

# THE TRANSFER OF PRISONERS ACT, 2004

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No. 10 OF 2004

I ASSENT,

*Benjamin W. Mhapa*

President

*4<sup>th</sup> June, 2004*

**An Act to provide for the transfer of prisoners between the United Republic of Tanzania and other countries for the purpose of enforcing sentences of imprisonment passed upon them and to provide for matters connected therewith**

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

**PART I**

**PRELIMINARY PROVISIONS**

1. This Act may be cited as the Transfer of Prisoners Act, 2004 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Short title and commencement

2. This Act shall apply to any prisoner who is already serving a sentence of imprisonment on the date of commencement of this Act in a country designated as such by the Minister in accordance with section 4 of this Act.

Application

3. In this Act unless the context requires otherwise-  
“Act” means the Transfer of Prisoners Act, 2004;

Interpretation

- “appropriate authority”; in relation to Tanzania; means the Minister or other person or authority designated by him for the purpose of this Act, and in relation to a foreign country means the authority responsible for the administration of the law relating to the transfer of prisoners;
- “designated country” means any country designated as such pursuant to the provisions of section 4 of this Act;
- “Minister” means the Minister for the time being responsible for matters relating to prisoners;
- “prisoner” means a Tanzania citizen serving a sentence in a designated country or a citizen of a designated country serving a sentence in Tanzania;
- “transfer” means transfer of a prisoner from a designated country to Tanzania or from Tanzania to a designated country;
- “warrant” means any judicial document authorizing the transfer of a prisoner to or from the United Republic.

## PART II

### TRANSFER OF SENTENCED PRISONERS TO THE UNITED REPUBLIC OF TANZANIA

Designation of countries

4. Where an agreement has been made with any country in respect to the transfer of prisoners to Tanzania, the Minister may by an order published in the *Gazette*, declare that this part of the Act shall apply in the case of 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

5.-(1) Where the Minister is requested by an appropriate authority of a designated country that -

- (a) a prisoner or his representative has applied for a transfer to Tanzania and that country has agreed to such transfer;
  - (b) that country requests such transfer and the prisoner consents to that transfer,
- the Minister shall after consultation with the Attorney-General determine whether he 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, sex, 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 Tanzania;
- (c) a certified copy of the judgment or other order of the Court;
- (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) any medical or other report pertaining to the prisoner including a report of his treatment in the designated country together with any recommendation for further treatment in Tanzania; and
- (g) the address of the prisoner's last residence;
- (h) full names and addresses of three referees who are citizens of the United Republic of Tanzania and are at the material time residing in Tanzania;
- (i) any other information which the Minister may require to enable him to consider the desirability of a transfer.

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

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

(4) Where an application for transfer of a prisoner to Tanzania has been made by a prisoner or consent for transfer to Tanzania has been given by another person on behalf of a prisoner, then, if that prisoner is habitual resident of Tanzania Zanzibar, the Minister shall before making any decision, consult with the Minister responsible for the custody of offenders in the Revolutionary Government of Zanzibar regarding the application and, where there is consensus in the affirmative, the provisions of this Act shall *mutatis mutandis* apply to such transfer.

(5) In determining the request for transfer made under subsection (1), the Minister shall not agree to a transfer where the prisoner has less than six months of the sentence remaining to be served except on exceptional circumstances.

Obligation to furnish information

6.-(1) Where the Minister determines request for a transfer he shall-

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

(2) A prisoner or his representative who is aggrieved by the decision of the Minister may appeal to a court.

(3) Where the Minister agrees to the transfer of a prisoner, he shall issue a warrant authorizing-

- (a) the bringing of the prisoner from the designated country to the United Republic of Tanzania;
- (b) the taking of the prisoner by an authorized person to such place of detention as may be indicated in the warrant; and
- (c) the detention of the prisoner in accordance with such provisions as may be provided in the warrant, being provisions appearing to the Minister to be appropriate for giving effect to the arrangements in accordance with which the prisoner is transferred.

Insane or mentally disordered prisoners

7. Where a citizen of the United Republic, 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 or mentally disordered or mentally defective prisoner 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 the United Republic at the request of the appropriate authority of that country and with the consent of the Attorney-General.

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

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

Means of communicating information on requests

9.-(1) A certified copy of a judgment or other order referred to in paragraph (c) of section 5(2) 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 other order of a court of competent jurisdiction in Tanzania.

(2) Any document required under this Act to be certified shall, if that document purports to be certified or signed by a judicial officer of authority or by the person in charge of any penal institution in the country in which the prisoner 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 Tanzania; and
- (b) subject to this Act, have effect according to the terms thereof.

10.-(1) A transferred prisoner sentenced to a term of imprisonment shall -

Remission

- (a) 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
- (b) be credited to earn remission of the remaining term of imprisonment as if he has been sentenced to a term of imprisonment of the same length by a court in Tanzania.

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

Detention  
of trans-  
ferred  
prisoners

11.-(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 portion of his sentence.

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(2) A transferred prisoner who would, if he had been convicted in Tanzania, have been treated by reason of his age as a young offender within the meaning of the Children and Young Persons Ordinance and sentenced accordingly, shall be dealt with in accordance with the provisions of that Ordinance.

