



Ghana No. 1 (2016)

Agreement

between the United Kingdom of Great Britain and Northern Ireland and
the Republic of Ghana on the Transfer of Sentenced Persons

Accra, 12 November 2015

[The Agreement is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
May 2016*



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**AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF GHANA
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 Ghana (hereinafter referred to as Ghana) referred to in this Agreement as 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 Country from which the sentenced person may be, or has been, transferred;
- (b) "receiving State" means the Country 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 final 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; and
- (f) "national":

- (i) in relation to the United Kingdom means, a British national 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 Ghana means a person who has the nationality of the Republic of Ghana.

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 bilateral or multilateral Agreement governing the transfer of sentenced persons to which both Parties are party.
3. Where both Parties agree and in accordance with the provisions of this Agreement; a sentenced person may be transferred from the territory of the transferring State to the territory of the receiving State with or without the sentenced person's consent in order for the sentenced person to continue serving the sentence imposed by the transferring State.
4. The transfer of sentenced persons may be requested by either the transferring State or the receiving State.
5. The Parties shall 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) either the sentenced person consents to the transfer or is subject to an order for expulsion, deportation or removal from the transferring State;
- (c) 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;
- (d) 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;
- (e) Subject to paragraph (b) the sentenced person has still at least 6 months of the sentence to serve at the time the request for transfer is made; and
- (f) the transferring and receiving States both agree to the transfer.

ARTICLE 4

Procedures for Transfer

1. Requests for transfer and replies shall be made in writing through the diplomatic channel.

2. 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.

3. If the transferring State requests the transfer of a sentenced person or, having received a request to transfer under paragraph 2 of this article, is prepared, in principle, to consider the request for 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 the sentenced person 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;
- (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 the sentence;
- (h) a copy of any written representations made by the sentenced person in accordance with paragraph 2 of Article 9 of this Agreement;
- (i) any undertakings or assurances required by the transferring State in relation to: the location of, or the facility in which, the sentenced person shall serve the remainder of the sentence; the conditions or treatment that shall be afforded to the sentenced person; the process for monitoring those conditions and treatment; any other matter relating to the transfer.

4. 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, or has relevant ties to, 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 1 of Article 8 of this Agreement upon that person's transfer;
- (d) a statement of any outstanding charges, convictions or criminal investigations in respect of the sentenced person;
- (e) agreement to any undertakings or assurances as requested by the transferring State under paragraph 3(i).

5. 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.

6. Where the Parties have agreed to transfer, the sentenced person shall be informed of the decision in writing. Transfer of the sentenced person shall not take place before 30 days has elapsed from the date the sentenced person is notified of that decision so that he/she can make arrangements for the disposal of any property in the transferring state.

7. 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.

8. 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

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

2. 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.

ARTICLE 7

Eligibility for Transfer Without Consent

A Sentenced Person is eligible for transfer without consent, if the sentence imposed by the Sentencing State is for a term of imprisonment which exceeds four years.

ARTICLE 8

Continued Enforcement of Sentence

1. Notwithstanding Article 6 of this agreement, 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 must, as far as possible, correspond with the sentence imposed in the transferring State and shall not be less than the maximum penalty provided for similar offences under the law of the receiving 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 may not convert a sanction involving deprivation of liberty to a pecuniary sanction.

2. The receiving State shall enforce the sentence as if the sentence had been imposed in the receiving State.

3. 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.

4. 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) a special report, if requested by the transferring State, including a special report for those matters where the States agreed certain assurances or undertakings in accordance with paragraphs 3(i) and 4(e) of Article 4.

ARTICLE 9

Rights of Sentenced Persons

1. A sentenced person may express to either the transferring State or the receiving State an interest in being transferred under this Agreement.
2. A sentenced person whose transfer is requested under this Agreement shall:
 - (a) be informed by the transferring State of the substance of this Agreement;
 - (b) have the terms of the transfer explained in writing in the sentenced person's own language;
 - (c) 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 5 of Article 4.

ARTICLE 10

Treatment of Sentenced Persons

1. Each Party shall treat all sentenced persons transferred under this Agreement in accordance with applicable international human rights obligations, particularly regarding the right to life and the prohibition against torture and cruel, inhuman or degrading treatment or punishment (for the avoidance of doubt this includes that a sentenced transferred person shall not be subject to corporal punishment).

ARTICLE 11

Prosecution for Other Offences

1. A 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 transfer, other than that for which the sentence to be enforced was imposed; nor shall the sentenced person for any other reason be restricted in their 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 the final discharge of the sentence, or if the sentenced person 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 12

Costs

1. The transferring State shall bear the costs of transferring the prisoner into the custody of the authority of the receiving State.

2. In this Agreement costs includes all costs incurred in transferring the convicted person prior to the handing over of that person to the competent authority in the receiving State.

ARTICLE 13

Transit of Sentenced Persons

1. If either Party transfers a sentenced person to or from any third State, the other Party shall co-operate in facilitating the transit of such a sentenced person through its territory. 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 in a particular case.

ARTICLE 14

Territorial Application

1. This Agreement shall apply:
 - (a) in relation to the United Kingdom of Great Britain and Northern Ireland and the Isle of Man; 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 the Republic of Ghana, to the territory of Ghana.

ARTICLE 15

Temporal Application

1. This Agreement is applicable to the transfer of sentenced persons either before or after the entry into force of this Agreement.
2. Notwithstanding subparagraph 1, if the sentence imposed on the sentenced person makes the sentenced person eligible for transfer without the consent of that sentenced person then this Agreement applies from the 3rd day of June 2015.

ARTICLE 16

Settlement of Disputes

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

ARTICLE 17

Final Provisions

1. This Agreement shall enter into force on the date 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 Accra in duplicate, on twelfth day of November in the year of 2015, in the English language, each text being equally authentic.

**FOR THE UNITED KINGDOM
OF GREAT BRITAIN AND
NORTHERN IRELAND:**

GRANT SHAPPS

FOR THE REPUBLIC OF GHANA:

DOMINC AKURITINGA

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