



TRANSFER OF PRISONERS ACT, 2010

(Act 17 of 2010)

I assent

A handwritten signature in black ink, appearing to read "Michel".

J. A. Michel
President

29th July, 2010



AN ACT to provide for the transfer of prisoners between Seychelles and certain countries for the purpose of enforcing sentences of imprisonment passed upon them and to provide for matters connected therewith.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

This Act may be cited as the Transfer of Prisoners Act, 2010.

Short title

Interpretation

2. In this Act —

“appropriate authority”, in relation to Seychelles means the Minister or other person designated by the Minister for the purpose of this Act, and in relation to any other State, means the authority responsible for the administration of the corresponding law of that State relating to the transfer of prisoners;

“designated country” means any country designated under section 3;

“Minister” means the Minister who has the portfolio responsibility for prison services;

“prisoner” means a citizen of Seychelles serving sentence in a designated country or a citizen of a designated country serving a sentence in Seychelles;

“transfer” means transfer of a prisoner from a designated country to Seychelles or from Seychelles to a designated country;

“warrant” means any judicial document authorising the transfer of a prisoner to or from the Seychelles.

PART II - TRANSFER OF PRISONERS TO SEYCHELLES

Designation of countries

3. Where an agreement has been entered into with any country in respect of the transfer of prisoners to Seychelles, the Minister may, by an Order published in the Official Gazette declare that this Part of the Act shall apply in relation to that country subject to such conditions, exceptions and qualifications as may be specified in the Order, and this Part shall apply accordingly.

Request for transfer

4.(1) Where the Minister receives a request from a appropriate authority of a designated country stating that —

- (a) a prisoner or a prisoner's representative has applied for a transfer to Seychelles and that country has agreed to such transfer;
- (b) that country requests such transfer and the prisoner consents to the transfer,

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

(2) A request made under this section for the transfer of a prisoner shall be accompanied by the following particulars—

- (a) the name, gender, date and place of birth, or if the date of birth is not known the approximate age of the prisoner;
- (b) the prisoner's address, if any, in Seychelles;
- (c) a certified copy of the judgment or other order of the Court;
- (d) a statement of the facts and circumstances on 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) any medical or other report pertaining to the prisoner including a report of the prisoner's treatment in the designated country together with any recommendation for further treatment in Seychelles;
- (g) the address of the prisoner's last residence;
- (h) full names and addresses of three referees who are citizens of Seychelles and are currently residing in Seychelles;

- (i) any other information which the Minister may require to enable him to consider the desirability of the transfer.

(3) The Minister may, on receipt of any request under subsection (1), request the designated country to furnish the Minister with information indicating that—

- (a) the prisoner has applied for or consented to such transfer; or
- (b) the prisoner by reason of his or her physical and mental condition or age appears to be incapable of acting for himself or herself and that an application has been made or consent has been given by another person on behalf of the prisoner.

(4) The Minister shall not agree to a transfer under this Act if the prisoner has less than six months of the sentence remaining to be served, except in exceptional circumstances.

Obligation to
furnish
information

5.(1) Where the Minister determines a request for a transfer the Minister shall—

- (a) inform the appropriate authority of the relevant designated country of the decision and
- (b) if the Minister agrees to the transfer, issue a warrant in the prescribed form for that purpose.

(2) A prisoner or the prisoner's representative who is aggrieved by the decision of the Minister may apply for judicial review of the decision.

(3) Where the Minister agrees to the transfer of a prisoner, the Minister shall issue a warrant authorising—

- (a) the bringing of the prisoner from the designated country to Seychelles;

- (b) the taking of the prisoner by an authorised person to such place of detention as may be indicated in the warrant; and
- (c) the detention of the prisoner in accordance with such directions as may be given in the warrant, being directions appearing to the Minister to be appropriate to give effect to the arrangements in accordance with which the prisoner is transferred.

6. Where a citizen of Seychelles, having been charged with an offence in a designated country, has been —

Insane or mentally disordered prisoners

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

that person may be transferred to Seychelles at the request of the appropriate authority of that country and with the consent of the Attorney-General.

7.(1) Every request for the transfer of a prisoner and every reply thereto shall be in writing.

Means of communicating information on requests

(2) All communications relating to the transfer of a prisoner shall be through such means as may be prescribed.

8.(1) A certified copy of a judgment or other order referred in section 4(2)(c) shall —

Supporting documents

- (a) be accepted as conclusive proof of the facts stated therein; and
- (b) have effect as if it were a judgment or order

order of a court of competent jurisdiction in Seychelles.

(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 by the person in charge of any penal institution in the country in which the prisoner was detained, 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 were certified or signed in relation to a person convicted and sentenced in Seychelles; and
- (b) subject to this Act, have effect according to the terms thereof.

Remission
9.(1) A transferred prisoner sentenced to a term of imprisonment shall—

- (a) be credited with any remission of that term to which the prisoner had become entitled at the date of the prisoner's transfer in accordance with the law relating to remission of prison sentences in the designated country; and
- (b) be credited to earn remission of the remaining term of imprisonment as if the prisoner has been sentenced to a term of imprisonment of the same length by a court in Seychelles.

(2) Any remission of imprisonment referred to in subsection (1) (a) shall be liable to forfeiture for a disciplinary offence as if it were a remission earned by virtue of subsection (1)(b).

10.(1) Subject to the provisions of this section, a transferred prisoner shall be detained in a prison or such other institution as the Minister may direct for the unexpired part of the prisoner's sentence.

Detention of transferred prisoners

(2) A transferred prisoner who would, if the prisoner had been convicted in Seychelles have been treated by reason of the prisoner's age as a child within the meaning of the Children Act and sentenced accordingly, shall be dealt with in accordance with the provisions of that Act.

