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Transfer of Convicted Offenders Act, 2001

Act 10 of 2001

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Transfer of Convicted Offenders Act, 2001

Act 10 of 2001

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An Act to provide for the transfer of convicted offenders to and from Swaziland and for matter incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

Part I – Preliminary

1. Short title and commencement

This Act may be cited as the Transfer of Convicted Offenders Act, 2001, and shall come into force on the day of its publication in the *Gazette*.

2. Interpretation

In this Act, unless the context otherwise requires—

“**administering country**” means the country to which the convicted offender may be or has been transferred in order to serve his sentence;

“**convicted offender**” means a person upon whom a sentence has been imposed by a court;

“**court**” means a court of competent jurisdiction whether in Swaziland or outside Swaziland;

“**Minister**” means the Minister responsible for Justice;

“**sentence**” means any punishment or measure involving deprivation of liberty ordered by a court for a determinate or indeterminate period of time in exercise of its criminal jurisdiction;

“**sentencing country**” means the country in which the sentence was imposed on the convicted offender who may be or has been transferred.

Part II – Transfer of convicted offenders from Swaziland

3. Transfer of convicted offenders

- (1) Subject to the provisions of this Act, a convicted offender sentenced to a term of imprisonment by a court in Swaziland may be transferred to another country referred to in this Part as the “administering country” in order that such person may serve in that country the remainder of the sentence.
- (2) A convicted offender may be transferred from Swaziland either—
 - (a) at the request of the Minister;
 - (b) at the request of the administering country; or

- (c) upon application by the convicted offender to the Minister or to the appropriate authority in the administering country.

4. Request for transfer of convicted offenders

All requests or applications for the transfer of convicted offenders under [section 3](#) shall be made in writing to the Minister.

5. Conditions for transfer of convicted offenders from Swaziland

- (1) A convicted offender may be transferred from Swaziland to an administering country on the following conditions—
 - (a) if that offender is a national of the administering country or has close ties with the administering country of a kind that may be recognized by that country for the purposes of this Act;
 - (b) if the judgment is final;
 - (c) if at the time of the receipt of the request for transfer, the convicted offender still has at least six months of the sentence to serve or if the sentence is indeterminate;
 - (d) if the transfer has been consented to by the convicted offender or by a person entitled by law to act on behalf of the convicted offender because of the age, physical or mental condition of the convicted offender; and
 - (e) if the Minister and the administering country have agreed to the transfer of the convicted offender from Swaziland.
- (2) Where a convicted offender consents to his transfer from Swaziland under subsection (1)(d), such consent shall be given by the convicted offender voluntarily and in writing.

6. Minister to furnish information

For the purpose of enabling a decision to be made on a request or an application for the transfer of a convicted offender from Swaziland under this Part, the Minister shall furnish the administering country with the following documents and information—

- (a) the name, date and place of birth of the convicted offender;
- (b) his address, if any, in the administering country;
- (c) a certified copy of the judgment and a copy or account of the law on which it is based;
- (d) a statement of the facts upon which the conviction and sentence were based;
- (e) the nature, duration and date of commencement of the sentence;
- (f) whenever appropriate, any medical or social reports on the convicted offender, information about his treatment and any recommendation for his further treatment in the administering country;
- (g) any other information which the administering country may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the convicted offender and the Minister of the full consequences of the transfer for the prisoner under this law.

7. Discharge of sentence in Swaziland

The enforcement by the administering country of the sentence imposed in Swaziland on the convicted offender shall, to the extent that it has been enforced in the administering country, have the effect of discharging the sentence in Swaziland.

