

Signed at Beijing May 27, 2008  
Entered into force August 5, 2009

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

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

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

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

In order to have sentenced persons serve their sentences in their country of nationality to facilitate their social rehabilitation,

Have agreed as follows:

**Article 1  
DEFINITIONS**

For the purposes of this Treaty:

- (a) "Transferring Party" means the Party which may transfer or has transferred a sentenced person out of its territory;
- (b) "Receiving Party" means the Party which may receive or has received a sentenced person into its territory;
- (c) "sentenced person" means a person who has been sentenced by a court to imprisonment in the Transferring Party.

**Article 2  
GENERAL PROVISIONS**

Each Party may, in accordance with the provisions of this Treaty, transfer a sentenced person to the other Party to enforce the sentence imposed against the person by the Transferring Party in the territory of the Receiving Party.

**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 or, where necessary,

through the diplomatic channels.

2. The Central Authorities referred to in paragraph 1 of this Article shall be the Minister of Justice for the Republic of Korea and the Ministry of Justice for the People's Republic of China.

3. 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 Receiving 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 Receiving Party;
  - (c) the judgment imposed against the sentenced person is effective without any possibility of further appeal;
  - (d) at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve;
  - (e) the transfer is consented to in writing by the sentenced person, or by the person's legal representative when either Party considers it necessary in view of the person's age or physical or mental condition; and
  - (f) 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 that specified in paragraph 1(d) of this Article.

#### **ARTICLE 5**

#### **DECISION TO TRANSFER**

Each Party may determine at its discretion whether or not to agree to the transfer requested by the other Party.

#### **Article 6**

#### **REQUESTS AND REPLIES**

1. A sentenced person may apply to either Party for a transfer under this Treaty. The Party to which the sentenced person has made an application for transfer must notify the other Party in writing of the application.
2. A request for transfer may be made by either Party. The requested Party shall promptly inform the requesting Party of its decision as to whether or not to agree to the requested transfer.
3. Requests for, and replies to, transfers shall be made in writing and transmitted

through the channels as provided for in paragraph 1 of Article 3 of this Treaty.

## **Article 7**

### **REQUIRED DOCUMENTS**

1. If a transfer is requested, the Transferring Party shall provide the following documents or statements to the Receiving Party, unless the requested Party has already indicated that it will not agree to the transfer:

- (a) a certified copy of the judgment, including the relevant provisions of law on which the judgment is based;
- (b) a statement indicating the category of the penalty, the term of the punishment and the starting date for calculating the term;
- (c) a statement describing the behavior of the person during the service of the sentence and the period of time already served and remaining to be served as well as time spent in pre-trial detention, any reduction of sentence and other factors relevant to the enforcement of the sentence;
- (d) a written declaration of the consent to the transfer as referred to in paragraph 1(e) of Article 4 of this Treaty; and
- (e) a statement indicating the physical and mental conditions of the sentenced person.

2. The Receiving Party shall provide the Transferring Party with the following documents or statements:

- (a) documents or statements certifying that the sentenced person is a national of the Receiving Party;
- (b) relevant provisions of the laws of the Receiving Party stipulating that the conduct for which the sentence was imposed against the sentenced person also constitutes an offence; and
- (c) information on the procedures of the Receiving Party, under its domestic law, to enforce the sentence imposed by the Transferring Party.

## **Article 8**

### **NOTIFICATION TO THE SENTENCED PERSON**

1. Each Party shall, within its territory, notify sentenced persons, to whom this 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 concerned within its territory of the measures taken or decisions made by the Transferring Party or the Receiving Party upon requests for transfer in accordance with Articles 5 and 6 of this Treaty.

## **Article 9**

### **CONSENT OF THE SENTENCED PERSON AND ITS VERIFICATION**

1. The Transferring Party shall ensure 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 a declaration indicating consent to the transfer.

2. Where the Receiving Party requests, the Transferring Party shall afford the opportunity to the Receiving Party to verify, through a designated official, that the sentenced person has expressed consent in accordance with the conditions set out in the paragraph above.

## **Article 10**

### **DELIVERY OF THE TRANSFERRED PERSON**

Where an agreement is reached on a transfer, the Parties shall determine the time, place and procedure for the transfer, by means of consultation through the channels as provided for in paragraph 1 of Article 3 of this Treaty.

