

TREATY BETWEEN
JAPAN AND THE SOCIALIST REPUBLIC OF VIET NAM
ON THE TRANSFER OF SENTENCED PERSONS

TREATY BETWEEN
JAPAN AND THE SOCIALIST REPUBLIC OF VIET NAM
ON THE TRANSFER OF SENTENCED PERSONS

Japan and the Socialist Republic of Viet Nam
(hereinafter referred to as "the Parties");

Desiring to further promote international co-operation
in the field of enforcement of sentences;

Considering that such co-operation should further the
ends of justice and the social rehabilitation of sentenced
persons;

Considering that these objectives require that persons
who are deprived of their liberty outside their own country
as a result of their commission of a criminal offence
should be given the opportunity to serve their sentences
within their own society; and

Considering that this aim can best be achieved by
having them transferred to their own country;

Have agreed as follows:

Article 1
Definitions

For the purposes of this Treaty:

- (a) "sentence" means any punishment involving
deprivation of liberty ordered by a court for a
limited or unlimited period of time on account of
a criminal offence;
- (b) "sentenced person" means a person on whom the
sentence has been imposed in the territory of
either Party and who is serving that sentence in
the territory of that Party or the other Party;
- (c) "judgment" means a decision or order of a court
imposing a sentence;
- (d) "transferring Party" means the Party from which
the sentenced person may be, or has been,
transferred; and
- (e) "receiving Party" means the Party to which the
sentenced person may be, or has been, transferred
in order to serve his or her sentence.

Article 2
General principles

1. Each Party undertakes to afford the other Party the widest measure of co-operation 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 serve the sentence imposed on him or her. To that end, the sentenced person may express his or her interest to the transferring Party or to the receiving Party in being transferred under this Treaty.
3. Transfer may be requested by either the transferring Party or the receiving Party.

Article 3
Conditions for transfer

1. A sentenced person may be transferred under this Treaty only on the following conditions:
 - (a) where Japan is the receiving Party, the sentenced person is a Japanese national or any other person who falls within the scope of the Act on the Transnational Transfer of Sentenced Persons (Law No. 66 of 2002) of Japan;

where the Socialist Republic of Viet Nam is the receiving Party, the sentenced person is a Vietnamese national;
 - (b) if the judgment is final;
 - (c) 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 or if the sentence is indeterminate;
 - (d) if the transfer is consented to by the sentenced person;
 - (e) 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 Party or would constitute a criminal offence if committed on its territory; and
 - (f) if the transferring Party and the receiving Party agree to the transfer.

2. The Parties may agree to a transfer even if the time of the sentence to be served by the sentenced person is less than that specified in sub-paragraph (c), paragraph 1 of this Article.

Article 4 Central authorities

1. Each Party shall designate a central authority for the purpose of facilitating communications between the Parties under Articles 5, 6 and 13:

- (a) for Japan, the central authority shall be the Ministry of Foreign Affairs; and
- (b) for the Socialist Republic of Viet Nam, the central authority shall be the Ministry of Public Security.

2. Communications between the Parties under the said Articles shall be made through the central authorities. Notwithstanding the above, the Ministry of Justice of Japan and the Ministry of Public Security of the Socialist Republic of Viet Nam may communicate with each other directly in case of emergency or other extraordinary circumstances in accordance with the laws and regulations of the respective countries.

Article 5 Requests and replies

1. Requests for transfer and replies shall be made in writing.

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

Article 6 Procedure 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 the sentenced person has expressed an interest to the transferring Party in being transferred under this Treaty, the transferring Party shall so inform the receiving Party in writing promptly after the judgment becomes final.

3. The information shall include:

- (a) the full name, nationality, photograph and date and place of birth of the sentenced person;
- (b) his or her address, if any, in the receiving Party;
- (c) a statement of the facts upon which the sentence was based; and
- (d) the nature, duration and dates of commencement and termination of the sentence.

4. If the sentenced person has expressed his or her interest to the receiving Party, the transferring Party shall, upon request, communicate in writing to the receiving Party the information referred to in paragraph 3 of this Article.