8. Effect of transfer for the administering country

- (1) When the convicted offender is transferred from Swaziland, the administering country shall continue the enforcement of the sentence immediately, unless the law of the administering country requires that such enforcement should be effected by a court or an administrative order.
- (2) Subject to [section 9](#), the enforcement in the administering country of the sentence imposed on the convicted offender shall be governed by the law of the administering country.
- (3) If according to its law, the administering country cannot enforce any measures imposed by a court in Swaziland on the convicted offender who because of his mental condition has been held not to be criminally responsible for the commission of the offence for which he has been convicted, and the administering country is prepared to receive such a person for further treatment, it may notify the Minister of the procedure it may follow to deal with the case of such person.
- (4) The administering country shall be bound by the legal nature and duration of the sentence as determined by the court in Swaziland.
- (5) If the sentence imposed by the court in Swaziland is by its nature or duration incompatible with the law of the administering country or its law so requires, that country may by court or administrative order impose a sentence of a nature and duration which shall as far as possible correspond with that imposed by the court in Swaziland:

Provided that the nature and duration of such sentence shall not be of greater severity than that imposed by the court in Swaziland.

9. Pardon, amnesty communication, etc

Unless the Minister and the administering country otherwise agree, the power to commute or remit any sentence of, or the grant of pardon either free or conditional to, a convicted offender sentenced in and transferred from Swaziland to the administering country, shall be exercised by His Majesty the King under Part II of the Criminal Procedure and Evidence Act, 1918.

10. Termination of enforcement of sentence

When as a result of any decision or measure the sentence imposed on the convicted offender by a court in Swaziland ceases to be enforceable, the Minister shall as soon as such decision or measure has been taken, inform the administering country and accordingly the enforcement of the sentence in that country shall terminate.

11. Information on enforcement by administering country

- (1) The administering country shall notify the Minister—
 - (a) when the enforcement of the sentence is completed; or
 - (b) when the convicted offender escapes from custody before he has completed serving his sentence.
- (2) Without prejudice to subsection (1), the Minister may at any time request a special report from the administering country concerning the enforcement of the sentence imposed on the convicted offender transferred to that country.

Part III – Transfer of convicted offenders to Swaziland

12. Transfer of convicted offender to Swaziland

- (1) Subject to the provisions of this Act, a convicted offender who is a Swazi citizen or is permanently resident in Swaziland and who is sentenced to a term of imprisonment by a court in a country outside Swaziland referred to in this Part as the “sentencing country” may be transferred to Swaziland to serve the remainder of the sentence.
- (2) The convicted offender referred to in subsection (1) may be transferred to Swaziland either—
 - (a) at the request of the Minister; or
 - (b) at the request of the sentencing country; or
 - (c) upon application by the convicted offender to the Minister or to the appropriate authority.
- (3) A request under subsection (2)(a) shall be made in writing by the Minister to the appropriate authority in the sentencing country.
- (4) An application under subsection (2)(c) shall be made in writing by the convicted offender to the Minister.

13. Conditions for transfer of convicted offenders to Swaziland

- (1) A convicted offender may be transferred to Swaziland from a sentencing country on the following conditions—
 - (a) if that offender is a citizen of Swaziland or is permanently resident in Swaziland;
 - (b) if the judgment is final; and
 - (c) if at the time of the request for transfer the convicted offender still has at least six months of the sentence to serve or if the sentence is indeterminate; and
 - (d) if the transfer has been consented to by the convicted offender or by a person entitled by law to act on behalf of the convicted offender because of the age, physical or mental condition of the convicted offender; and
 - (e) if the Minister and the sentencing country have agreed to the transfer of the convicted offender.
- (2) Subject to the law of the sentencing country, where a convicted offender consents to his transfer to Swaziland under subsection (1)(d), such consent shall be given by him voluntarily and in writing.

14. Sentencing country to furnish information

For the purposes of enabling the Minister to make a decision on a request by a sentencing country for the transfer of a convicted offender or on an application by the convicted offender for his transfer to Swaziland, the appropriate authority of the sentencing country shall furnish the Minister with the following information and documents—

- (a) the name, date and place of birth of the convicted offender;
- (b) his address, if any, in Swaziland;
- (c) a certified copy of the judgment and a copy or account of the law on which it is based;
- (d) a statement of the facts upon which the conviction and sentence were based;
- (e) the nature, duration and date of commencement of the sentence;

- (f) whenever appropriate, any medical or social report on the convicted offender. information about his treatment in the sentencing country and any recommendation for his further treatment in Swaziland; and
- (g) any other information which the Minister may specify as required in all cases to enable him to consider the possibility of the transfer and to inform the convicted offender and the sentencing country of the full consequences of the transfer for the convicted offender under the law of Swaziland.

