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Agreement

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Uganda on the transfer of sentenced persons

Kampala, 2 June 2009

[The Agreement is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
June 2009*

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

The United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the "United Kingdom") and the Republic of Uganda (hereinafter referred to as "Uganda"), together the "Parties";

Taking into consideration developments in international prisoner transfer arrangements;

Desiring to ensure that wherever possible foreign national prisoners should serve their sentences in their own country;

Reaffirming that sentenced persons shall be treated with respect for their human rights;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) "transferring State" means the State from which the sentenced person may be, or has been, transferred;
- (b) "receiving State" means the State to which the sentenced person may be, or has been, transferred;
- (c) "sentenced person" means a person who is required to be detained in a prison or any other institution in the transferring State by virtue of a judgment made by a court of the transferring State on account of a criminal offence;
- (d) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court of the transferring State for a limited or unlimited period of time on account of a criminal offence;
- (e) "judgment" means a decision or order of a court imposing a sentence;
- (f) "national" means:
 - (i) in relation to the United Kingdom, a British citizen or any person whose transfer the Government of the United Kingdom considers

appropriate having regard to any close ties which that person has with the United Kingdom;

(ii) in relation to Uganda, a person who is a citizen of Uganda; and

(g) “consent” means consent given by or, where relevant, on behalf of, a sentenced person in accordance with the laws of whichever Party requires such consent under paragraph 4 of Article 2 of this Agreement.

ARTICLE 2

General Principles

1. The Parties shall afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Agreement.
2. As between the Parties, this Agreement shall prevail over any multilateral Agreements governing the transfer of sentenced persons to which both Parties may be party.
3. Subject to paragraph 4 of this Article, a sentenced person may be transferred from the territory of the transferring State to the territory of the receiving State without the consent of the sentenced person in accordance with the provisions of this Agreement in order to continue serving the sentence imposed on him or her by the transferring State.
4. Consent in respect of a sentenced person’s transfer from the territory of the transferring State to the territory of the receiving State in accordance with the provisions of this Agreement in order to continue serving the sentence imposed on him or her by the transferring State shall be required in the following circumstances:
 - (a) where either Party does not agree to the transfer without consent in respect of a sentenced person; or
 - (b) where either Party’s domestic law does not permit such a transfer without consent in respect of a sentenced person.
5. The transfer of sentenced persons may be requested by either the transferring State or the receiving State.
6. The Parties may enter into a Memorandum of Understanding governing the implementation of this Agreement.

ARTICLE 3

Conditions for Transfer

Sentenced persons may be transferred under this Agreement only on the following conditions:

- (a) the sentenced person is a national of the receiving State for the purposes of this Agreement;
- (b) the judgment is final and no other legal proceedings relating to the offence or any other offence committed by the sentenced person are pending in the transferring State;
- (c) the acts or omissions for 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;
- (d) the sentenced person has still at least 6 months of the sentence to serve at the time the request for transfer is made; in exceptional cases, the Parties may agree to a transfer even if the sentenced person has less than 6 months of the sentence to serve;
- (e) the transferring and receiving States both agree to the transfer; and
- (f) where consent is required pursuant to paragraph 4 of Article 2 of this Agreement, such consent has been obtained.

ARTICLE 4

Procedures for Transfer

1. Requests for transfer and replies shall be made in writing [through the diplomatic channel].
2. The requested State shall inform the State requesting the transfer of its decision whether or not to agree to the requested transfer.
3. If the receiving State requests the transfer of a sentenced person, it shall provide the following information, where available, to the transferring State with the written request for transfer:
 - (a) the name, date and place of birth of the sentenced person;
 - (b) the location of the sentenced person; and
 - (c) the permanent address of the sentenced person in the receiving State.

4. If the transferring State requests the transfer of a sentenced person or, having received a request to transfer a sentenced person under paragraph 3 of this Article from the receiving State, is prepared, in principle, to consider the request for the transfer of a sentenced person, it shall inform the receiving State in writing, and provide the following information:

- (a) the name, date and place of birth of the sentenced person;
- (b) the location of the sentenced person;
- (c) if available, the permanent address of the sentenced person in the receiving State;
- (d) a statement of the facts upon which the conviction and sentence were based;
- (e) the nature, duration and date of commencement of the sentence, the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remission to which he or she is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
- (f) a copy of the judgment and information about the law on which it is based; and
- (g) if available, any other additional information, including medical or social reports on the sentenced person, which may be of significance for the sentenced person's transfer and for the continued enforcement of his sentence.

5. If the receiving State, having considered the information which the transferring State has provided, is willing to proceed with the transfer, it shall inform the transferring State in writing, and provide the following information:

- (a) a statement indicating that the sentenced person is a national of the receiving State for the purposes of this Agreement;
- (b) 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;
- (c) a statement of the effect, in relation to the sentenced person, of any law or regulation relating to that person's detention in the receiving State after that person's transfer, including a statement, if applicable, of the effect of paragraph 3 of Article 7 of this Agreement upon that person's transfer; and

- (d) a statement of any outstanding charges, convictions or criminal investigations in respect of the sentenced person.
6. If the transferring State is willing to proceed with the transfer, it shall provide the receiving State with its written agreement to the terms of the transfer.
 7. For the purposes of considering whether to agree to the transfer of a sentenced person, the transferring State may at any time seek from the receiving State information, undertakings or assurances regarding the location of or access to the facility in which the sentenced person shall serve the remainder of his or her sentence, the conditions or treatment that shall be afforded to the sentenced person, the monitoring of those conditions and treatment or any other matter relating to the transfer. The receiving State shall consider all such requests and shall provide such information, undertakings or assurances where possible and appropriate.
 8. Where the Parties have agreed to the transfer, they shall make arrangements for the transfer of the sentenced person. Delivery of the sentenced person by the authorities of the transferring State to those of the receiving State shall occur on a date and at a place agreed upon by both Parties.
 9. If either Party decides not to agree to the transfer, it shall inform the other Party of its decision in writing.