5. The receiving Party, if requested by the transferring Party, shall furnish it with the following documents or statements unless the receiving Party has already indicated that it will not agree to the transfer:

- (a) a document or statement indicating that the sentenced person is a national of the receiving Party, or, where Japan is the receiving Party, any other person as provided for in sub-paragraph (a), paragraph 1 of Article 3;
- (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; and
- (c) a statement describing how the sentence would be enforced by the receiving Party.

6. If a transfer is requested, the transferring Party shall provide the following documents or statements to the receiving Party, unless either Party has already indicated that it will not agree to the transfer:

- (a) a copy of the judgment and the law on which it is based;

- (b) a statement indicating how much of the sentence has already been served, including information on any remission and any other factor relevant to the enforcement of the sentence;
- (c) a statement containing the consent to the transfer as referred to in sub-paragraph (d), paragraph 1 of Article 3; and
- (d) any medical or social reports or behaviour report in prison on the sentenced person, information about his or her treatment in the transferring Party, and any recommendation for his or her further treatment in the receiving Party.

7. Either Party may ask to be provided with any of the documents or statements referred to in paragraph 5 or 6 of this Article before making a request for transfer or taking a decision on whether or not to agree to the transfer.

8. The sentenced person shall be informed, in writing, of any action taken by the transferring Party or by the receiving Party under paragraphs 2 and 4 of this Article, as well as of any decision taken by either Party on a request for his or her transfer.

Article 7 Consent and its verification

1. The transferring Party shall ensure that the sentenced person who gives consent to the transfer in accordance with sub-paragraph (d), paragraph 1 of Article 3 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 Party.

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

Article 8 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 in the transferring Party.

2. The transferring Party may no longer enforce the sentence if the receiving Party considers enforcement of the sentence to have been completed.

Article 9
Continued enforcement of sentence

1. The receiving Party shall continue the enforcement of the sentence by taking necessary measures in accordance with its laws and regulations.

2. The continued enforcement of the sentence after the transfer shall be governed by the laws and regulations of the receiving Party, 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 or otherwise.

3. The receiving Party shall be bound by the legal nature and duration of the sentence as determined by the transferring Party.

4. If, however, this sentence is by its nature or duration incompatible with the law of the receiving Party, or its law so requires, that Party may, by taking necessary measures in accordance with its laws and regulations, adapt the sanction imposed in the transferring Party to a sanction prescribed by its own law for a similar offence. As to its nature and duration, the adapted sanction shall, as far as possible, correspond with the sanction imposed in the transferring Party. It shall not be severer than that imposed in the transferring Party, in terms of nature and duration.

Article 10
Pardon, amnesty, commutation

Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution, laws and regulations.

Article 11
Review of judgment

The transferring Party alone shall have the right to decide on any application for review of the judgment.

Article 12
Termination of enforcement of sentence

The receiving Party shall terminate enforcement of the sentence as soon as it is informed by the transferring Party of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 13
Information on enforcement of sentence

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

- (a) when it considers enforcement of the sentence to have been completed;
- (b) if the sentenced person has escaped from custody or died before enforcement of the sentence has been completed; or
- (c) if the transferring Party requests a special report.

Article 14
Language and costs

1. Requests for the transfer and replies, and information, documents and statements provided under this Treaty shall be furnished in the language of the Party to which they are addressed or in English.

2. Any costs incurred in the application of this Treaty shall be borne by the receiving Party, except costs incurred exclusively in the territory of the transferring Party.

Article 15
Consultations

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

Article 16
Headings

The headings of the Articles of this Treaty are inserted for convenience of reference only and shall not affect the interpretation of this Treaty.

Article 17
Entry into force and termination

1. This Treaty shall enter into force on the thirtieth day after the date on which the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary to give effect to this Treaty have been completed.

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

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

4. This Treaty shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred in conformity with the provisions of this Treaty prior to the date of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Treaty.

Done at Tokyo, in duplicate, in the Japanese, Vietnamese and English languages, all texts being equally authentic, this first day of July, 2019. In case of any divergence of interpretation, the English text shall prevail.

FOR JAPAN:

阿部俊子

FOR THE SOCIALIST REPUBLIC
OF VIET NAM:

Lê Quý Vương