

TREATY BETWEEN THE PORTUGUESE REPUBLIC AND THE
PEOPLE'S REPUBLIC OF CHINA ON TRANSFER OF
SENTENCED PERSONS

The Portuguese Republic and the People's Republic of China (hereinafter referred to as "the Parties"),

On the basis of mutual respect for sovereignty and equality and mutual benefit,

Desiring to strengthen judicial cooperation in criminal matters between the two countries,

In order to have sentenced persons serve the sentence in their country of nationality to facilitate their social reintegration,

Have decided to conclude this Treaty and agreed as follows:

Article 1

Definition

For the purposes of this Treaty,

a. "Sentencing Party" means the Party in which the sentence was imposed on the

person who may be, or has been transferred;

b. “Administering Party” means the Party to which the sentenced person may be, or has been transferred, in order to serve his or her sentence;

c. “Sentenced Person” means the person to serve a sentence of imprisonment in accordance with an effective criminal judgment imposed by a court of either Party.

Article 2

General Provisions

The Parties may, in accordance with the provisions of this Treaty, transfer a sentenced person to each other to enforce, in the territory of the Administering Party, the sentence imposed against the person.

Article 3

Central Authorities

1. For the purpose of implementing this Treaty, the Parties shall communicate with each other through the Central Authorities designated therefore.

2. The Central Authorities referred to in Paragraph 1 of this Article shall be Procuradoria-Geral da República for the Portuguese Republic, and the Ministry of Justice for the People’s Republic of China. Should either Party change its designated Central Authority, it shall notify the other Party of such change in writing through diplomatic channels.

Article 4

Conditions for Transfer

1. A sentenced person may be transferred only if,
 - (a) the sentenced person is a national of the Administering Party;
 - (b) the conduct on account of which the sentence was imposed against the sentenced person also constitutes an offence under the laws of the Administering Party;
 - (c) the judgment imposed against the sentenced person has come into effect when the request for transfer is made, and the period of time to be served by the sentenced person is at least one year;
 - (d) the transfer is consented to in writing by the sentenced person, or by the person's legal representative when one of the Parties considers it necessary in view of the person's age, physical or mental conditions; and
 - (e) both Parties agree to the transfer.

2. In exceptional cases, the Parties may agree to a transfer even if the period of time to be served by the sentenced person is less than one year.

Article 5

Request and Reply

1. Either the Sentencing Party or the Administering Party may make a request for transfer. The sentenced person may apply to either Party for a transfer according to this Treaty and the Party may decide whether or not to make such a request.

2. The Requested Party shall promptly inform the Requesting Party of its decision

whether or not to agree to the requested transfer.

3. Request and reply to transfer shall be made in writing and transmitted through the channel as provided in Article 3 of this Treaty.

Article 6

Required Documents

1. When a request for transfer is made, unless it has been refused by either Party, the Sentencing Party shall provide the Administering Party with the following documents:

- (a) a certified copy of the judgment, including the relevant provisions of laws on which the judgment is based and a declaration informing that the judgment is final;
- (b) a statement indicating the category of the penalty, the term of the punishment and the date to count the term, including pre-trial detention, commutation of punishment and other factors relevant to the enforcement of the sentence;
- (c) a statement describing the situation of the person during serving the sentence, including information on health conditions; and
- (d) a written declaration of the consent to the transfer as referred to in Paragraph 1(d) of Article 4 of this Treaty.

2. The Administering Party shall provide the Sentencing Party with the following documents:

- (a) documents or statement certifying that the sentenced person is a national of the Administering Party;
- (b) articles of the laws of the Administering Party stipulating that the conduct for which the sentence was imposed against the sentenced person also constitutes an offence;

(c) information on the ways and procedures of the Administering Party, under its domestic law, to enforce the sentence imposed by the Sentencing Party.

Article 7

Notification to the Sentenced Person

1. Each Party shall, within its territory, notify the sentenced person, to whom the Treaty is applicable, that he or she may be transferred in accordance with the provisions of this Treaty.
2. Each Party shall inform in writing the sentenced person within its territory of the measures taken or decisions made by the Sentencing Party or the Administering Party upon the request for transfer in accordance with Article 5 and Article 6 of this Treaty.

Article 8

Consent of the Sentenced Person and Its Verification

1. The Sentencing Party shall ensure, in accordance with its domestic law, that the sentenced person or his or her legal representative voluntarily gives consent to the transfer with full knowledge of the legal consequences of the transfer and confirms such knowledge in the declaration indicating consent to the transfer.
2. Where the Administering Party requests, the Sentencing Party shall afford an opportunity to the Administering Party to verify, through a consular official, that the sentenced person has expressed consent in accordance with the conditions set out in the Paragraph above.

Article 9

Execution of the Transfer

Where an agreement is reached on a transfer, the Parties shall determine the time, place and procedure for the transfer, through consultation through the channels as provided in Article 3 of the Treaty.

