

TRANSFER OF PRISONERS ACT
Act 10 of 2001 – 15 February 2002

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TRANSFER OF PRISONERS ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Transfer of Prisoners Act.

2. Interpretation

(1) In this Act—

“agreement” includes a treaty which has been entered into with a foreign State for the transfer of prisoners;

“application” means an application by a person pursuant to section 4 or 10, as the case may be;

“Convention” means the Convention on the Transfer of Sentenced Persons adopted in Strasbourg on 23 March 1983 by the Committee of Ministers of the Council of Europe;

“designated country” means a country designated in accordance with section 3;

“foreign offender”—

(a) means a person who—

(i) is not a citizen of Mauritius;

- (ii) is a citizen of, or is ordinarily resident in, or appears to the Minister to have close ties with, a designated country; and
- (iii) has been convicted and sentenced in Mauritius to—
 - (A) a term of imprisonment of which the unexpired portion at the time that an application is made is not less than 6 months; or
 - (B) an indeterminate period of imprisonment; and
- (b) includes a foreign offender released on licence from such a sentence;

“foreign State” includes a Commonwealth country which has not notified the Commonwealth Secretary-General that it has enacted legislation to give effect to the Scheme;

“imprisonment” includes—

- (a) placement of a juvenile in a place of detention referred to in section 25 of the Juvenile Offenders Act;
- (b) confinement following an order issued pursuant to section 115 of the Criminal Procedure Act;
- (c) any other similar form of restraint of liberty that applies in a designated country;

“Minister” means the Prime Minister;

“offender”—

- (a) means a person who—
 - (i) is a citizen of Mauritius or a person whose transfer appears to the Minister to be appropriate, having regard to any close ties that person may have with Mauritius; and
 - (ii) has been convicted and sentenced in a designated country to—
 - (A) a term of imprisonment of which the unexpired portion at the time that an application is made is not less than 6 months; or
 - (B) an indeterminate period of imprisonment;
- (b) includes an offender released on licence from such sentence;

“prisoner” means a foreign offender or an offender;

“release on licence” means release in accordance with—

- (a) Part V of the Reforms Institutions Act; or
- (b) a similar system of conditional release from imprisonment operating in a designated country;

“responsible authority” —

- (a) means the person responsible under the law of a designated country for administering the transfer of offenders to and from that country; and
- (b) includes a person to whom that person's duties and powers have been lawfully delegated;

“Scheme” means the Scheme for the Transfer of Convicted Offenders within the Commonwealth agreed by Law Ministers at their 1986 Meeting in Harare;

“transfer” means transfer —

- (a) from a designated country to Mauritius; or
- (b) from Mauritius to a designated country.

(2) In determining whether or not a person has close ties with a country, the Minister shall take into account —

- (a) whether or not he was born in that country or is descended from persons who were born in that country;
- (b) whether or not he has resided in that country and, if so, for how long;
- (c) whether or not he has any relatives by birth or marriage in that country, and if so, the degree of relationship;
- (d) any cultural or religious ties he may have with that country.

[S. 2 reprinted by Reprint 5 of 2001.]

3. Application of Act

(1) (a) Where an agreement has been, or is deemed to have been, entered into between Mauritius and a foreign State, for the transfer of prisoners or the enforcement of sentences, the Minister may, by regulations, designate that country as a country to which this Act shall, notwithstanding any other enactment but subject to this subsection, apply.

(b) Regulations made under subsection (1) may provide that this Act applies in relation to that country subject to such exceptions, adaptations, modifications or other provisions as may be specified in the regulations.

(c) Regulations made under subsection (1) in relation to a country other than one referred to in subsection (2) or (3) shall —

- (i) contain the text of the agreement entered into between Mauritius and that country; and
- (ii) not remain in force for any longer period than the agreement.

(2) Where a Commonwealth country notifies the Commonwealth Secretary-General that it has enacted legislation to give effect to the Scheme, that notification shall be deemed to be an agreement between Mauritius and that country.

(3) The accession by Mauritius to the Convention pursuant to paragraph (1) of Article 19 of the Convention shall be deemed to be an agreement between Mauritius and every other country that is a party to the Convention.

