



Morocco No. 1 (2002)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Kingdom of Morocco

on the Transfer of Convicted Offenders

London, 21 February 2002

[The Agreement is not in force]

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

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AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF MOROCCO ON THE TRANSFER OF CONVICTED OFFENDERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Morocco hereinafter called “the Parties”;

Desiring to strengthen and develop the friendly relations and co-operation between the two countries, and in particular to strengthen judicial co-operation between them;

Desiring to enable convicted persons to spend the remainder of a custodial sentence in their own country to facilitate the process of their social reintegration;

Have agreed as follows:

CHAPTER I

General Principles

ARTICLE 1

Definitions

For the present Agreement:

- (a) “sentencing State” means the State in which the sentence was imposed on the person who may be, or has been, transferred;
- (b) “administering State” means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) “judgement” means a decision or order of a court imposing a sentence;
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- (e) “sentenced person” means any person who has undergone final judgement on the territory of either State and who is in detention.

ARTICLE 2

Principles

- 1. Any sentenced person on the territory of one of the Parties may, in accordance with the provisions of this Agreement, be transferred to the territory of the other Party to serve the sentence that has been imposed on him.
- 2. Any sentenced person to whom this Agreement may apply must be informed by the sentencing State of the possibility accorded to him by this Agreement of his transfer to his country in order to serve his sentence.

ARTICLE 3

Reasons for refusal

- 1. An application for transfer of a sentenced person shall be refused:
 - (a) if the State requested considers that the transfer would prejudice its sovereignty, security, public order, the basic principles of its legal system, or its basic interests;

- (b) if the sentence would lapse under the law of the administering State before transfer.
- 2. An application for transfer may be refused, in particular:
 - (a) if, within the scope deemed appropriate by the sentencing State, the sentenced person has not paid monetary amounts owing in the way of fines, judicial expenses, indemnities, and financial penalties of any kind awarded;
 - (b) if the conviction on which the application is founded is based on facts on which a final judgement has been rendered by the administering State;
 - (c) if the sentenced person is a national of the sentencing State;
 - (d) if the facts on which the conviction was based are the subject of a prosecution in the administering State;
 - (e) if the competent authority in the administering State takes a final and enforceable decision not to prosecute or decides finally to call a halt to a prosecution moved previously on the same facts.

ARTICLE 4

Conditions for transfer

This Agreement shall be implemented on the following terms:

- (a) that the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory;
- (b) that the sentenced person is a national of the administering State;
- (c) that the judicial decision must be final and enforceable;
- (d) that the sentenced person, or his authorised representative if not possible for reasons of age or state of physical or mental health, must voluntarily agree to such transfer having fully appreciated the consequential legal effects;
- (e) that the outstanding period of the sentence must not be less than one year when applying for permission to be transferred. In exceptional cases the two States may permit the transfer even if the outstanding period is less than one year;
- (f) that both the sentencing State and the administering State must agree to the transfer.

CHAPTER II

Procedure

ARTICLE 5

Channels of communication

1. Except in exceptional cases, applications by the applying State to the State to which application is made, shall be addressed, in relation to the Kingdom of Morocco, to the Ministry of Justice and in relation to the United Kingdom of Great Britain and Northern Ireland, to the Foreign and Commonwealth Office. Replies shall be forwarded in the same way with the minimum of delay.

2. Each State shall notify the other State in writing of the specific department to which communications are to be addressed.
3. The State to which application is made shall inform the applying State with the minimum of delay of its decision to accept or refuse the application for transfer.
4. A decision to refuse must be accompanied by reasons.

ARTICLE 6

Applications for transfer and replies thereto

1. An application for transfer may be made:
 - (a) either by the sentenced person himself or his legal representative, who, to this effect, presents an application to either State;
 - (b) or by the sentencing State;
 - (c) or by the administering State.
2. An application shall be submitted in writing. It shall state the identity of the sentenced person, his place of residence in the sentencing State and the administering State.

ARTICLE 7

Supporting documentation

1. The administering State, either in support of its own application or in response to an application from the sentencing State, shall furnish:
 - (a) a document or declaration indicating that the sentenced person is one of its nationals;
 - (b) the text of the legal provisions in the administering State showing that the acts or omissions that are the subject of the judgement in the sentencing State would also constitute an offence if committed on its territory;
 - (c) a document indicating the legal designation and the outstanding period of the sentence to be served in the administering State after transfer, as well as information on how the sentence is to be enforced.
2. The sentencing State, either in support of its own application or in response to an application from the administering State, shall furnish:
 - (a) a certified true copy of the decision to convict stating the enforceable nature of this decision and the legal provisions applied;
 - (b) a statement of the facts indicating the circumstances and time of the offence and where committed;
 - (c) an indication of the duration of the sentence, the commencement of custody, taking into account the period of provisional detention where applicable and a reference to any other action affecting enforcement of the sentence;

- (d) a statement taken down by the competent authority recording the consent of the sentenced person or his legal representative;
 - (e) all useful information on how the sentence would be enforced in the sentencing State.
3. Both the sentencing State and the administering State may request any document or information considered useful before applying for transfer or deciding to accept or refuse the transfer.
4. The sentenced person shall be kept informed of the progress made in his case and of any decision made by either State concerning the transfer.