Parole

12.-(1) Where a prisoner has, before transfer been released on parole in the designated country and that parole was subsequently revoked, the time spent on parole shall count towards the completion of sentence in Tanzania.

(2) A transferred prisoner 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 Tanzania, 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 Tanzania.

(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 laws of Tanzania.

Preroga-  
tive of  
mercy

13.-(1) Nothing in this Act shall be construed as limiting the exercise by President's prerogative of mercy provided for in Article 45 of the Constitution of the United Republic of Tanzania, 1977.

(2) Where the prerogative of mercy has been exercised in a designated country in respect of a transferred prisoner, 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 prisoner in terms of Article 45 of the Constitution of the United Republic of Tanzania, 1977.



## PART III

## TRANSFER OF PRISONERS FROM THE UNITED REPUBLIC OF TANZANIA

14.-(1) Where an agreement between Tanzania and a designated country has been or is deemed to have been entered into, the Principal Commissioner of Prisons shall, as far as practicable, cause to be informed prisoners who are citizens of such designated country of the purpose of the agreement.

Transfer  
of a pris-  
oner  
from  
Tanzania

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

(3) The Minister shall where he agrees to the application for the transfer, cause to be sent to the responsible person of the designated country-

- (a) the application made by the prisoner or certified copy of the application; and
- (b) particulars of the kind set out in section 5.

(4) Where the designated country agrees to the transfer of a prisoner, the Minister shall cause to be sent to appropriate authority a request for a warrant issued under subsection (3) authorizing the taking of the sentenced prisoner from his place of detention to a place of departure in Tanzania and his delivery at that place into the custody of the responsible authority of the country to which the sentenced prisoner is to be transferred.

(5) Where an application for transfer outside the United Republic has been made by a prisoner or consent for such transfer has been given by another person on behalf of that prisoner, then, if such prisoner is detained in Tanzania Zanzibar, the Minister shall before making any decision consult with the Minister responsible for the custody of offenders in the Revolutionary Government of Zanzibar regarding the application and, where there is consensus in the affirmative, the provisions of this Act shall *mutatis mutandis* apply to such transfer.

## PART IV

## CUSTODY AND TRANSFER OF PRISONERS

15.-(1) A prisoner, while being transferred to or from Tanzania, shall be deemed to be in lawful custody of the person who is duly authorized to escort him.

Prisoner  
in lawful  
custody  
during  
transfer

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

Continued  
enforce-  
ment

16. Notwithstanding the provisions of this Act, where the sentence imposed by the foreign country upon a sentenced prisoner who is transferred to Tanzania by its nature or duration incompatible with any law of the United Republic of Tanzania, the President shall invoke the provisions of Article 45 of the Constitution of the United Republic of Tanzania, 1977, provided that, the legal nature of the sentence imposed shall so far as possible, correspond with that of the sentence imposed by a foreign country.

Termina-  
tion of  
enforce-  
ment

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

(2) Where a foreign sentenced prisoner is serving a sentence in a designated country consequent upon his transfer from Tanzania under this Act, and the power which renders the sentence no longer enforceable in Tanzania 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 he is no longer subject to detention by reason only of that sentence.

Cost of  
transfer of  
sentenced  
prisoners

18.-(1) Subject to the provisions of this section, the cost of a transfer of a prisoner under this Act shall be borne out by Tanzania 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 Tanzanian citizen, the expenses of such transfer shall be borne by such prisoner or by his 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 Minister.

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

(4) The provisions of subsections (2) and (3) shall not apply where it appears to the Minister that it would be unreasonable for him to exercise the power conferred by these subsections because:

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

Transit  
prisoners

19.-(1) Where-

- (a) 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; and
- (b) that country seeking permission for the prisoner and escorting officer to land and transit in Tanzania during the course of the transfer,

shall apply to the Minister, permission to land and transit in Tanzania.

Amend-  
ment of  
the  
Prisons  
Act,  
1967

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

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

(3) A permit issued under subsection (1) shall not authorize the holding of the prisoner in custody in Tanzania 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 Tanzania, 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 designated country.

Regulations

**20.**-(1) The Minister may make regulations as may be necessary for better and proper administration of this Act.

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

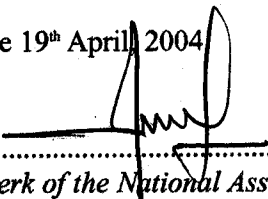
- (a) the form and manner in which a prisoner may apply to be transferred to or from Tanzania;
- (b) any matter which is required or permitted to be prescribed under this Act; and
- (c) generally any matter in respect of which the Minister considers it necessary or expedient to make regulations for carrying into effect the purposes of this Act.

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

Amendment of the Prisons Act, 1967

**21.** The Prisons Act, 1967 is amended in section 25 by deleting a fullstop at the end of subsection (1) and inserting a "comma" and the following phrase "or an order or direction made in pursuance to the provisions of the Transfer of Prisoners Act, 2004."

Passed in the National Assembly on the 19<sup>th</sup> April, 2004

  
.....  
*Clerk of the National Assembly*