(4) For the purposes of this section, a territory for the external relations of which a designated country is responsible may, where the Government of that country so requests or has so notified the Commonwealth Secretary-General, be treated as—

- (a) a part of that country; or
- (b) a separate country.

(5) This Act shall apply to any prisoner who is already serving a sentence of imprisonment on the date when its provisions are extended, pursuant to section 3, to the country of which such offender is a citizen.

PART II – TRANSFER TO MAURITIUS

3A. Conditions for transfer

(1) Subject to subsection (2), no prisoner shall be transferred under this Act unless—

- (a) he is a national of, is ordinarily resident in, or has close ties with, the designated country to which he is to be transferred;
- (b) the judgment imposing the sentence which he is serving is final;
- (c) at the time of receipt of the request for transfer, he still has not less than 6 months of the sentence to serve or the sentence is indeterminate;
- (d) he consents to the transfer or, where he is, by reason of his physical or mental condition or his youth, incapable of acting for himself, a person appearing to the Minister to be the appropriate person to consent on behalf of the prisoner, has given the prisoner's consent on his behalf;
- (e) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the designated country to which the prisoner is to be transferred or would constitute a criminal offence if committed on its territory; and
- (f) both Mauritius and the designated country agree to the transfer.

(2) In exceptional cases, a transfer may be agreed to where the term to be served by the prisoner is less than 6 months.

[S. 3A inserted by s. 3 of Act 39 of 2003 w.e.f. 28 November 2003; Reprint 1 of 2004.]

4. Request for transfer

(1) (a) Where the Minister is informed by the responsible authority of a designated country that—

- (i) an offender has applied for a transfer to Mauritius and that country has agreed to such transfer;

- (ii) that country requests such transfer and the offender consents thereto,

the Minister shall, after consultation with the Attorney-General, determine whether or not he agrees to the transfer.

(b) The Minister shall not, save in exceptional circumstances, agree to a transfer where less than 6 months of the sentence remain to be served.

(c) The Minister shall—

- (i) inform the responsible authority of the designated country of his decision; and
- (ii) where he agrees to the transfer, issue a warrant in the prescribed form for that purpose.

(2) The Minister may, on receipt of an application under subsection (1), require the designated country to provide him with such evidence as he thinks fit to show that—

- (a) the offender has applied for or consented to such transfer; or
- (b) where it appears to the Minister that the offender is, by reason of his physical or mental condition or his youth, incapable of acting for himself, a person appearing to the Minister to be the appropriate person to apply or consent on behalf of the offender has made the application or given his consent on behalf of the offender.

(2A) (a) Where an offender applies in writing to the Minister for a transfer to Mauritius, the Minister shall, after consultation with the Attorney-General, determine whether or not a request for transfer of the offender shall be made to the designated country.

(b) The Minister shall not, save in exceptional circumstances, request a transfer where a term of less than 6 months of the sentence remain to be served.

(c) Where the designated country to which Mauritius has made the request agrees to the transfer, the Minister shall issue a warrant in the prescribed form for the purpose of the transfer.

(3) A warrant issued under subsection (1) or (2A) (c) shall, subject to this Act, authorise—

- (a) the bringing of the offender from the designated country to Mauritius;
- (b) the taking of the offender by an authorised person to such place of detention as may be designated in the warrant; and
- (c) the detention of the offender in accordance with such provisions as may be contained in the warrant, being provisions appearing to the Minister to be appropriate for giving effect to the arrangements in accordance with which the offender is transferred.

(4) Notwithstanding subsection (1), where a citizen of Mauritius, having been charged with an offence in a designated country, has been—

- (a) ordered by a Court of that country to be detained because he has been found to be insane and unfit to stand trial or to be a mentally disordered or mentally defective offender; or
- (b) found guilty of the offence but was insane at the time of the commission of the offence,

that person may be transferred to Mauritius at the request of the responsible authority of that country and with the consent of the Minister or at the request of the Minister and with the consent of the responsible authority of that country.

