

TREATY BETWEEN
JAPAN AND THE KINGDOM OF THAILAND
ON THE TRANSFER OF SENTENCED PERSONS
AND ON CO-OPERATION IN THE ENFORCEMENT OF SENTENCES

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Japan and The Kingdom of Thailand (hereinafter referred to as "the Parties");

Desiring to co-operate in the enforcement of sentences;

Desiring to facilitate the rehabilitation and social reintegration of sentenced persons;

Considering that these objectives can best be fulfilled by giving foreigners who are deprived of their liberty as a result of their commission of a criminal offence 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 State" means the Party from which the sentenced person may be, or has been, transferred;
- (b) "receiving State" means the Party to which the sentenced person may be, or has been, transferred;
- (c) "sentenced person" means a person on whom the sentence of imprisonment or any other form of deprivation of liberty has been imposed by virtue of an order 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.

Article 2
General principles

A person sentenced in the territory of the transferring State may be transferred to the territory of the receiving State in accordance with the provisions of this Treaty in order to serve the sentence imposed on that person.

Article 3
Conditions for transfer

A sentenced person may be transferred under this Treaty only on the following conditions:

- (a) if the acts or omissions on account of 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;
- (b) if the sentenced person is a national of the receiving State as defined by the receiving State for the purpose of this Treaty in accordance with its relevant laws;
- (c) if the sentenced person is serving the sentence of imprisonment in prison in the transferring State;
- (d) if the sentenced person has served in the transferring State any minimum period of imprisonment stipulated by the law of the transferring State;
- (e) if, at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve;
- (f) if the transferring and receiving States agree to the transfer; and
- (g) if the transfer is consented to by the sentenced person.

Article 4
Refusal to transfer

A request for transfer of a sentenced person shall be refused under this Treaty on the following conditions:

- (a) in cases where the Kingdom of Thailand is the transferring State, if the sentenced person was sentenced in respect of an offence under the law of the Kingdom of Thailand:
 - (i) against the internal or external security of the state;
 - (ii) against the Head of State or a member of his family; or
 - (iii) against the legislation protecting national art treasures;
- (b) if the judgment is not final or other legal proceedings relating to the offence for which the sentence has been imposed or any legal proceedings relating to the other offences are pending in the transferring State; or
- (c) if the transfer of the sentenced person may prejudice sovereignty, security, public order or other essential interests of either Party.

Article 5
Procedure for transfer

1. The Parties shall endeavour to inform a sentenced person within the scope of this Treaty of the substance of this Treaty.

2. If the sentenced person has expressed an interest in writing to the transferring State in being transferred under this Treaty, the transferring State shall so inform the receiving State. The receiving State thus informed shall give consideration to the application expressing his or her interest made by the sentenced person in accordance with its laws and regulations and, if so requested by the transferring State, inform the transferring State of any decision the receiving State has taken on the application.

3. Every transfer under this Treaty shall be commenced through diplomatic channels by a written request from the receiving State to the transferring State. The transferring State shall inform the receiving State through the same channels and without delay of its decision on whether or not to agree to the request for transfer. If the transferring State agrees to the request, the Parties shall take all measures necessary for effectuating the transfer of the sentenced person.

4. The transferring State shall provide the receiving State with the following information:

- (a) a statement of the facts upon which the sentence was based;
- (b) the duration and dates of commencement and termination of the sentence, the length of time already served by the sentenced person and any information on the reduction of the term of imprisonment;
- (c) a certified copy of all judgments including the sentences concerning the sentenced person and of the law on which they are based; and
- (d) any other additional information requested by the receiving State insofar as such information may be of significance for the transfer of the sentenced person and for the continued enforcement of his or her sentence.

5. The receiving State, if requested by the transferring State, shall furnish it with:

- (a) a document or statement indicating that the sentenced person is a national of the receiving State; and
- (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.

6. Either Party shall, as far as possible, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether or not to agree to the transfer.

