

# **INTER-AMERICAN CONVENTION ON SERVING CRIMINAL SENTENCES**

## **ABROAD**

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,

**CONSIDERING** that, according to Article 2.e of the OAS Charter, one of the essential purposes of the Organization of American States is to "seek the solution of political, juridical and economic problems that may arise among them";

**INSPIRED BY THE DESIRE** to cooperate to ensure improved administration of justice through the social rehabilitation of the sentenced persons;

**PERSUADED** that to attain these ends, it is advisable that the sentenced person be given an opportunity to serve the sentence in the country of which the sentenced person is a national; and

**CONVINCED** that the way to bring about this result is to transfer the sentenced person,

**RESOLVES** to adopt the following Inter-American Convention on Serving Criminal Sentences Abroad:

### **ARTICLE I DEFINITIONS**

For the purposes of this convention:

1. *Sentencing state*: means the state party from which the sentenced person would be transferred.
2. *Receiving state*: means the state party to which the sentenced person would be transferred.

3. *Sentence*: means the final judicial decision imposing, as a penalty for the commission of a criminal offense, imprisonment or a term of parole, probation, or other form of supervision without imprisonment. A sentence is understood to be final when no ordinary legal appeal against the conviction or sentence is pending in the sentencing state and the period for its appeal has expired.
4. *Sentenced person*: means the person who is to serve or is serving a sentence in the territory of a state party.

## **ARTICLE II GENERAL PRINCIPLES**

In accordance with the provisions of this convention:

- a. a sentence imposed in one state party upon a national of another state party may be served by the sentenced person in the state of which he or she is a national; and
- b. the states parties undertake to afford each other the fullest cooperation in connection with the transfer of sentenced persons.

## **ARTICLE III CONDITIONS FOR THE APPLICATION OF THIS CONVENTION**

This convention shall be applicable only under the following conditions:

1. The sentence must be final, as defined in Article 1.3 of this convention.

2. The sentenced person must consent to the transfer, having been previously informed of the legal consequences thereof.
3. The act for which the person has been sentenced must also constitute a crime in the receiving state. For this purpose, no account shall be taken of differences of terminology or of those that have no bearing on the nature of the offense.
4. The sentenced person must be a national of the receiving state.
5. The sentence to be served must not be the death penalty.
6. At least six months of the sentence must remain to be served at the time the request is made.
7. The administration of the sentence must not be contrary to domestic law in the receiving state.

#### **ARTICLE IV PROVISION OF INFORMATION**

1. Each state party shall inform any sentenced person covered by the provisions of this convention as to its content.
2. The states parties shall keep the sentenced person informed as to the processing of the transfer.

## **ARTICLE V PROCEDURE FOR TRANSFER**

The transfer of a sentenced person from one state to another shall be subject to the following procedure:

1. The request for application of this convention may be made by the sentencing state, the receiving state, or the sentenced person. The procedures for the transfer may be initiated by the sentencing state or by the receiving state. In these cases, it is required that the sentenced person has expressed consent to the transfer.
  
2. The request for transfer shall be processed through the central authorities indicated pursuant to Article XI of this convention, or, in the absence thereof, through consular or diplomatic channels. In conformity with its domestic law, each state party shall inform those authorities it considers necessary as to the content of this convention. It shall also endeavor to establish mechanisms for cooperation among the central authority and the other authorities that are to participate in the transfer of the sentenced person.
  
3. If the sentence was handed down by a state or province with criminal jurisdiction independent from that of the federal government, the approval of the authorities of that state or province shall be required for the application of this transfer procedure.
  
4. The request for transfer shall furnish pertinent information establishing that the conditions of Article III have been met.
  
5. Before the transfer is made, the sentencing state shall permit the receiving state to verify, if it wishes, through an official designated by the latter, that the sentenced

person has given consent to the transfer in full knowledge of the legal consequences thereof.

6. In taking a decision on the transfer of a sentenced person, the states parties may consider, among other factors, the possibility of contributing to the person's social rehabilitation; the gravity of the offense; the criminal record of the sentenced person, if any; the state of health of the sentenced person; and the family, social, or other ties the sentenced person may have in the sentencing state and the receiving state.
7. The sentencing state shall provide the receiving state with a certified copy of the sentence, including information on the amount of time already served by the sentenced person and on the time off that could be credited for reasons such as work, good behavior, or pre trial detention. The receiving state may request such other information as it deems necessary.
8. Surrender of the sentenced person by the sentencing state to the receiving state shall be effected at the place agreed upon by the central authorities. The receiving state shall be responsible for custody of the sentenced person from the moment of delivery.
9. All expenses that arise in connection with the transfer of the sentenced person until that person is placed in the custody of the receiving state shall be borne by the sentencing state.
10. The receiving state shall be responsible for all expenses arising from the transfer of the sentenced person as of the moment that person is placed in the receiving state's

custody.