(5) An application under subsection (1) or (2A) or a request under subsection (4) shall be accompanied by the following particulars—

- (a) the name, place and date of birth or, if the date of birth is not known, the approximate age of the offender;
- (b) the offender's address, if any, in Mauritius;
- (c) a certified copy of the judgment or other order of the Court, together with a copy of the law on which it is based or a statement of that law;
- (d) a statement of the facts and circumstances upon which the conviction and sentence or other order were based;
- (e) the nature of the sentence, if any, its date of commencement and duration;
- (f) where appropriate, any medical or other report pertaining to the offender, including a report of his treatment in the designated country together with any recommendation for further treatment in Mauritius;
- (g) a document or statement indicating that the offender is a citizen of, is ordinarily resident in, or has close ties with, the designated country;
- (h) a copy of the relevant law of the designated country which provides that the acts or omissions on account of which the sentence has been imposed in the designated country constitute a criminal offence according to the law of the designated country, or would constitute a criminal offence if committed on its territory;
- (i) a statement indicating whether the sentence is to be enforced in the designated country immediately or through a Court or administrative order, or whether it is to be converted into a decision of the designated country or varied;
- (j) any other information which the Minister may require to enable him to consider the desirability of a transfer.

(6) The Minister shall cause the offender to be informed in writing of any action taken on a request for transfer.

[S. 4 amended by s. 4 of Act 39 of 2003 w.e.f. 28 November 2003; Reprint 1 of 2004.]

5. Revocation of warrant

(1) Where it appears to the Minister that, in order to give effect to any agreement which has been, or is deemed to have been, entered into with a foreign State, it is necessary that a warrant issued under this Act be revoked or varied, he may—

- (a) revoke the warrant; or
- (b) revoke the warrant and issue a new warrant under this Act containing provision superseding any provision of the previous warrant.

(2) A warrant issued in accordance with subsection (1) (b) may provide that—

- (a) a provision contained in it is to be treated as having taken effect when the provision which that provision supersedes took effect;
- (b) anything done under or for the purposes of the superseded provision is to be treated as having been done under or for the purposes of the provision contained in the new warrant.

6. Effect of transfer

(1) Where an offender is transferred to Mauritius, a conviction and sentence recorded by the Court in the designated country from which he was transferred shall, subject to subsection (2), be deemed for all purposes to be a conviction recorded and a sentence imposed by a Court of competent jurisdiction in Mauritius.

(2) Subject to subsection (3), the conviction of, and the sentence imposed upon, a transferred offender shall not be subject to any appeal or to any form of review in Mauritius.

(3) Where a sentence imposed upon a transferred offender is, by its nature or duration, incompatible with the law of Mauritius, he may apply to the Judge in Chambers for a variation of the sentence to accord with the law of Mauritius, and the Judge shall, after hearing the application, grant such relief as he considers appropriate having regard to all the circumstances.

(4) Where the Judge in Chambers decides to vary the sentence imposed—

- (a) he shall be bound by the findings of the facts as they appear from the judgment imposed in the designated country;
- (b) he shall not convert a sanction involving deprivation of liberty to a pecuniary sanction;
- (c) he shall deduct the full period of deprivation of liberty served by the offender;
- (d) he shall not be bound by any minimum term of imprisonment which the law of Mauritius provides for the offence or offences committed.

[S. 6 amended by s. 5 of Act 39 of 2003 w.e.f. 28 November 2003; Reprint 1 of 2004.]

7. Documentary proof

(1) A certified copy of a judgment or other order referred to in section 4 (5) (c) shall—

- (a) be accepted as conclusive proof of the facts stated therein; and
- (b) have effect as if it were a judgment or other order of a Court of competent jurisdiction in Mauritius.

(2) Any document required under this Act to be certified shall, if that document purports to be certified or signed by a judicial officer or authority or by the person in charge of any penal institution in the country in which the offender was detained, and without proof of the signature or the official character of the person by whom it purports to be signed or certified, be accepted as evidence of the facts stated therein unless the contrary is proved.

