



**AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND
THE INTERNATIONAL CRIMINAL COURT ON THE
ENFORCEMENT OF SENTENCES OF THE
INTERNATIONAL CRIMINAL COURT**

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**AGREEMENT BETWEEN THE KINGDOM OF SPAIN AND THE INTERNATIONAL CRIMINAL
COURT ON THE ENFORCEMENT OF SENTENCES OF THE INTERNATIONAL CRIMINAL
COURT**

The Kingdom of Spain (hereinafter referred to as “Spain”) and
the International Criminal Court (hereinafter referred to as the “Court”),

PREAMBLE

RECALLING Article 103(1)(a) of the Rome Statute of the International Criminal Court (hereinafter referred to as “Rome Statute”), adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries, according to which sentences of imprisonment pronounced by the Court shall be served in a State designated by the Court from a list of States which have indicated their willingness to accept sentenced persons;

RECALLING Rule 200(5) of the Rules of Procedure and Evidence of the Court (hereinafter referred to as “Rule(s)”), according to which the Court may enter into bilateral arrangements with States with a view to establishing a framework for the acceptance of persons sentenced by the Court, consistent with the Rome Statute;

RECALLING the widely accepted international standards governing the treatment of prisoners including the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted by General Assembly resolution 70/175 of 17 December 2015, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111 of 14 December 1990;

NOTING the willingness of Spain to accept persons sentenced by the Court;

IN ORDER to establish a framework describing the conditions under which such sentences will be enforced in Spain;

HAVE AGREED as follows:

Article 1

Purpose and scope of the Agreement

The Agreement shall regulate matters relating to or arising from the enforcement of sentences pronounced by the Court and served in Spain.

Article 2

Procedure and information relating to designation

1. After the sentencing of an accused person by the Trial Chamber, the Presidency of the Court (hereinafter referred to as “Presidency”) shall communicate with Spain and request Spain to provide, within 30 calendar days, an indication of its readiness, as a practical matter, to receive a person convicted by the Court.

2. If Spain indicates its readiness, as a practical matter, to receive a person convicted by the Court, the Presidency shall request Spain to provide the Court with updated information regarding its national detention regime, including, *inter alia*, recently promulgated legislation and administrative guidelines.
3. If the Presidency designates Spain as the State in which the sentenced person shall serve his or her sentence, it shall notify Spain of its decision. When notifying Spain of its designation as the State of enforcement, the Presidency shall transmit the following information and documents:
 - (a) The name, nationality, date and place of birth of the sentenced person;
 - (b) A copy of the final judgment of conviction and of the sentence imposed;
 - (c) The length and commencement date of the sentence and the time remaining to be served;
 - (d) The date on which the sentenced person is eligible for review concerning the reduction of his or her sentence;
 - (e) With due respect for medical confidentiality, any necessary information concerning the state of the sentenced person's health, including any medical treatment that he or she is receiving.
4. Spain shall promptly decide upon the Court's designation, in accordance with its national law, and inform the Presidency whether it accepts the designation.

Article 3

Transfer of the sentenced person

1. The sentenced person shall be transferred to Spain as soon as possible after Spain accepts the designation.
2. The Registrar of the Court (hereinafter referred to as "Registrar") shall ensure the proper transfer of the sentenced person in consultation with Spain and the host State.

Article 4

Supervision of enforcement of sentence and conditions of imprisonment

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international standards governing the treatment of prisoners.
2. In order to supervise the enforcement of sentences of imprisonment, the Presidency shall:
 - (a) When necessary, request any information, report or expert opinion from Spain or from any reliable sources;
 - (b) Where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying Spain, for meeting the sentenced person and hearing his or her views, without the presence of national authorities;

