

**NATIONAL PARLIAMENT RESOLUTION NO. 5/2010  
OF 10 FEBRUARY**

**THAT RATIFIES, FOR ADHESION, THE CONVENTION ON THE  
TRANSFER OF SENTENCED PERSONS BETWEEN MEMBER  
STATES OF THE COMMUNITY OF PORTUGUESE SPEAKING  
COUNTRIES**

On proposal of the Government, pursuant to subparagraph f) of article 95.3 of the Constitution of the Republic, the National Parliament resolves to ratify, for purposes of adhesion, the Convention on the Transfer of Sentenced Persons between the Community of Portuguese Speaking Countries, signed in Praia on 23 November 2005, the text of which, in Portuguese version, is published as an annex to the present Convention.

Approved on 24 March 2009.

The Speaker of the National Parliament,

**Fernando La Sama de Araújo**

For publication.

10 February 2010

The President of the Republic

**Dr. José Ramos-Horta**

**CONVENTION ON THE TRANSFER OF SENTENCED PERSONS  
BETWEEN MEMBER STATES OF THE COMMUNITY OF  
PORTUGUESE SPEAKING COUNTRIES**

The member States of the Community of Portuguese Speaking Countries – CPLP – hereinafter referred to as “Contracting States”;

Animated by the desire to strengthen judiciary cooperation in the field of criminal law;

Considering that such cooperation should serve the interests of a good administration of justice and favour the social reinsertion of the sentenced persons;

Considering that one of the forms of pursuing such objectives is to afford people who are deprived of their liberty as a result of their commission of a criminal offence the possibility to serve their sentences in their own original social and family environment; and

Having in mind the need to ensure full respect for the human rights deriving from the universally recognised rules and principles,

Have agreed as follows:

## Article 1 Definitions

For the purposes of this Convention:

- a) “Sentence” shall mean any penalty or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- b) “Judgment” shall mean a final decision of a court imposing a conviction;
- c) “Sentencing State” shall mean the State in which the sentence was imposed on the person who may be, or has already been, transferred;
- d) “Administering State” shall mean the State to which the sentenced person may be, or has already been, transferred in order to serve his or her sentence.

## Article 2 General principles

1. The Contracting States undertake to cooperate mutually, under the conditions provided for in this Convention, with the objective of enabling the transfer of sentenced persons.

2. Transfers may be requested by the sentencing State or the administering State at the request, or with the express consent, of the sentenced person.

3. The Contracting State shall take into consideration, as regards a request of transfer made, or administered, by it, the factors that contribute to the social reinsertion of the sentenced person and the conditions in which the sentence may be effectively served.

### Article 3 Conditions for transfer

1. Pursuant to the present Convention, the transfer may take place under the following conditions:

- a) The sentenced person is a national or a legal and permanent resident of the administering State;
- b) The judgment is final;
- c) If, at the time of receipt of the request for transfer, the sentenced person still has more than one year of the sentence to serve or if the sentence is indeterminate;
- d) If the transfer is consented to by the sentenced person or, where in view of his or her age or physical or mental condition, the legislation of one of the Contracting States considers it necessary, by the sentenced person's legal the legislation;
- e) If the acts 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; and
- f) If the sentencing State and the administering State agree to the transfer.

2. In exceptional cases, the Contracting States may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c) of this article.

Article 4  
Obligation to furnish information

1. Any sentenced person to whom the present Convention may apply shall be informed by the sentencing State of the substance of this Convention and shall be given the application form attached to the present Convention.
2. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Convention, that State shall so inform the administering State as soon as possible after the judgment becomes final. Such information shall have an indication of the decision made on the request for transfer.
3. The information referred to in the preceding paragraph shall contain:
  - a) An indication of the criminal offence for the commission of which the person has been sentenced, the duration of the penalty or measure applied, the period of time already served and the period of time that remains to be served;
  - b) A certified copy of the judgment;
  - c) Copies of the legal provisions applied;
  - d) A declaration of the sentenced person containing his or her consent to the transfer.
  - e) Whenever appropriate, any medical or social reports on the sentenced person, information about his or her treatment in the sentencing State, and any recommendation for his or her further treatment in the administering State.
  - f) Other elements of interest to the execution of the penalty.
4. The Contracting State to which the sentenced person is to be transferred may request additional information it deems necessary.

5. The sentenced person shall be informed, in writing, of any action taken by the sentencing State or the administering State under the preceding paragraphs, as well as of any decision made by either State on a request for transfer.

### **Article 5**

#### **Decision on the request for transfer**

1. The decision accepting or refusing the transfer shall be communicated as soon as possible to the State making the request for transfer.
2. The State refusing the transfer shall inform the other State of the reasons for such refusal.

### **Article 6**

#### **Central authorities**

At the time of depositing their instrument of ratification, acceptance or approval, in compliance with article 18, the Contracting States shall designate their respective central authorities for the purposes of implementation of the present Convention.

### **Article 7**

#### **Consent and its verification**

1. The sentencing State shall ensure that the person required to give his or her consent to the transfer in accordance with article 3.1.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 sentencing State.
2. The sentencing State shall afford an opportunity to the administering State to verify through an official designated by mutual agreement, that the consent is given in accordance with the conditions set out in the preceding paragraph.