## **ARTICLE VI REFUSAL OF TRANSFER REQUEST**

When a state party does not approve the transfer of a sentenced person, it shall notify the requesting state of its refusal immediately, and whenever possible and appropriate, explain its reasons for the refusal.

## **ARTICLE VII RIGHTS OF THE SENTENCED PERSON WHO IS TRANSFERRED AND MANNER OF SERVING SENTENCE**

1. A sentenced person who is transferred under the provisions of this convention shall not be arrested, tried, or sentenced again in the receiving state for the same offense upon which the sentence to be executed is based.
2. Except as provided in Article VIII of this convention, the sentence of a sentenced person who is transferred shall be served in accordance with the laws and procedures of the receiving state, including application of any provisions relating to reduction of time of imprisonment or of alternative service of the sentence.

No sentence may be enforced by a receiving state in such fashion as to lengthen the sentence beyond the date on which it would expire under the terms of the sentence of the court in the sentencing state.

3. The authorities of a sentencing state may request, by way of the central authorities, reports on the status of service of the sentence of any sentenced person transferred to a

receiving state in accordance with this convention.

## **ARTICLE VIII REVIEW OF SENTENCE AND EFFECTS IN THE RECEIVING STATE**

The sentencing state shall retain full jurisdiction for the review of sentences issued by its courts. It shall also retain the power to grant pardon, amnesty, or mercy to the sentenced person. The receiving state, upon receiving notice of any decision in this regard, must take the corresponding measures immediately.

## **ARTICLE IX APPLICATION OF THE CONVENTION IN SPECIAL CASES**

This Convention may also be applicable to persons subject to supervision or other measures under the laws of one of the states parties relating to youthful offenders. Consent for the transfer shall be obtained from the person legally authorized to grant it.

By agreement between the parties, this convention may be applied to persons whom the competent authority has pronounced unindictable, for purposes of treatment of such persons in the receiving state. The parties shall, in accordance with their laws, agree on the type of treatment to be accorded such individuals upon transfer. For the transfer, consent must be obtained from a person legally authorized to grant it.

## **ARTICLE X TRANSIT**

If the sentenced person, upon being transferred, must cross the territory of a another state

party to this convention, the latter shall be notified by way of transmittal of the decision granting the transfer by the state under whose custody the transfer is to be effected. In such cases, the state of transit may or may not consent to the transit of the sentenced person through its territory.

Such notification shall not be necessary when air transport is used and no regular landing is scheduled in the territory of the state party that is to be overflowed.

#### **ARTICLE XI CENTRAL AUTHORITY**

Upon signing, ratifying, or acceding to this convention, the states parties shall notify the General Secretariat of the Organization of American States of the central authority designated to perform the functions provided herein. The General Secretariat shall distribute to the states parties to this convention a list of the designations it has received.

#### **ARTICLE XII RELATIONSHIP TO OTHER AGREEMENTS**

None of the stipulations of this convention shall be construed to restrict other bilateral or multilateral treaties or other agreements between the parties.

#### **FINAL CLAUSES**

#### **ARTICLE XIII**

This convention is open to signature by the Member states of the Organization of



American States.

#### **ARTICLE XIV**

This convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

#### **ARTICLE XV**

This convention shall remain open to accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

#### **ARTICLE XVI**

The States may set forth reservations to this convention at such time as they approve, sign, ratify, or accede to it, provided that the reservations are not incompatible with the object and purpose of this convention and that they relate to one or more specific provisions.

#### **ARTICLE XVII**

This convention shall enter into force for the ratifying states on the thirtieth day following the date on which the second instrument of ratification has been deposited. For each state that ratifies the convention or accedes to it after the second instrument of ratification has been deposited, the convention shall enter into force on the thirtieth day following the day on which such states has deposited its instrument of ratification or accession.

## **ARTICLE XVIII**

This convention shall remain in force indefinitely, but any state party may denounce it. The denunciation shall be registered with the General Secretariat of the Organization of American States. At the end of one year from the date of the denunciation, the convention shall cease to be in force for the denouncing state.

However, its provisions shall remain in force for the denouncing state with respect to sentenced persons transferred in accordance with this convention, until the respective sentences have been served.

Requests for transfer being processed at the time the denunciation of this convention is made will continue to be processed and executed, unless the parties agree to the contrary.

## **ARTICLE XIX**

The original of this convention, whose texts in English, French, Portuguese, and Spanish are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy, for registry and publication, to the Secretariat of the United Nations, pursuant to Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify the Member states of that Organization and the states that have acceded to the convention of the signatures affixed, the instruments of ratification, accession, or denunciation deposited, and the reservations set forth, if any.

**IN WITNESS WHEREOF** the undersigned Plenipotentiaries, being duly authorized

thereto by their respective governments, have signed this Convention, which shall be called the "Inter-American Convention on Serving Criminal Sentences Abroad".

**DONE IN THE CITY OF MANAGUA, NICARAGUA**, the ninth of June in the year one thousand nine hundred ninety-three.