15. Discharge of sentence in sentencing country

The enforcement in Swaziland of the sentence imposed on the convicted offender by the sentencing country shall, to the extent that the sentence has been enforced in Swaziland, have the effect of discharging the sentence in the sentencing country.

16. Effect of transfer for Swaziland

- (1) When the convicted offender is transferred to Swaziland, the Government shall immediately continue the enforcement of the sentence.
- (2) Subject to [section 17](#), the enforcement of the sentence in Swaziland shall be governed by the provisions of the Criminal Procedure and Evidence Act, 1938.
- (3) If any measures imposed by a court in the sentencing country on the convicted offender cannot be enforced in Swaziland on the ground that, because of the mental condition of the offender he has been held not to be criminally responsible for the commission of the offence, and the Government is prepared to receive such person for further treatment, the Minister may notify the appropriate authority in the sentencing country of the procedure he may follow to deal with the case of such person.
- (4) The Government shall be bound by the legal nature and duration of the sentence as determined by the court in the sentencing country.
- (5) If the sentence imposed by the court in the sentencing country is by its nature and duration incompatible with the law of Swaziland, the Director of Public Prosecutions may apply to the High Court for the Court to impose a sentence of a nature and duration which shall as far as possible correspond with that imposed by the court in the sentencing country:

Provided that the nature and duration of such sentence shall not be of greater severity than that imposed by the court in the sentencing country.

17. Pardon, communication, etc.

Unless the Minister and the sentencing country otherwise agree, the power to commute or remit any sentence imposed on the convicted offender by the court in the sentencing country or the grant of pardon either free or conditional to convicted offenders shall be exercised by competent authority of, and in accordance with the law of, the sentencing country.

18. Termination of enforcement of sentence in Swaziland

When, as a result of any decision or measure, the sentence imposed on a convicted offender transferred to Swaziland ceases to be enforceable in the sentencing country, the appropriate authority in that country shall, as soon as such decision or measure has been taken, inform the Minister of the decision or measure and accordingly the enforcement of the sentence in Swaziland shall terminate.

19. Information on enforcement of sentence in Swaziland

- (1) The Minister shall notify the appropriate authority in the sentencing country—
 - (a) when the enforcement of the sentence is completed; or
 - (b) when the convicted offender escapes from custody before he has completed serving his sentence.
- (2) Without prejudice to subsection (1), the appropriate authority of the sentencing country may at any time request a special report from the Minister concerning the enforcement of the sentence imposed on the convicted offender transferred from that country.

Part IV – Miscellaneous

20. Supporting documents need to be certified

Except as provided in [section 6\(c\)](#), any other document required in support of a request or an application for the transfer of the convicted offender under this Act need not be certified.

21. Transit

If the transfer of the convicted offender under this Act involves transit through the territory of any other country or countries, the Minister or the sentencing country, as the case may be, shall give each transit country not less than 7 days' written notice of the intended transfer of the convicted offender, and request the appropriate authority in each transit through its territory of the convicted offender.

22. Costs

The cost of the transfer of a convicted offender under this Act shall be defrayed by the Government and the administering country or the sentencing country, as the case may be, in such proportion as the Minister and that country may agree either generally or in regard to any particular transfer.

23. Regulations

The Minister may, by Legal Notice published in the *Gazette*, make such regulations as may be necessary for the carrying out or giving effect to the provisions of this Act.

24. Transitional provision

The provisions of this Act shall be applicable to the enforcement of any sentence imposed before the coming into force of this Act.