



Treaty Series No. 23 (2002)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Federative Republic of Brazil

on the Transfer of Prisoners

London, 20 August 1998

[Instruments of Ratification were exchanged on 11 December 2001 and the Agreement entered into force on 11 December 2001]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
May 2002*

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AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL ON THE TRANSFER OF PRISONERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil (hereinafter called the “Parties”):

In order to encourage the social rehabilitation of sentenced persons by giving them the opportunity to complete their sentences in their own countries;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) “transferring State” means the State in which the sentence was imposed on the prisoner who may be, or has been, transferred;
- (b) “receiving State” means the State to which the prisoner may be, or has been, transferred in order to serve his sentence;
- (c) “prisoner” means a person who is required to be detained in a prison, a hospital or any other institution in the transferring State by virtue of an order made by a court in the course of the exercise of its criminal jurisdiction;
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court in the course of the exercise of its criminal jurisdiction;
- (e) “national” means:
 - (i) in relation to the Federative Republic of Brazil, a national as defined in the Brazilian Constitution;
 - (ii) in relation to the United Kingdom of Great Britain and Northern Ireland, and to the Isle of Man, a British citizen.

For the purposes of this Agreement, both parties may apply for the transfer of any person whose transfer they consider appropriate having regard to any close ties that person has with Brazil, the United Kingdom or the Isle of Man.

ARTICLE 2

General principles

1. The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of prisoners in accordance with the provisions of this Agreement.
2. A person sentenced in the territory of one Party may be transferred to the territory of the other Party, in accordance with the provisions of this Agreement, in order to serve the sentence imposed on him. To that end he may express his interest to the transferring State or to the receiving State in being transferred under this Agreement.
3. Transfer may be requested by either the transferring or the receiving State.

ARTICLE 3

Conditions for transfer

A prisoner may be transferred under this Agreement only if the following criteria are met:

- (a) the prisoner is a national of the receiving State;
- (b) the judgement is final and no other legal proceedings relating to the offence or any other offence are pending in the transferring State;
- (c) at the time of receipt of the request for transfer, the prisoner still has at least six months of the sentence to serve;
- (d) the prisoner himself consents to the transfer or, where in view of his age or his physical or mental condition one of the Parties considers it necessary, his legal representative does so on his behalf;
- (e) 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; and
- (f) the transferring and receiving States agree to the transfer.

ARTICLE 4

Procedure for transfer

1. Any prisoner to whom this Agreement may apply shall be informed by the transferring State of the substance of this Agreement.

2. If the transferring State is prepared, in principle, to approve any prisoner's request for transfer, it shall provide the receiving State with the following information:

- (a) the name, date and place of birth of the prisoner;
- (b) the nature, duration and date of commencement of the sentence that has been imposed;
- (c) a statement of the facts upon which the sentence was based;
- (d) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission and any other factor relevant to the enforcement of the sentence;
- (e) a certified copy of the judgement and the law on which it is based;
- (f) if appropriate, a medical or social report on the prisoner, information about his treatment in the transferring State and any recommendation for his further treatment in the receiving State.

3. If the receiving State, having considered the information which the transferring State has supplied, is willing to consent to the prisoner's transfer, it shall furnish the transferring State with the following:

- (a) a statement indicating that the prisoner is a national of that State;
- (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 prisoner, 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 (2) of Article 8 upon that person's transfer.

4. Transfer of the prisoner from the custody of the authorities of the transferring State into the custody of the authorities of the receiving State shall take place on the territory of the transferring State.

ARTICLE 5

Requests and replies

1. Requests for transfers shall be made in writing and addressed, through diplomatic channels, by the competent authority of the requesting State to the competent authority of the requested State. Replies shall be communicated through the same channels.

2. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with Article 3(d) does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.

2. The transferring State shall afford an opportunity to the receiving State to verify, through a consul or other official agreed upon with the receiving State, that the consent is given in accordance with the conditions set out in paragraph (1) of this Article.

ARTICLE 7

Effect of transfer for transferring State

1. Responsibility for the continued enforcement and administration of the sentence shall pass from the transferring to the receiving State as soon as the prisoner is formally handed over into the custody of the authorities of the receiving State.

2. Once the prisoner has been taken into custody by the authorities of the receiving State, enforcement of the sentence by the transferring State shall cease.

3. If the transferred prisoner subsequently returns to the transferring State after completion of the sentence in the receiving State, the transferring State shall not return the prisoner to custody or in any other way resume enforcement of the original sentence.

ARTICLE 8

Procedure for enforcement of sentence

1. The continued enforcement of the sentence after transfer shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

2. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. No prisoner shall be transferred unless the sentence is of a duration, or has been adapted to a duration by the appropriate authorities in the receiving State, that is enforceable in the receiving State. The receiving State shall not aggravate, by its nature or duration, the sanction imposed in the transferring State.

ARTICLE 9

Review of judgement

1. The transferring State alone shall have the right to decide on any application for review of the judgement.
2. If the transferring State revises, modifies, or overturns the judgement pursuant to paragraph (1) of this Article or reduces, commutes or terminates the sentence, the receiving State shall, upon being notified of the decision, give effect thereto in accordance with this paragraph.

ARTICLE 10

Information on enforcement

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

- (a) when the sentence has been completed;
- (b) if the prisoner has escaped from custody before the sentence has been completed;
or
- (c) if the transferring State requests a special report.

ARTICLE 11

Transit

In any case involving a prisoner being transferred from a third country to the territory of one of the Parties to this Agreement in order to serve the remainder of their sentence, the other Party shall, if so requested, facilitate the transit through its territory of the prisoner concerned, excepting that it may refuse to grant transit if the prisoner is one of its own nationals. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 12

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the cost of transfer from the prisoner or from some other source.

ARTICLE 13

Territorial application

This Agreement shall apply:

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

ARTICLE 14

Temporal application

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

ARTICLE 15

Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which the instruments of ratification are exchanged.

2. The present Agreement shall remain in force for five years from the date upon which it enters into force. Thereafter, the Agreement shall continue in force until six months from the date upon which either Party gives written notice to the other Party of its intention to terminate it.

In witness thereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London on this 20th day of August 1998 in the English and Portuguese languages, each text being equally authentic.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

F BERMAN

For the Government of the Federative
Republic of Brazil:

R CALHEIROS



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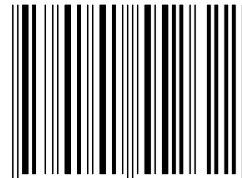
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