- (c) Where appropriate, give Spain an opportunity to comment on the views expressed by the sentenced person pursuant to sub-paragraph (b).
3. Communications between a sentenced person and the Court shall be unimpeded and confidential. The Presidency, in consultation with Spain, shall respect these requirements when establishing appropriate arrangements for the exercise by the sentenced person of his or her right to communicate with the Court about the conditions of imprisonment.
 4. The conditions of imprisonment shall be governed by the Law of Spain and shall be consistent with widely accepted international standards governing the treatment of prisoners. In no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in Spain.
 5. Spain shall notify the Court of any circumstances, including the exercise of any conditions agreed under Article 103(1) of the Rome Statute, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, Spain shall take no action that might prejudice its obligations under Article 110 of the Rome Statute.
 6. Spain shall promptly inform the Presidency of any important event concerning the sentenced person.
 7. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of Spain which may entail some activity outside the prison facility, Spain shall communicate that fact to the Presidency, together with any relevant information or observation, sufficiently in advance to enable the Court to exercise its supervisory function.
 8. Spain shall allow the inspection of the conditions of imprisonment and treatment of the sentenced person(s) by the International Committee of the Red Cross (hereinafter referred to as "ICRC") at any time and on a periodic basis, the frequency of visits to be determined by the ICRC. After each visit to the enforcement State by the ICRC:
 - (a) The ICRC shall submit a confidential report on its findings together with recommendations, as necessary, to Spain and to the Presidency.
 - (b) Spain and the Presidency shall consult each other on the findings of the report. The Presidency shall thereafter request Spain to report any changes in the conditions of imprisonment as a result of the recommendations made by the ICRC.
 - (c) Spain and the Presidency shall submit a joint response to the ICRC within 30 calendar days of receiving the report. The joint response shall address the findings of the report and detail measures to implement the recommendations of the report by Spain and the Presidency.

Article 5
Appearances before the Court

If, after transfer of the sentenced person to Spain, the Court orders that the sentenced person appear before the Court, the sentenced person shall be transferred temporarily to the Court, conditional on his or her return to Spain within the period decided by the Court. The time spent in the custody of the Court shall be deducted from the term of the overall sentence remaining to be served in Spain.

Article 6
Limitation on prosecution or punishment

1. The sentenced person shall not be tried before a court of Spain for a crime referred to in Article 5 of the Rome Statute for which that person has already been convicted or acquitted by the Court.
2. The sentenced person in the custody of Spain shall not be subject to prosecution or punishment or to extradition to another State for any conduct engaged in prior to that person's transfer to Spain, unless such prosecution, punishment or extradition has been approved by the Presidency at the request of Spain.
 - (a) When Spain intends to prosecute or enforce a sentence against the sentenced person for any conduct engaged in prior to the sentenced person's transfer, it shall notify its intention to the Presidency and transmit to it the following documents:
 - (i) A statement of the facts of the case and their legal characterization;
 - (ii) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;
 - (iii) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;
 - (iv) A protocol containing the views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.
 - (b) In the event of a request for extradition made by another State, Spain shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.
 - (c) The Presidency may in all cases request any document or additional information from Spain or the State requesting the extradition.
 - (d) The Presidency may decide to conduct a hearing.
 - (e) The Presidency shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings.
 - (f) If the request for prosecution, punishment, or extradition to another State concerns the enforcement of a sentence, the sentenced person may serve that sentence in Spain or be extradited to another State only after having served the full sentence pronounced by the Court.

- (g) The Presidency may authorize the temporary extradition of the sentenced person to another State for prosecution only if it has obtained assurances, which it deems to be sufficient, that the sentenced person will be kept in custody in that State and transferred back to Spain, after the prosecution.
- 3. Paragraph 2 of this article shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of Spain after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

Article 7

Appeal, revision, reduction and extension of sentence

- 1. Subject to the conditions contained in the Agreement, the sentence of imprisonment shall be binding on Spain, which shall in no case modify it.
- 2. Spain shall not release the person before expiry of the sentence pronounced by the Court. Spain shall terminate the enforcement of the sentence as soon as it is informed by the Court of any decision or measure as a result of which the sentence ceases to be enforceable.
- 3. The Court alone shall have the right to decide any application for appeal and revision and Spain shall not impede the making of any such application by the sentenced person.
- 4. The Court alone shall have the right to decide any reduction of sentence and shall rule on a reduction of sentence after having heard the person.
- 5. Where the Presidency extends the term of imprisonment pursuant to Rule 146(5), the Presidency may ask for observations from Spain.