(3) A document referred to in this section shall, when accepted—

- (a) be treated as though it was duly certified or signed in relation to a person convicted and sentenced in Mauritius; and
- (b) subject to this Act, have effect according to the terms thereof.

8. Detention of transferred offenders

(1) Subject to this section, a transferred offender who has been sentenced to a term of imprisonment shall be detained in a prison or such other institution as the Minister may direct for the unexpired portion of his sentence.

(2) (a) A transferred offender sentenced to a term of imprisonment who would, if he had been convicted in Mauritius, have been treated by reason of his age as a young offender within the meaning of the Juvenile Offenders Act and sentenced accordingly, shall be dealt with as his age dictates in accordance with paragraph (b).

(b) An offender to whom paragraph (a) applies shall, pursuant to a warrant in the prescribed form under the hand of the Minister, be produced before the Court having jurisdiction to try an offence of a similar nature to that for which he has been convicted, and that Court shall sentence him—

- (i) on the basis of the conviction by the Court in the designated country;
- (ii) with regard to the nature of the offence;
- (iii) with regard to any observations made by the convicting Court in passing sentence; and
- (iv) in accordance with the Juvenile Offenders Act.

(3) A transferred offender referred to in section 4 (4) shall be detained in accordance with the law of Mauritius relating to such offenders.

- (4) (a) A transferred offender sentenced to a term of imprisonment shall—
- (i) be credited with any remission of that term to which he had become entitled at the date of his transfer in accordance with the law relating to remission of prison sentences in the designated country; and
 - (ii) thereafter be eligible to earn remission of that term as if he had been sentenced to a term of imprisonment of the same length by a Court in Mauritius.

(b) Any remission of imprisonment referred to in paragraph (a) (i) shall be liable to forfeiture for a disciplinary offence as if it were remission earned by virtue of paragraph (a) (ii).

9. Parole and pardon

(1) Where a transferred offender has, before his transfer, been released on parole in the designated country in which he was convicted and sentenced, and that parole was subsequently revoked, the time spent on parole shall count towards the completion of his sentence in Mauritius.

(2) A transferred offender who is, at the date of his transfer, on parole in the designated country in which he was convicted and sentenced shall, upon transfer to Mauritius, be treated as a person on parole, notwithstanding that such an offender might not be eligible for parole under the law of Mauritius.

(3) A breach of any condition of parole or of a conditional pardon shall render the offender liable to the same consequences as if he had been granted respite, or had been conditionally pardoned, in accordance with the law of Mauritius.

(4) Nothing in this Act shall be so construed as to limit the President's prerogative of mercy provided for in section 75 of the Constitution.

(5) Where the prerogative of mercy has been exercised in a designated country in respect of a transferred offender, any pardon granted pursuant thereto shall, to the extent to which that prerogative is exercised, have effect as if it were a pardon granted by the President to the transferred offender in terms of section 75 of the Constitution.

PART III – TRANSFER FROM MAURITIUS

10. Transfer of offenders from Mauritius

(1) Where an agreement between Mauritius and a designated country has been, or is deemed to have been, entered into for the transfer of foreign offenders, the Commissioner of Prisons shall cause every such offender to be informed in a language which he understands of the purport of the agreement.

(2) (a) A foreign offender may apply in writing to the Commissioner of Prisons to be transferred to a designated country.

(b) The Minister shall, where he agrees to the transfer, cause to be sent to the responsible authority of the designated country—

- (i) the application made by the foreign offender or a certified copy thereof;
- (ii) particulars of the kind set out in section 4 (5); and
- (iii) a statement indicating the term of the sentence which has already been served, including information on any pre-trial detention, remission and any other factor relevant to the enforcement of the sentence.

(3) Where the designated country agrees to the transfer, the Minister shall issue a warrant in the prescribed form authorising the transfer.

(3A) Where a responsible authority makes a request in writing to the Minister for the transfer of a foreign offender to a designated country, the Minister shall—

- (a) cause the Commissioner of Prisons to ascertain whether the foreign offender consents to the transfer and, if so, whether he does so voluntarily and with full knowledge of the legal consequences thereof;
- (b) cause to be sent to the responsible authority—
 - (i) particulars of the kind set out in section 4 (5) and subsection (2) (b) (iii);
 - (ii) a declaration containing the foreign offender's consent to the transfer;
- (c) where he agrees to the transfer, issue a warrant in the prescribed form authorising the transfer.

