or has been, transferred;
- (f) "sentence" shall mean any punishment or measure involving deprivation of liberty in a prison, hospital or other institution in the Transferring State ordered by a judge, a court or a tribunal for a limited or indeterminate period of time on account of a criminal offence.

ARTICLE 2

General Principles

1. Both Parties agree to provide the greatest possible cooperation to each other in all matters regarding the transfer of sentenced persons under the terms of this Agreement.
2. 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 desire to the Transferring State or to the Receiving State to be transferred under this Agreement.
3. Transfer may be requested by either the Transferring State or the Receiving State.

ARTICLE 3

Conditions for Transfer

This Agreement shall apply only under the following conditions:

- (a) the sentenced person is a national of the Receiving State, as defined in paragraph (b) of Article 1 of this Agreement;
- (b) the sentenced person has not been sentenced to the death penalty, unless this has been commuted;
- (c) the transfer is possible under the internal laws and rules in force in the Transferring State;
- (d) the part of the sentenced person's sentence which has still to be served at the time the request is made is at least six months or the sentence is indeterminate. However, both Parties may agree to a transfer even if

the sentenced person has less than six months of the sentence left to serve;

- (e) the judgment is final or definitive; all remedies of appeal have been exhausted; or the sentenced person has waived all rights of appeal, and there are no extraordinary review or reconsideration procedures pending at the time the provisions of this Agreement are invoked;
- (f) the sentenced person, or by reason of his age or his physical or mental state, his legal representative on his behalf, requests and consents to the transfer in writing;
- (g) the Transferring and Receiving States agree to the transfer;
- (h) the acts or omissions which have given rise to the sentence constitute a criminal offence according to the law of the Receiving State, or would constitute a criminal offence if committed on its territory.

ARTICLE 4

Obligation to furnish information

1. The Parties shall bring the provisions of this Agreement to the attention of any sentenced person to whom it may apply.
2. If the sentenced person 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 practical, after the judgment becomes final.
3. The information shall include:
 - (a) the name, date and place of birth of the sentenced person;
 - (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 beginning of the sentence; and
 - (e) 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 and the Transferring State of the full consequences of transfer for the sentenced person under its law. In particular, the Receiving State may request, at its cost, a certified copy of the sentence and of the relevant legal

provisions, as well as of the main documents of the trial or any other information deemed as necessary.

4. If the sentenced person has expressed to the Receiving State his wish to be transferred, the Transferring State shall communicate to that State the information referred to in paragraph 3 of this Article.
5. The sentenced person shall be informed, in writing, of any action taken by the Transferring State or the Receiving State with regard to his request for transfer, as well as of any decision taken by either State in this regard.

ARTICLE 5

Requests and Replies

1. Requests for transfer shall be initiated by means of a written request submitted by the relevant authority in the requesting State through its Embassy in the requested State to the appropriate authority in that State.
2. For the purpose of paragraph 1 of this Article, the relevant authority shall be, in relation to the United Kingdom, the Foreign and Commonwealth Office; in relation to the Republic of Peru, the Ministry of Foreign Affairs.
3. The sentenced person shall be handed over by the authorities of the Transferring State to those of the Receiving State at a place agreed by both Parties. The Receiving State shall be responsible for the custody of the sentenced person and his transport from the Transferring State to the Receiving State.
4. Either State shall have absolute discretion to refuse the transfer of the sentenced person, without any need to give reasons.
5. Where for any reason either State does not approve the transfer of a sentenced person, it shall notify the other State of its decision without delay.
6. Before the transfer takes place, the Transferring State shall, if the Receiving state so requests, afford the latter the opportunity to verify, through an official appointed in accordance with the laws of the Receiving State, that the consent of the sentenced person was given voluntarily and with full knowledge of the legal consequences inherent therein.
7. The costs incurred in the physical transfer of the sentenced person in accordance with the terms of this Agreement shall be borne by the Receiving State, except costs of this kind 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 sentenced person.

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 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;
 - (b) a statement of the effect in relation to the sentenced person of any relevant law or regulation relating to his detention in the Receiving State after his transfer.
2. If a transfer is requested, the Transferring State shall furnish the Receiving State with the following documents, unless either State has already indicated that it does not agree to the transfer:
 - (a) a copy of the judgment and the law or regulations applied;
 - (b) a written indication of the period of the sentence which has already been served, including information on any pre-trial detention, remission, or any other circumstances relevant to the enforcement of the sentence;
 - (c) a declaration containing the consent to the transfer referred to in paragraph (f) of Article 3;
 - (d) any medical or social reports on the sentenced person, information about his treatment in the Transferring State and any recommendation for his further treatment in the Receiving State.
3. The documents submitted by either State in accordance with this Agreement shall be exempt from any consular legalisation formalities.

ARTICLE 7

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 sentenced person escapes before enforcement of the sentence has been completed; or
- (c) if the Transferring State requests a special report.

ARTICLE 8

Jurisdiction

1. The Transferring State shall retain exclusive jurisdiction regarding the sentences imposed and any procedures that provide for revision, modification, or cancellation of the sentences pronounced by its judges, courts or tribunals. It shall also keep the exclusive right to grant pardon, amnesty or mercy to the sentenced person. The Receiving State, upon being informed of any decision in this regard, shall give effect to the decision in accordance with this Article.
2. The sentence imposed on the sentenced person shall be carried out in accordance with the laws and rules in force in the Receiving State. In no event can the nature or duration of the sentence imposed by the Transferring State be modified.
3. The taking into charge of the sentenced person by the authorities of the Receiving State shall have the effect of suspending the enforcement of the sentence in the Transferring State.
4. The Transferring State may no longer enforce the sentence in the case where the Receiving State considers enforcement of the sentence to have been completed in accordance with its laws and rules.

ARTICLE 9

Transit Provisions

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

ARTICLE 10

Territorial Application

This Agreement shall apply:

- (a) in relation to the United Kingdom, to Great Britain and Northern Ireland and the Isle of Man; and to any other territories for the international relations of which the Government of the United Kingdom are responsible as may be agreed between the Parties in an Exchange of Notes; and
- (b) to the Republic of Peru.

ARTICLE 11

Temporal Application

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

ARTICLE 12

Ratification and Entry into Force

1. Each of the Parties shall notify the other upon completion of their respective internal constitutional and legal procedures required to allow this Agreement to enter into force. This Agreement shall enter into force on the date of the latter notification.
2. Either of the Parties may terminate this Agreement by means of written notification to the other Party. Such termination shall become effective on the expiration of a six month period after the date of receipt of the notification.
3. Notwithstanding its termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which its termination takes effect.

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

Done in duplicate at Lima on this 7th day of March 2003, in the English and Spanish languages, each text being equally authoritative.

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

For the Government of
the Republic of Peru:

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