7. The transferring State shall afford an opportunity to the receiving State, if the receiving State so desires, to verify through an official designated by the receiving State, prior to the transfer, that the consent of the sentenced person is given voluntarily and with full knowledge of the legal consequences thereof.

8. Delivery of the sentenced person by the authorities of the transferring State to those of the receiving State shall occur on a date at a place within the transferring State agreed upon by the Parties or, if the Parties agree, within the receiving State.

Article 6
Retention of jurisdiction

1. Where sentences are enforced pursuant to this Treaty, the transferring State shall retain exclusive jurisdiction regarding the judgments including the sentences imposed by its courts and any procedures for revision, modification or cancellation of those judgments including the sentences.

2. The transferring State shall retain exclusive jurisdiction to grant pardon or amnesty or to commute the sentences.

Article 7
Procedure for enforcement of sentence

1. The continued enforcement of the sentence after transfer shall be governed by the laws, regulations and procedures of the receiving State, including those governing conditions for service of imprisonment or other form of deprivation of liberty and those providing for the reduction of the term of imprisonment or other form of deprivation of liberty by parole, conditional release, remission or otherwise.

2. Subject to paragraph 3 of this Article, the receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. If, under the laws of the receiving State regarding the maximum duration of the enforcement of the sentence, the receiving State enforces the sentence ordered by a court of the transferring State in such a manner that the duration of the continued enforcement of the sentence in the receiving State is less than the remaining duration of the sentence which the sentenced person has to serve, the transferring State shall be informed together with the request for transfer and the relevant laws. In such case, the transferring State has the right to refuse the request.

3. No sentence shall be enforced by the receiving State in such a way as to extend it beyond the period specified in the sentence ordered by a court of the transferring State. The sentence to be enforced by the receiving State shall as far as possible correspond with the sentence ordered by a court of the transferring State.

4. If the transferring State revises, modifies or cancels the judgment including the sentence, grants pardon or amnesty, commutes the sentence or otherwise reduces or terminates the sentence, the receiving State shall upon being notified of the decision give effect thereto.

5. The receiving State may treat any sentenced person as juvenile if he or she is so categorized under its laws regardless of his or her status under the laws of the transferring State.

6. The receiving State shall provide information to the transferring State concerning the enforcement of the sentence:

- (a) if the sentenced person is granted parole or conditional release and when the sentenced person is discharged on completion of the sentence;
- (b) when the enforcement of the sentence has been completed;
- (c) if the sentenced person has escaped from custody or died before the enforcement of the sentence has been completed; or
- (d) if the transferring State requests a report.

Article 8 Expenses

Unless the Parties agree otherwise, the expenses incurred in the transfer of the sentenced person or in the enforcement of the sentence after transfer shall be borne by the receiving State. The receiving State may, however, seek to recover all or part of the expenses of the transfer from the sentenced person.

Article 9 Language

Requests for transfer shall be made in English. The information and documents under paragraphs 4 and 6 of Article 5, and paragraph 4 of Article 7 shall be furnished in the language of the transferring State.

Article 10 Temporal application

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

Article 11
Consultations

The Parties shall consult, at the request of either Party, concerning the interpretation and the application of this Treaty.

Article 12
Entry into force and termination

1. This Treaty shall be subject to ratification and shall enter into force on the thirtieth day after the date on which instruments of ratification are exchanged. The exchange of instruments shall take place at Tokyo as soon as possible.

2. Either Party may terminate this Treaty at any time by giving written notice to the other Party. Such termination shall take effect one hundred and eighty days after the date of receipt of the notice.

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

Done at Phuket, this twenty-second day of July, 2009, in duplicate, in the Japanese, Thai and English languages, all texts being equally authentic. In case of divergent interpretations of the Japanese and Thai texts, the English text shall prevail.

For Japan:

中曾根弘文

For the Kingdom of Thailand:

Kasit Piromya