Article 8

Escape

- 1. If the sentenced person escapes from custody, Spain shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record.
- 2. If the sentenced person escapes from custody and flees Spain, Spain may, after consultation with the Presidency, request the person's extradition or surrender from the State in which the person is located pursuant to any existing bilateral or multilateral arrangements, or may request that the Presidency seek the person's surrender, in accordance with Part 9 of the Rome Statute. It may direct that the person be delivered to Spain or to another State designated by the Court.
- 3. If the State in which the sentenced person is located agrees to surrender him or her to Spain, pursuant to either international agreements or its national legislation, Spain shall so advise the Registrar in writing. The person shall be surrendered to Spain as soon as possible, if necessary in consultation with the Registrar. The Registrar shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with Rule 207.

4. If the sentenced person is surrendered to the Court, the Court shall transfer him or her to Spain. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of Spain, designate another State, including the State to the territory of which the sentenced person has fled.
5. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his or her escape and, where paragraph 4 of this Article is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he or she was located shall be deducted from the sentence remaining to be served.

Article 9

Change in designation of Spain as the State of enforcement

1. The Presidency, acting on its own motion or at the request of Spain or the sentenced person or the Prosecutor, may, at any time, decide to transfer a sentenced person to a prison of another State.
2. Before deciding to change the designation of Spain as the State of enforcement, the Presidency may:
 - (a) Request views from Spain;
 - (b) Consider written or oral presentations of the sentenced person and the Prosecutor;
 - (c) Consider written or oral expert opinion concerning, *inter alia*, the sentenced person;
 - (d) Obtain any other relevant information from any reliable sources.
3. The Presidency shall inform the sentenced person, the Prosecutor, the Registrar and Spain of its decision and of the reasons therefor.

Article 10

Transfer of the sentenced person upon completion of the sentence

1. Spain shall notify the Presidency:
 - (a) 90 calendar days before the scheduled completion of the sentence, that the sentence will be completed;
 - (b) 30 calendar days before the scheduled completion of the sentence of the relevant information concerning the intention of Spain to authorize the person to remain in its territory or the location where it intends to transfer the person.
2. Following completion of the sentence, a sentenced person who is not a national of Spain may, in accordance with the Law of Spain, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless Spain authorizes the person to remain in its territory.

3. Subject to the provisions of Article 6, Spain may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 11

Costs

1. The ordinary costs for the enforcement of the sentence in the territory of Spain shall be borne by Spain.
2. Other costs, including those for the transport of the sentenced person to and from the seat of the Court and to and from Spain, shall be borne by the Court.
3. In case of escape, the costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

Article 12

Channels of Communication

1. The channel of communication for Spain shall be the Spanish Ministry of Justice.
2. The channel of communication for the Court shall be the Legal and Enforcement Unit of the Presidency.

Article 13

Entry into force

This Agreement and any amendments thereto, shall enter into force on the first day of the month following the date of receipt by the Court of the notification of Spain, written and through diplomatic channels, of the completion of its formal internal legal requirements.

Article 14

Amendments and termination

1. The Agreement may be amended, after consultation, by mutual consent of the parties.
2. Spain may at any time withdraw its conditions of acceptance for the inclusion in the list of States of enforcement. Any amendment or additions to such conditions shall be subject to confirmation by the Presidency.
3. The Agreement may be terminated, after consultation, by either party with two months prior written notice. Such termination shall not affect sentences in force at the time of the termination, and the provisions of the Agreement shall continue to apply until such sentences have been completed, terminated or, if applicable, the sentenced person has been transferred in accordance with Article 9 of the Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed the Agreement.

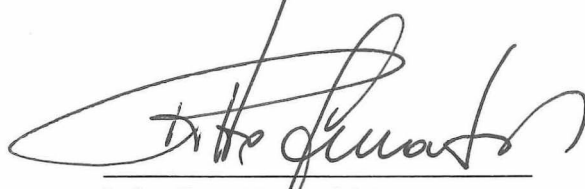
Done at The Hague this 8th day of December, 2022, in duplicate, in the English and the Spanish languages, both texts being equally authentic.

FOR THE KINGDOM OF SPAIN



H.E. María Consuelo Femenía Guardiola
Ambassador Extraordinary and Plenipotentiary

FOR THE COURT



Judge Piotr Hofmański
President of the International Criminal Court