



Vietnam No. 1 (2008)

Treaty

Between the United Kingdom of Great Britain and Northern Ireland and
the Socialist Republic of Vietnam on the Transfer of Sentenced Persons

Hanoi, 12 September 2008

[Instruments of Ratification have not been exchanged]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 2008*

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**TREATY BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE SOCIALIST REPUBLIC OF
VIETNAM ON THE TRANSFER OF SENTENCED PERSONS**

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

Taking into consideration the laws and regulations of the Contracting Parties in force regarding enforcement of penal sentences;

Desiring to co-operate in the enforcement of penal sentences;

Considering that this co-operation should serve the interest of the administration of justice;

Desiring to facilitate the successful reintegration of sentenced persons into society;

Considering that these objectives can be best fulfilled by giving foreign sentenced persons the opportunity to serve their sentences within their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Treaty:

- (a) "transferring Party" means the State from which the sentenced person may be, or has been, transferred;
- (b) "receiving Party" 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 Party by virtue of a judgment made by a court of the transferring Party on account of a criminal offence;
- (d) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court of the transferring Party 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;
and

- (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 Vietnam, a person who has the nationality of Vietnam.

ARTICLE 2

General Principles

1. The Contracting 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 Treaty.
2. A sentenced person may be transferred from the territory of the transferring Party to the territory of the receiving Party in accordance with the provisions of this Treaty in order to continue serving the sentence imposed on him or her by the transferring Party.
3. A sentenced person may express an interest to the transferring Party or receiving Party in being transferred under this Treaty.
4. The transfer of sentenced persons may be requested by either the transferring Party or the receiving Party.

ARTICLE 3

Central Authorities

1. For the purpose of implementing this Treaty, each Contracting Party shall designate a Central Authority or Central Authorities.
2. The Central Authority for Vietnam shall be the Ministry of Public Security. The Central Authorities for the United Kingdom shall be:
 - (a) in relation to England and Wales, Her Majesty's Prison Service;
 - (b) in relation to Scotland, the Scottish Prison Service; and
 - (c) in relation to Northern Ireland, the Northern Ireland Prison Service.

3. Unless otherwise required by this Treaty, all communication concerning the transfer of sentenced persons under this Treaty shall be transmitted through the Central Authorities.

ARTICLE 4

Conditions for Transfer

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

- (a) the acts or omissions for which the sentence has been imposed would constitute a criminal offence under the laws of the receiving Party; this condition shall not be interpreted to require that the offence described in the laws of both Contracting Parties be identical with respect to matters that do not affect the essential nature of the offence;
- (b) the sentenced person is a national of the receiving Party;
- (c) the transferring and receiving Parties agree to the transfer;
- (d) the transfer is consented to by the sentenced person or, where in view of the person's age or physical or mental condition one of the Contracting Parties considers it necessary, by his or her legal representative;
- (e) at the time the request for transfer is received, the sentenced person has still at least one year of the sentence to serve; in exceptional cases, the Contracting Parties may agree to a transfer even if the sentenced person has less than one year of the sentence to serve;
- (f) 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 Party; and
- (g) the transfer of the sentenced person does not prejudice the Contracting Parties' internal or external security, public order or other essential interests.

ARTICLE 5

Procedures for Transfer

1. Any sentenced person to whom this Treaty may apply shall be informed by the transferring Party of the substance of this Treaty.

2. If a sentenced person expresses an interest to the transferring Party to be transferred, and the transferring Party is prepared, in principle, to approve the request for transfer, the transferring Party shall promptly inform the receiving Party 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 and, if available, permanent address in the receiving Party;
- (c) a statement of the facts upon which the conviction and sentence were based;
- (d) 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;
- (e) a copy of the judgment and information about the law on which it is based; and
- (f) 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.

3. If a sentenced person expresses an interest to the receiving Party to be transferred, the receiving Party shall so inform the transferring Party. If the transferring Party is prepared, in principle, to approve the request for transfer, the transferring Party shall promptly inform the receiving Party in writing, and provide the information referred to in paragraph 2 of this Article If a sentenced person expresses an interest to the receiving Party to be transferred.