(4) A warrant issued under subsection (3) or (3A) shall authorise the taking of the offender from his place of detention to a place of departure in Mauritius and his delivery at that place into the custody of the responsible authority of the country to which the offender is to be transferred.

(5) The Commissioner of Prisons shall cause the offender to be informed in writing of any action taken on a request for transfer.

[S. 10 amended by s. 6 of Act 39 of 2003 w.e.f. 28 November 2003; Reprint 1 of 2004.]

PART IV – GENERAL

11. Offenders in lawful custody during transfer

(1) While an offender is being transferred to or from Mauritius under this Act, he shall be deemed to be in lawful custody of the person duly authorised to accompany him.

(2) Where a person referred to in subsection (1) escapes from such lawful custody, he may be arrested in any part of Mauritius in the same manner as a person escaping from custody under a warrant issued for his arrest in Mauritius.

(3) Any person who does an act referred to in subsection (2) shall commit an offence and shall, on conviction, be liable to the penalty provided in section 170 of the Criminal Code.

12. Termination of sentence

(1) Where an offender is serving a sentence in Mauritius consequent upon his transfer thereto under this Act, and the Minister is satisfied that the designated country from which he has been transferred has exercised the power of pardon or any other power which renders the sentence no longer enforceable in that country, or that the sentence has been completed, the offender shall no longer be subject to detention by reason only of that sentence.

(2) Where a foreign offender is serving a sentence in a designated country consequent upon his transfer from Mauritius under this Act, and the power of pardon or any other power which renders the sentence no longer enforceable in Mauritius has been exercised, or the sentence has been completed, the Minister shall forthwith inform the designated country to which the foreign offender was transferred that he is no longer subject to detention by reason only of that sentence.

13. Cost of transfer of offenders

(1) Subject to this section, the cost of the transfer of a prisoner under this Act shall be met by Mauritius and by the designated country in such proportion as may be agreed upon by them.

(2) (a) Subject to subsection (3), in the case of a transfer of an offender to Mauritius, the expenses of such transfer shall be borne by such offender or by someone on his behalf, and for this purpose the Minister shall have the power to require a person with or without a surety to give an undertaking to pay the expenses to the Minister.

(b) Any expenses referred to in paragraph (a) shall be regarded as a civil debt owed to the Government of Mauritius.

(3) Subsection (2) shall not apply where it appears to the Minister that it would be unreasonable for him to exercise the power conferred by that subsection because—

- (a) of the exceptional circumstances of the case; or
- (b) the means of such offender are insufficient to meet the expenses, and their recovery, whether immediately or at some future time, from such offender or from any other source, is impracticable.

14. Transit

(1) Where—

- (a) a designated country has agreed with a third country to transfer an offender into or out of its territory pursuant to an arrangement relating to the transfer of convicted offenders; and

- (b) that country seeks permission for the offender and any escorting officer to land and transit in Mauritius during the course of the transfer,

the Minister shall, subject to subsection (2), issue his authority for the transit in the prescribed form.

(2) The Minister may refuse to issue an authority for transit where—

- (a) the person sought to be transferred is a citizen of Mauritius;
- (b) the offence for which the sentence was imposed is not an offence under the law of Mauritius; or
- (c) the person being transferred is wanted in Mauritius in respect of any offence against the law of Mauritius.

(3) An authority issued under subsection (1) shall authorise the holding of the prisoner in custody in Mauritius for such time as is reasonably necessary to facilitate the transfer between the requesting country and the country of destination.

(4) A person who is being transferred pursuant to an authority issued under subsection (1) shall not, while in Mauritius, be detained or otherwise subjected to any restriction on his liberty in respect of an offence committed or sentence imposed prior to his departure from the territory of the sentencing country.

15. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide for the taking of fees and the levying of charges.

16. —
