

**Mr. Jerome Brown**

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Dear Sir,

I am writing in response to your recent correspondence dated 15 May 2009, regarding the Agreement between Australia and the Socialist Republic of Vietnam concerning Transfer of Sentenced Prisoners. Thank you for extending an invitation to our organisation to make comments to this very important submission. The agreement appears to be conclusive and of particular interest to us are three points to which I have raised comment below:

1. Article 8, Continued enforcement of sentence

(3) If the sentence is by its nature or duration incompatible with the law of the receiving Party, the receiving Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed by the transferring Party. The adapted sentence shall be no more severe than that imposed by the transferring Party in terms of nature or duration.

**Comment:** If the judicial commission of an Australian local state government is contacted to provide an estimate of an equivalent sentence for a similar crime, does this then mean that the receiving state can automatically adjust the sentence, or must it still be subject to consultation and approval from the transferring state? This needs to be clarified.

2. In regards to Article 12, Expenses

(2) The receiving Party may, however, seek to recover all or part of the cost of transfer from the sentenced person.

**Comment:** There appears to be a pattern developing at the Australian State Government level whereby prisoners are denied transfers based on cost. In one particular transfer case we dealt with most recently, it was found that the family of the prisoner were unable to pay the cost of transfer due to financial hardship. The application for transfer was supported by the Australian Federal Minister but when it went to the Local State government it was rejected outright, with advice that unless the

prisoner or their family was able to pay the cost of transfer, then transfer would be denied. The family clearly could not and we were forced to make further representations to the Australian Attorney General's office. We were fortunate that our organisation was able to secure a donation of AUD\$10,000 dollars which covered the said costs. This is an issue that needs to be considered more carefully when our Federal Government negotiate these international agreements.

### **3. Wrongful convictions.**

**Comment:** My final point of concern is that there are no provisions for Australian citizens who may be subject to arbitrary detainment or wrongful conviction. There is no provision for an Australian Citizen to request, from its Government, any assistance to support their application to the International Criminal Court of Justice in the case of wrongful conviction. As we know individual cases cannot be heard at these levels unless presented by a state.

Having experienced arbitrary arrest, detainment and wrongful conviction personally, not all Australian citizens have the benefit as I once did, of having their Government negotiate their release under an unprecedented Presidential Pardon. However, even with a Pardon, one still must declare, when travelling, that they were arrested and convicted, even despite the outcome through a Pardon process, and even when the matter clearly supports the claim of wrongful conviction.

It is fair to say that trials in Vietnam and other like-minded states, have a questionable record when it comes to providing fairness of trials, the pre-trial process and the appeals process thereafter. I would like to see greater consideration given to this particular point.

Kind regards,

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International Humanitarian

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