Article 10

Enforcement of the Sentence

1. The Administering Party shall, in accordance with its domestic law, continue to enforce the sentence imposed by the Sentencing Party pursuant to the category and the duration of the sentence as determined by the Sentencing Party.

2. If the category and the duration of the sentence as determined by the Sentencing Party are incompatible with the laws of the Administering Party, the Administering Party may convert the sentence to the penalty prescribed by its domestic law for a similar offence for enforcement. In case of such a conversion,

(a) the Administering Party shall be bound by the cognition on the facts indicated in the judgment of the Sentencing Party;

(b) the Administering Party shall not convert penalty of deprivation of liberty to a pecuniary sentence;

(c) the converted sentence shall, by its nature and as far as possible, correspond with that imposed by the Sentencing Party;

(d) the conversion shall not aggravate the sentence imposed by the Sentencing Party, nor exceed the maximum duration of penalty applicable to a similar offence prescribed by the laws of the Administering Party;

(e) the conversion is not bound by the minimum duration of penalty applicable to a similar offence prescribed by the laws of the Administering Party; and

(f) the period of time served in custody in the territory of the Sentencing Party by the sentenced person shall be deducted.

3. When converting sentence in accordance with Paragraph 2 of this Article, the Administering Party shall transmit a copy of the legal document on the conversion to the Sentencing Party.

4. The Administering Party has the right, in accordance with its domestic law, to commute the sentenced person or release the person on probation.

Article 11

Retrial

1. The Sentencing Party alone has the right to retry on the case.

2. If a sentenced person makes an appeal to the Administering Party after transfer, the Administering Party shall promptly notify the Sentencing Party and transmit the appealing documents to the latter.

3. The Sentencing Party shall inform promptly the Administering Party of the decision on the appeal through the channels as provided in Article 3 of this Treaty.

4. If the Sentencing Party makes a decision, after retrial, to commute or grant pardon to the sentenced person, the Administering Party shall modify or terminate the enforcement of the sentence as soon as it is informed by the Sentencing Party.

Article 12

Pardon

Either Party may, in accordance with its domestic law, grant pardon or, if pertained, amnesty, to the sentenced person transferred and shall inform promptly the other Party of the decision through the channel as provided in Article 3 of this Treaty.

Article 13

Information on the Enforcement of the Sentence

The Administering Party shall provide information to the Sentencing Party concerning the enforcement of the sentence as:

- a. the enforcement of the sentence has been completed;
- b. the sentenced person has escaped from custody or died before the enforcement of the penalty has been completed; or
- c. the Sentencing Party requests for a specific statement.

Article 14

Transit

1. When one Party is to implement an agreement with a third country on transfer of sentenced persons through the territory of the other Party, the former shall request the latter for the permission of such transit.

2. Such permission is not required where air transportation is used and no landing in the territory of the Party is scheduled.

3. The Requested Party shall, insofar as not contrary to its domestic law, grant the request for transit made by the Requesting Party.

Article 15

Languages

For the purpose of this Treaty, the Parties shall communicate in its official language and provide a translation in an official language of the addressed Party or in English language.

Article 16

Exemption from Legalization

For the purpose of this Treaty, any document made by competent authorities of the Parties and transmitted through the channels provided in Article 3 of the Treaty, affixed with the signature or seal of the competent authority of the Requesting Party, can be used in the territory of the Requested Party without any form of legalization.

Article 17

Costs

1. Costs arising from a transfer of a sentenced person before the transfer shall be borne by the Party where the costs incur. Costs for execution of the transfer and for

the enforcement of the penalty after the transfer, shall be borne by the Administering Party.

2. Costs for transit shall be borne by the Party requesting for the transit.

Article 18

Settlement of Disputes

Any dispute arising out of the interpretation and application of this Treaty shall be resolved through consultation through diplomatic channels.

Article 19

Entry into Force, Revision and Termination

1. This Treaty shall enter into force thirty days after the date of receipt of the later notification in writing and through the diplomatic channel, conveying the fulfilment of their respective constitutional or legal formalities for the entry into force of the Treaty.

2. This Treaty may be revised at any time by written agreement between the Parties. The amendments shall enter into force under the terms of Paragraph 1 of this Article.

3. Either Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. The termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.

4. This Treaty shall equally be applicable to the transfer of sentenced persons against

whom the judgment has been rendered before its entry into force.

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

DONE in duplicate at _____ on this _____ day of _____ (month) _____ (year), in the Portuguese, Chinese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

<p>For the Portuguese Republic</p> <p>Minister of Foreign Affairs</p> <p>Luis Amado</p>	<p>For the People's Republic of China</p> <p>Vice-Minister of Foreign Affairs</p> <p>Zhang Yesui</p>
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