ARTICLE 8

Information concerning the enforcement

The administering State shall provide the sentencing State with information relating to the enforcement of a judgement:

- (a) if it considers that the sentence has been enforced;
- (b) if the sentenced person escapes before completing his sentence;
- (c) if the sentencing State asks the administering State for a special report.

ARTICLE 9

Exemption from certification

Documents and paperwork forwarded in implementation of this Agreement shall be exempt from certification procedures.

ARTICLE 10

Languages

Each State may reserve the right to demand that the other State forward applications and their accompanying documentation together with a translation into that State's official language.

ARTICLE 11

Escort and costs

1. The administering State shall be responsible for providing the escort for the transfer.
2. The administering State shall bear the costs of the transfer, including that of the escort, unless otherwise decided by the two States.
3. The sentencing State shall bear the costs incurred exclusively on its territory.
4. The administering State may, however, seek to recover all, or part of the costs involved in the transfer, from the sentenced person.

CHAPTER III

Consequences of the Transfer

ARTICLE 12

Effects in the sentencing state

1. Enforcement of a judgement in the sentencing State shall be suspended when the sentenced person is taken into charge by the authorities of the administering State. If the sentenced person escapes enforcement of the sentence, after having been transferred, the sentencing State shall recover the right to enforce the judgement in respect of the outstanding amount of the sentence which should have been served in the administering State.
2. The sentencing State may not proceed to enforce a sentence when the administering State considers the enforcement has been completed.

ARTICLE 13

Effects in the administering state

1. The sentence pronounced by the sentencing State shall be directly applicable in the administering State.
2. The administering State shall abide by fact reports and by the legal nature and term of the sentence set out in the judgement.
3. If the term of this sentence exceeds the maximum sentence provided for by the legislation of the administering State, the sentencing State may refuse the transfer request. If, however, the transfer is awarded, the administering State may adapt the sentence to suit the sentence or measure provided by its law for similar offences. Such sentence or measure shall conform as far as possible in nature to that which it has been decided to enforce under the judgement. Such sentence or measure may not, in nature or term, lead to a harshening of the sentence awarded by the sentencing State, nor may it exceed the maximum limit set out in the law of the administering State.
4. Subject to Articles 16 and 17 of the present Agreement, the enforcement of the sentence in the administering State shall be subject to the law of that State. The latter shall have sole authority to take decisions to determine how the sentence is to be enforced, including decisions concerning the term of imprisonment of the sentenced person.

ARTICLE 14

Consequences of the transfer

1. A person who has been transferred under the provisions of this Agreement may not be re-convicted in the administering State for the same facts which were the subject of the judgement in the sentencing State.
2. However, a person who has been transferred may be apprehended, tried and convicted in the administering State for facts other than those which were the subject of the judgement in the sentencing State if such facts are punishable in law under the legislation of the administering State.

ARTICLE 15

Suspension of the enforcement of the sentence

1. The sentencing State shall without delay inform the administering State of any judgement or prescribed action taken in its territory which shall cease to enforce the sentence.
2. The administering State shall cease the enforcement of the sentence as soon as it is notified by the sentencing State of any judgement or prescribed action that calls an end to the enforceable nature of the conviction.

ARTICLE 16

Pardon and amnesty

Either State may grant a pardon and amnesty or commute the sentence under the provisions of the law of its constitution or other legal regulations.

ARTICLE 17

Revision of the judgement

The right to decide on any appeal against a conviction shall rest solely with the sentencing State.

CHAPTER IV

Final Provisions

ARTICLE 18

Application in time

The present Agreement shall apply to sentences rendered before of after this Agreement enters into force.

ARTICLE 19

Exchange of views and consultations

1. If considered useful, the competent authorities of both States shall proceed, verbally or in writing, with the exchange of views on the application of this Agreement in a general manner or for a particular case.
2. Either State may request that a meeting be convened of representatives of the Ministries of Justice and of Foreign Affairs of the two parties, to discuss any question relating to a particular case.
3. All disputes shall be solved through negotiation between the two States.

ARTICLE 20

Provisional implementation and entry into force

1. This Agreement shall be applied provisionally upon its signature.
2. This Agreement shall enter into force on the first day of the second month following the date of the latest notification certifying that the required constitutional procedures have been fulfilled in each State.
3. This Agreement has been concluded for an unlimited period.

ARTICLE 21

Territorial application

This Agreement shall be applied:

- (a) With respect to the United Kingdom, to Great Britain and Northern Ireland 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;
- (b) With respect to the Kingdom of Morocco, to the whole territory of the Kingdom.

ARTICLE 22

Suspension and cancellation

1. Either Party may suspend or cancel this Agreement at any time by notice to the other Party. With respect to the United Kingdom, either Party has the right to suspend or cancel this Agreement with relation to each of the territories of the United Kingdom.
2. A suspension shall take effect from the date of receipt of notice from the other Party and shall end on the date of receipt of a notice cancelling the suspension. Cancellation shall take effect from the first day of the third month following the date of receipt of notice from the other Party.
3. However, this Agreement shall remain applicable for the enforcement of sentences of persons who have been transferred pursuant to the said Agreement prior to the entry into effect of a suspension or cancellation.

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

Done in duplicate at London on 21 February 2002 in the English, Arabic and French languages, all three texts being equally authoritative.

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

JACK STRAW

For the Government of the Kingdom of
Morocco:

MOHAMMED BENAÏSSA



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