11.(1) Where a prisoner had, before the transfer, been released on parole in the designated country and that parole is subsequently revoked, the time spent on parole shall count towards the completion of the sentence in Seychelles.

Parole

(2) A transferred prisoner who is at the date of the prisoner's transfer on parole in the designated country in which the prisoner was convicted and sentenced shall, upon transfer to Seychelles, be treated as a person on parole, notwithstanding that such a prisoner may not be eligible for parole under the law relating to parole of Seychelles.

(3) A breach of any condition of parole or of a conditional pardon shall render the offending prisoner liable to the same consequences as if the prisoner had been granted parole, or had been conditionally pardoned, in accordance with the laws of Seychelles.

12.(1) Nothing in this Act shall be construed as limiting the exercise of the President's power of pardon under article 60 of the Constitution.

Power of pardon

(2) Where the power of pardon has been exercised in a designated country in respect of a transferred prisoner, any pardon granted pursuant thereto shall, to the extent to which the power is exercised, have effect as if it were a pardon granted by the President to the transferred prisoner in terms of article 60 of the Constitution.

PART III - TRANSFER OF PRISONERS FROM SEYCHELLES

Transfer of
a prisoner
from
Seychelles

13.(1) Where an agreement between Seychelles and a designated country has been entered into, the Superintendent of Prisons shall inform prisoners who are citizens of such designated country of the purpose of the agreement.

(2) A prisoner may apply in writing to the Minister through the Superintendent of Prisons to be transferred to a designated country.

(3) The Minister shall, where the Minister agrees to the application for the transfer, cause to be sent to the appropriate authority of the designated country—

- (a) the application made by the prisoner or a certified copy of the application; and
- (b) particulars of the kind set out in section 4.

(4) Where the designated country agrees to the transfer of a prisoner, the Minister shall cause to be sent to the appropriate authority a request for a warrant authorising the taking of the prisoner from the prisoner's place of detention to a place of departure in Seychelles and the prisoner's delivery at that place into the custody of the responsible authority of the country to which the prisoner is to be transferred.

(5) Notwithstanding the other provisions of this Act, where a designated country has agreed to receive certain prisoners who are citizens of that country for the purpose of serving the unexpired part of their sentence in that country the Minister may, in terms of that agreement take steps under subsection (4) to transfer the prisoners to that country.

PART IV - CUSTODY AND TRANSFER OF PRISONERS

Prisoner in
lawful custody
during transfer

14.(1) A prisoner, while being transferred to or from

Seychelles shall be deemed to be in lawful custody of the person who is duly authorised to escort the prisoner.

(2) Where a prisoner referred to in subsection (1) escapes from such lawful custody the prisoner shall be treated in the same manner as a person escaping from custody under a warrant issued for the person's arrest in Seychelles.

15. Notwithstanding the provisions of this Act, where the sentence imposed by the designated country upon a prisoner who is transferred to Seychelles by its nature or duration is incompatible with any law of Seychelles, the President may invoke the provisions of article 60 of the Constitution:

Continued
enforcement

Provided that, the legal nature of the sentence imposed shall, so far as possible, correspond with that of the sentence imposed by the foreign country.

16.(1) Where a prisoner is serving a sentence in Seychelles consequent upon a transfer, and the Minister is satisfied that the designated country from which the prisoner has been transferred has immediately before the prisoner's transfer to Seychelles exercised the power of pardon or any other power which renders the sentence no longer enforceable in that country or that the sentence is completed, the prisoner shall no longer be subject to detention by reason only of that sentence.

Termination
of
enforcement

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

17.(1) Subject to the provisions of this section, the cost of a transfer of a prisoner under this Act shall be borne by

Cost of transfer
of sentenced
prisoners

Seychelles and the designated country in such proportion as may be agreed upon by them.

(2) Subject to the provisions of subsection (4), in the case of a transfer of a prisoner who is a citizen of Seychelles the expenses of such transfer shall be borne by such prisoner or by the prisoner's agent, 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 Government.

(3) Any expenses referred to in subsection (2) shall be regarded as a civil debt owed to the Government.

(4) The provisions of subsections (2) and (3) shall not apply where it appears to the Minister that it would not be just and fair for the Minister to exercise the power conferred by those subsections because—

- (a) of the exceptional circumstances of the case; or
- (b) the means of such prisoner are insufficient to meet the expenses, and their recovery from the prisoner or from any other person is impracticable; or
- (c) a designated country has agreed with a third country to transfer a prisoner into or out of its territory pursuant to an arrangement relating to the transfer of prisoners.

**Transit of
prisoners**

18.(1) A country seeking permission for a prisoner and an escorting officer to land and transit in Seychelles during the course of the transfer shall apply to the Minister for permission to land and transit in Seychelles.

(2) The Minister may refuse to issue a permit for transit where—

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

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

(4) A prisoner who is being transferred pursuant to a permit issued under subsection (1) shall not while in Seychelles be detained or otherwise subjected to any restriction on the prisoner's liberty in respect of any other offence committed or sentence imposed prior to the prisoner's departure from the territory of the designated country.

19.(1) The Minister may make regulations for the better implementation of this Act.

Regulations

(2) Regulations made under this section may provide for—

- (a) the form and manner in which a prisoner may apply to be transferred to or from Seychelles; and
- (b) any matter which is required or permitted to be prescribed under this Act.

(3) Different regulations may be made in respect of different designated countries.

20. The Prisons Act is amended in section 2 by inserting

Amendment of
the Prisons
Act, Cap. 180

immediately after the last word "authority" in the definition of "convicted prisoner" the following words —

"or a prisoner detained under section 10(1) of the Transfer of Prisoners Act, 2010."

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 20th July, 2010.



Veronique Bresson
Clerk to the National Assembly