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

- (a) a statement indicating that the sentenced person is a national of the receiving Party for the purposes of this Treaty;

- (b) a copy of the relevant law of the receiving Party which provides that the acts or omissions on account of which the sentence has been imposed in the transferring Party constitute a criminal offence according to the law of the receiving Party, 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 Party after that person's transfer, including a statement, if applicable, of the effect of paragraph 3 of Article 9 of this Treaty upon that person's transfer; and
 - (d) a statement of any outstanding charges, convictions or criminal investigations in respect of the sentenced person.
5. If the transferring Party is willing to proceed with the transfer, it shall promptly provide the receiving Party with the following:
- (a) a declaration containing the sentenced person's consent to the transfer; and
 - (b) written confirmation of the transferring Party's agreement to the transfer.
6. Where the Contracting 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 Party to those of the receiving Party shall occur on a date and at a place within the territory of the transferring Party agreed upon by both Contracting Parties.
7. If either Contracting Party decides not to agree to the transfer, it shall promptly inform the other Contracting Party of its decision in writing.
8. The transferring Party shall inform the sentenced person in writing of any action taken by the transferring Party or the receiving Party under the preceding paragraphs of this Article.

ARTICLE 6

Verification of Consent

1. The transferring Party shall ensure that a sentenced person who gives consent to transfer under this Treaty does so voluntarily and with knowledge of the consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring Party.

2. The transferring Party shall permit an official designated by the receiving Party to verify, prior to the transfer, that the sentenced person's consent to the transfer has been given in accordance with paragraph 1 of this Article.

ARTICLE 7

Effect of Transfer for Transferring Party

1. The taking into charge of the sentenced person by the authorities of the receiving Party shall have the effect of suspending the enforcement of the sentence by the authorities in the transferring Party.
2. The transferring Party shall not enforce the sentence if the receiving Party considers enforcement of the sentence to have been completed.

ARTICLE 8

Retention of Jurisdiction

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

ARTICLE 9

Continued Enforcement of Sentence

1. The receiving Party shall enforce the sentence as if the sentence had been imposed in the receiving Party.
2. The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, 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 Party, that Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed in the transferring Party. The adapted sentence shall be no more severe than that imposed by the transferring Party in terms of nature or duration, nor exceed the maximum penalty prescribed by the law of the receiving Party. When adapting the sentence, the competent authority of the receiving Party may,

however, not convert a sanction involving deprivation of liberty to a pecuniary sanction.

4. The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring Party 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.

5. The receiving Party shall provide the following information to the transferring Party 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 Party requests a special report.

ARTICLE 10

Transit of Sentenced Persons

If either Contracting Party transfers a sentenced person to or from any third State, the other Contracting Party shall co-operate in facilitating the transit through its territory of such a sentenced person. The Contracting Party intending to make such a transfer shall give advance notice to the other Contracting Party of such transit. Either Contracting Party may refuse to grant transit.

ARTICLE 11

Language and Costs

1. Requests for transfer as well as the documents and declarations shall be furnished in the language of the transferring Party.

2. Any costs incurred in relation to the transfer of the sentenced person or the continued enforcement of the sentence after transfer shall be borne by the receiving Party, except costs incurred by the transferring Party exclusively within the territory of the transferring Party. The receiving Party may, however, seek to recover all or part of the costs of transfer from the sentenced person or some other source.

ARTICLE 12

Territorial Application

This Treaty shall apply:

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

ARTICLE 13

Temporal Application

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

ARTICLE 14

Other Agreements

This Treaty shall not affect the rights or obligations of the Contracting Parties under treaties or other international agreements to which they are a party.

ARTICLE 15

Settlement of Disputes

Any dispute arising out of the interpretation, application, or implementation of this Treaty shall be resolved through negotiations between the Central Authorities. If the Central Authorities are unable to reach an agreement, the dispute shall be resolved by the Contracting Parties through diplomatic channels.

ARTICLE 16

Final Provisions

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged as soon as possible. This Treaty shall enter into force on the thirtieth (30)th day after the date of the exchange of the instruments of ratification.
2. This Treaty shall be subject to review by the Contracting Parties six (06) months after its entry into force.
3. Either Contracting Party may terminate this Treaty at any time by notice in writing to the other through diplomatic channels. Termination shall take effect six months after the date on which the notice is received.
4. Notwithstanding any termination, this Treaty shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Treaty before the date on which such termination takes effect.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Vietnam, have signed the present Treaty.

DONE at Hanoi in duplicate, on this Twelfth Day of September in the year of 2008, in the English and Vietnamese languages, each text being equally authentic.

For the United Kingdom of Great
Britain and Northern Ireland:

Jack Straw

For the Socialist Republic of
Vietnam:

Le Hong Anh



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