## **Article 8**

### **Effect of transfer**

1. Once the transfer has been decided upon, the sentenced person shall be handed over to the State in which the person shall serve the sentence at a place agreed upon by the Contracting States.
2. Enforcement of the sentence shall be suspended at the sentencing State as soon as the authorities of the administering State take into charge the sentenced person.
3. Once the sentence has been served in the State for which the sentenced person has been transferred, the sentencing State can no longer enforce it.

## **Article 9**

### **Enforcement**

1. The transfer of any sentenced person may only take place if the sentence is enforceable in the State for which the sentenced person is to be transferred.
2. The State for which the sentenced person is to be transferred to shall not:
  - a) Aggravate, augment or extend the penalty or measure applied in the sentencing State or deprive the sentenced person of any rights other than those resulting from the sentence imposed by sentencing State;
  - b) Alter the matter de facto contained in the sentence imposed by sentencing State.
3. In enforcing the penalty, the legislation and procedures in force in the State for which the sentenced person has been transferred to shall apply.

## **Article 10**

### **Transit**

1. The transit of the sentenced person through the territory of a third Contracting State shall require the notification to the transit State of the decision of the sentencing State which authorised the transfer as well as the approval of the administering State. Such notification shall not be required where the transport is by air and no landing there is scheduled.
2. A State that refuses to grant transit shall inform the sentencing State and the administering State of the reasons for such refusal.

## **Article 11**

### **Review of judgment**

1. The sentencing State alone shall have the right to decide on any application for review of the judgment.
2. The decision shall be communicated to the administering State, which shall enforce the modifications produced in the judgment.

## **Article 12**

### **Termination of enforcement**

The administering State shall terminate enforcement of the sentence as soon as it is notified by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

## **Article 13**

### **Non bis in idem**

The State to which the sentenced person has been transferred shall not sentence that same person for the same facts for which he or she has been sentenced in the sentencing State.

## **Article 14**

### **Information on enforcement**

The administering State shall provide the Sentencing State with information concerning the enforcement of the sentence:

- a) Where it considers the enforcement of the sentence to have been completed;
- b) Where the sentenced person has escaped from custody before enforcement of the sentence has been completed;
- c) Where the sentencing State requests information on the enforcement of the penalty, including on parole and on the release of the sentenced person.

### **Article 15**

#### **Costs**

The administering State shall be responsible for the costs resulting from the transfer from the moment it takes custody of the sentenced person and under no circumstance shall that State claim reimbursement of such costs.

### **Article 16**

#### **Temporal application**

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

### **Article 17**

#### **Settlement of doubts**

The Contracting States shall undertake mutual consultations for the settlement of doubts resulting from the application of this Convention.

### **Article 18**

#### **Signature and entry into force**

1. This Convention shall be open for its signature by the member States of the Community of Portuguese Speaking Countries – CPLP. It shall be submitted for ratification, acceptance or approval and the respective instruments shall be deposited with the Executive Secretariat of CPLP.
2. This Convention shall enter into force on the first day of the month immediately after the date on which three Member States of the CPLP have



expressed their consent to be bound by the Convention in compliance with the provisions of article 1.

3. For any signatory State that expresses its consent *a posterior* to be bound by this Convention, the Convention shall enter into force on the first day of the month immediately after the date of the deposit of the instrument of ratification, acceptance or approval.

### **Article 19**

#### **Connection with other conventions and agreements**

1. The present Convention shall substitute, as regards the States to which it applies, the provisions of treaties, conventions or bilateral agreements which, between Contracting States, regulate the transfer of sentenced persons.

2. The Contracting State may celebrate conventions, bilateral or multilateral agreements among them in order to complement the provisions of the present Convention or to facilitate the application of the principles contained therein.

### **Article 20**

#### **Denunciation**

1. Any Contracting State may at any time denounce this Convention by means of a notification addressed to the Technical Secretariat of CPLP.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification.

3. The present Convention shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Convention and to the processes of transfer already initiated pursuant to articles 4.2 and 4.3.

## **Article 21**

### **Notifications**

The Executive Secretariat of CPLP shall notify the Contracting States of the signatures, deposits of instruments of ratification, acceptance or approval, the dates of entry into force of the Convention pursuant to articles 18.2 and 18.3 and of any other act, declaration, notification or communication relating to this Convention.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Praia, this 23rd day of November 2005, in a single copy, which shall be deposited with the CPLP. The Executive Secretariat of CPLP shall transmit certified copies to each Contracting State.

For the Republic of Angola

For the Republic of Mozambique

For the Federal Republic of Brazil

For the Portuguese Republic

For the Republic of Cape Verde  
and Principe

For the Democratic Republic of S. Tomé

For the Republic of Guiné-Bissau

For the Democratic Republic of Timor-Leste

### **Annex**

#### **Model of application for transfer of sentenced persons**

(article 4.1 of the Convention on the Transfer of Sentenced Persons among member States of the Community of Portuguese Speaking Countries)

I,  
the bearer of Passport/Identity Card No. .... issued on.....  
nationality.....born at.....on.....  
the son/daughter of.....and of.....

Having been sentenced by (judicial authority imposing the sentence and no.  
of proceeding).....  
to serve a penalty of .....at  
prison.....for committing.....(criminal offence)

Hereby request my transfer to (name of the Contracting State) in order to serve the remainder of my sentence within my original social and family environment, with residence at.....

I further declare that this application translates my consent to the referred transfer.

Done at .....on..... (Place and date)

(Signature)

Addressed to: Each Contracting State shall fill up the application with the authority and the address to which the application shall be sent