ARTICLE 5

Effect of Transfer for Transferring State

1. 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 by the authorities in the transferring State.
2. The transferring State shall not enforce the sentence if the receiving State considers enforcement of the sentence to have been completed.

ARTICLE 6

Retention of Jurisdiction

The transferring State shall retain exclusive jurisdiction for the review of the judgment.

ARTICLE 7

Continued Enforcement of Sentence

1. The receiving State shall enforce the sentence as if the sentence had been imposed in the receiving State.
2. The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving State, including those governing conditions 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.
3. If the sentence is by its nature or duration incompatible with the law of the receiving State, that State may, with the agreement of the transferring State prior to transfer, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the receiving State shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed in the transferring State. The adapted sentence shall not, however, aggravate, by its nature or duration, the sanction imposed in the transferring State, nor exceed the maximum penalty prescribed by the law of the receiving State. When adapting the sentence, the receiving State shall not convert a sanction involving deprivation of liberty to a pecuniary sanction.
4. The receiving State shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring State to pardon the sentenced person, or of any other decision or measure of the transferring State that results in cancellation or reduction of the sentence.
5. The receiving State shall provide the following information to the transferring State in relation to the continued enforcement of the sentence:
 - (a) when the sentence has been completed;
 - (b) if the sentenced person has escaped from custody before the sentence has been completed;
 - (c) if the sentenced person is unable to complete the sentence for any reason; or
 - (d) if the transferring State requests a special report.

ARTICLE 8

Rights of Sentenced Persons

1. Any sentenced person may express to either the transferring State or the receiving State an interest in being transferred under this Agreement.
2. Any sentenced person whose transfer is requested under this Agreement shall be informed by the transferring State of the substance of this Agreement.
3. A sentenced person whose transfer is requested under this Agreement shall have the terms of his transfer explained to him in writing in his own language.
4. A sentenced person whose transfer is requested under this Agreement shall be given the opportunity to make written representations to the authorities of the transferring State before the transferring State provides its written agreement to the terms of the transfer within the meaning of paragraph 6 of Article 4 of this Agreement.

ARTICLE 9

Treatment of Sentenced Persons

Each Party shall treat all sentenced persons transferred under this Agreement in accordance with their applicable international human rights obligations, particularly regarding the right to life and the prohibition against torture and cruel, inhuman or degrading treatment or punishment.

ARTICLE 10

Speciality

1. Any sentenced person transferred under the provisions of this Agreement shall not be proceeded against, sentenced or detained with a view to carrying out a sentence or detention order, for any offence committed prior to his or her transfer other than that for which the sentence to be enforced was imposed, nor shall he or she for any other reason be restricted in his or her personal freedom, except in the following circumstances:
 - (a) when the transferring State so authorises, in accordance with paragraph 2 of this Article; or
 - (b) when the sentenced person, having had an opportunity to leave the territory of the receiving State, has not done so within 45 days of his or her final discharge, or if he or she has returned to the receiving State after leaving it.

2. Under subparagraph 1(a) of this Article, a request for authorisation shall be submitted by the receiving State to the transferring State. The request for authorisation shall be accompanied by all relevant documents and a legal record of any statement made by the sentenced person. Authorisation may be given by the transferring State when the offence for which it is requested would itself be subject to extradition under the law of the transferring State or when extradition would be excluded only by reason of the length of punishment.

ARTICLE 11

Transit of Sentenced Persons

If either Party transfers a sentenced person to or from any third State, the other Party shall 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. This Article is without prejudice to the right of either Party to refuse to grant transit.

ARTICLE 12

Territorial Application

This Agreement shall apply:

- (a) in relation to the United Kingdom of Great Britain and Northern Ireland; and to any other territory for the international relations of which the United Kingdom is responsible and to which this Agreement shall have been extended by mutual agreement between the Parties by exchange of notes; and
- (b) in relation to Uganda, to the territory of Uganda.

ARTICLE 13

Temporal Application

This Agreement shall be applicable to the transfer of sentenced persons who have been sentenced either before or after the entry into force of this Agreement.

ARTICLE 14

Settlement of Disputes

Any dispute between the Parties arising out of or in connection with this Agreement shall be resolved through diplomatic channels.

ARTICLE 15

Final Provisions

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.
2. This Agreement shall enter into force on the date of the latter notification referred to in paragraph 1 of this Article.
3. Either Party may terminate this Agreement at any time by 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 notification.
4. Notwithstanding any termination, this Agreement, and any assurances or undertakings given pursuant to it, shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Kampala in duplicate, on this 2nd day of June, in the year of 2009, in the English language.

For The United Kingdom Of Great
Britain And Northern Ireland:

For The Republic Of Uganda:

MARTIN SHEARMAN

KIRUNDA KIVEJINJA



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