## **ARTICLE 11**

### **CONTINUED ENFORCEMENT OF SENTENCE**

1. After receiving the sentenced person, the Receiving Party shall continue to enforce the sentence pursuant to the nature and the duration of the sentence determined by the Transferring Party.

2. If the sentence as determined by the Transferring Party is by its nature or duration incompatible with the domestic law of the Receiving Party, the Receiving Party may adapt the sentence in accordance with the sentence prescribed by its own domestic law for a similar offence. When adapting the sentence:

- (a) the Receiving Party shall be bound by the findings of facts insofar as they appear from the judgment imposed by the Transferring Party;
- (b) the Receiving Party shall not adapt a penalty of deprivation of liberty to a pecuniary penalty;
- (c) the adapted sentence shall, as far as possible, correspond with the sentence imposed in the Transferring Party;
- (d) the adapted sentence shall be no more severe than that imposed by the Transferring Party in terms of nature or duration, nor exceed the maximum duration of penalty applicable to a similar offence prescribed by the laws of the Receiving Party;
- (e) the adapted sentence is not bound by the minimum duration of penalty applicable to a similar offence prescribed by the laws of the Receiving Party; and
- (f) the period of time served by the sentenced person under a sentence of imprisonment in the Transferring Party shall be deducted.

3. The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the Receiving Party, including those providing for the reduction of sentence and parole and those governing other measures adopted during the enforcement of sentence.

**Article 12**  
**RETENTION OF JURISDICTION**

1. The Transferring Party shall retain jurisdiction for the modification or cancellation of convictions and sentences imposed by its courts.
2. The Receiving Party shall modify or terminate enforcement of a sentence as soon as it is informed of any decision by the Transferring Party in accordance with this Article that results in modification or cancellation of a conviction or sentence imposed by its courts.

**Article 13**  
**PARDON**

Either Party may, in accordance with its domestic law, grant a pardon to the sentenced person transferred and shall promptly inform the other Party of the decision through the channel as provided for in paragraph 1 of Article 3 of this Treaty.

**Article 14**  
**INFORMATION ON THE ENFORCEMENT OF THE SENTENCE**

The Receiving Party shall provide information to the Transferring Party concerning the enforcement of the sentence when:

- (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 Transferring Party requests a specific statement.

**Article 15**  
**TRANSIT**

1. When one Party is to implement an agreement with a third country on the transfer of sentenced persons through the territory of the other Party, the former Party shall request permission from the latter Party for such transit.
2. Such permission is not required where air transportation is used and no landing in the territory of the other Party is scheduled.
3. The requested Party shall, insofar as it is not contrary to its domestic law, grant the request for transit made by the requesting Party.

**Article 16**  
**LANGUAGE OF COMMUNICATION**

For the purpose of this Treaty, each Party shall communicate in its official language and provide a translation into the official language of the other Party or in English.

**Article 17**  
**EXEMPTION FROM LEGALIZATION**

For the purpose of this Treaty, any document made by competent authorities of the Parties and transmitted through the channels provided for in paragraph 1 of Article 3 of this Treaty, affixed with the signature or seal of the competent authority of one Party, may be used in the territory of the other Party without any form of legalization.

**Article 18**  
**COSTS**

1. The Receiving Party shall bear the costs of:
  - (a) the transfer of the sentenced person, except the costs incurred exclusively in the territory of the Transferring Party; and
  - (b) the continued enforcement of the sentence after transfer.
2. The Receiving Party may seek to recover all or part of the costs from the sentenced person.

**Article 19**  
**SETTLEMENT OF DISPUTES**

Any dispute arising out of the interpretation, application, or implementation of this Treaty shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach an agreement.

**Article 20**  
**ENTRY INTO FORCE AND TERMINATION**

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Seoul. This Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
2. Either Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.
3. This Treaty applies to any requests for transfer presented after its entry into force even if the relevant offences occurred before the entry into force of this Treaty.

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

DONE in duplicate at Beijing, on this 27th day of May, 2008, in the Korean, Chinese, and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA FOR THE PEOPLE'S REPUBLIC OF CHINA