

ACTS SUPPLEMENT

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Act 2 *Transfer of Convicted Offenders Act* **2012**

THE TRANSFER OF CONVICTED OFFENDERS ACT, 2012.

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THE TRANSFER OF CONVICTED OFFENDERS ACT, 2012.

An Act to make provision for the mutual transfer of convicted offenders between Uganda and other Commonwealth countries for the purpose of serving their sentences of imprisonment, to provide for the conditions, treatment and other arrangements in respect of persons liable to be transferred in accordance with this Act; to empower the Minister in appropriate cases to extend the provisions of this Act to countries not in the Commonwealth and for other connected matters.

DATE OF ASSENT: 27th July, 2012.

Date of Commencement: See Section 1.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. Commencement.

This Act shall come into force on such day, as the Minister may by statutory instrument appoint.

2. Application.

This Act applies—

- (a) to the transfer of convicted offenders between Uganda and any other Commonwealth country designated by the Minister by statutory instrument, and in respect of which the Minister is satisfied that it has in force a law providing for the transfer of convicted offenders from its territory to Uganda on substantially similar terms as are provided in this Act; and

- (b) in respect of sentences imposed before or after its commencement.

3. 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 or her sentence;

“child” means a person below the age of eighteen years;

“convicted offender” means a person who has been found guilty of an offence and upon whom a sentence has been imposed;

“imprisonment” includes detention;

“judgement” means a decision or order of a court or tribunal imposing a sentence;

“Minister” means the Minister responsible for justice;

“proper authority” in relation to Uganda means the Minister or other person or authority designated by him or her for the purpose of this Act and, in relation to a Commonwealth country other than Uganda, means the authority responsible for the administration of the law relating to the transfer of convicted offenders on substantially similar terms as are provided in this Act;

“sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal in exercise of its criminal jurisdiction and includes supervision while at liberty on parole or on probation;

“sentencing country” means the country in which the sentence is imposed on the convicted offender.

4. Persons liable to be transferred.

Subject to this Act, a convicted offender who—

- (a) is in Uganda and is a citizen or national of another Commonwealth country; or
- (b) is in another Commonwealth country and is a citizen or national of Uganda; or
- (c) is a person to whom section 6(a)(ii) applies;
- (d) is a person to whom section 23 applies,

may be transferred to that country or to Uganda, as the case may be, as provided by this Act so that the offender may serve the remainder of his or her sentence in the administering country.

5. General requirements and application for transfer.

(1) A convicted offender shall not be transferred under this Act or committed to or kept in custody for the purpose of his or her transfer unless—

- (a) he or she has first been informed by the proper authority of the sentencing country of the substance of this Act and the corresponding law of the administering country, applicable to the transfer of convicted offenders; and
- (b) he or she or the proper authority of the sentencing country or of the administering country has made a request for his or her transfer.

(2) Where a convicted offender applies to the proper authority for his or her transfer to Uganda or from Uganda to another country, the Minister shall, as soon as practicable, communicate the fact of the application to the proper authority of the sentencing country or the country to which the offender wishes to be transferred in order to serve the remainder of his or her sentence.

6. Conditions for transfer.

Notwithstanding the provision of section 122 of the Prisons Act, a convicted offender may be transferred under this Act only if—

(a) he or she is—

- (i) a citizen or a national of the administering country, notwithstanding that he or she may also be a citizen or a national of any other country including the sentencing country; or
- (ii) a person who, in the opinion of the Minister, has no established citizenship or nationality but has a right of domicile or permanent residence in the administering country;

(b) the judgement in respect of the offence committed is final and—

- (i) no appeal lies from it or no appeal is pending; or
- (ii) the normal time limit for appeal has expired without an appeal being brought; or
- (iii) the convicted offender having a right of appeal from the judgement, indicates in writing to the proper authority of the sentencing country and the administering country that he or she does not intend to appeal from the judgement;

(c) on the date of receipt by the Minister of the request for transfer, the remainder of the sentence to be served by him or her is more than six months or the sentence is indeterminate, unless the sentencing country and the administering country agree on a period shorter than six months in any particular case;

(d) he or she has in writing, applied for or consented to the transfer or, if he or she is incapable or incompetent to give consent, the consent has been given by a person who is, in the opinion of the proper authority of the sentencing country or of the administering country, entitled to act on his or her behalf; and

- (e) the proper authorities of both the sentencing country and the administering country agree to the transfer.

7. Obligation to furnish information.

(1) For the purpose of enabling a decision to be made on a request or an application for the transfer of a convicted offender convicted in Uganda, unless the Minister or the proper authority of the administering country has earlier decided not to transfer the convicted offender, the Minister shall send the following information and documents to the administering country—

- (a) the name, date and place of birth of the convicted offender;
- (b) the address, if any, in the administering country of the convicted offender;
- (c) a certified copy of the judgement and a copy or summary 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 or her treatment in Uganda and any recommendation for his or her further treatment in the administering country; and
- (g) any other information which the proper authority of 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 proper authority in Uganda of the full consequences of transfer for the convicted offender under its law.

(2) Where the Minister or a convicted offender who is serving a sentence in another country has made a request or an application for a transfer to Uganda, the Minister shall, if requested by the proper authority in that country, send to it a document or statement indicating whether the convicted offender satisfies the requirements of section 6(a).

8. Requests, applications and channels of communication.

(1) Every request or application for the transfer of a convicted offender and every reply to the request or application shall be made in writing.

(2) All communications relating to the transfer of a convicted offender shall be through such channels as may be prescribed by the Minister.

9. Consent and its verification.

(1) If a person liable for transfer is serving a sentence in Uganda, the proper authority shall ensure that the person required to give consent to the transfer in accordance with section 6(d) does so voluntarily according to law and with full knowledge of the legal consequences of the transfer.

(2) For the purposes of subsection (1), the proper authority in Uganda shall afford an opportunity to the proper authority of the country to which a convicted offender is to be transferred, to verify whether the consent complies with the conditions provided for in that subsection.

10. Notification of decisions to convicted offender.

(1) The proper authority shall in writing and, as occasion arises, inform a convicted offender convicted in Uganda of any relevant action taken or of any decision made by the proper authority in Uganda and the administering country or either of them in respect of a request for his or her transfer.

(2) The proper authority shall, within reasonable time after the transfer of any convicted offender, notify the members of his or her family or other appropriate persons of the convicted offender's choice of his or her transfer and of the place where he or she shall be kept in custody.

11. Effect of transfer from Uganda.

If a convicted offender serving a sentence in Uganda is transferred to another country, the enforcement of the sentence in that other country, to the extent that the sentence has been enforced in the latter country shall have the effect of discharging that sentence.

12. Effect of transfer to Uganda.

(1) If a convicted offender is transferred to Uganda, the proper authority shall continue the enforcement of the sentence immediately or through a court under the conditions set out in section 15.

(2) Subject to section 19, the enforcement of the sentence of a convicted offender transferred to Uganda shall be in accordance with the law of Uganda and all decisions relating to the continued enforcement of the sentence shall be within the exclusive jurisdiction of the proper authority in Uganda.

(3) If a convicted offender who is transferred to Uganda has been certified to be of unsound mind in the country in which the sentence was imposed, the proper authority in Uganda shall inform the proper authority of the sentencing country of the treatment it intends to provide to the offender, having proper regard to his or her mental condition.

13. Convicted offender in lawful custody during transfer.

(1) A convicted offender shall—

- (a) while he or she is being transferred to or from Uganda, be taken to be in the lawful custody of the person duly authorised to conduct him or her and to be subject to the same restraint; and

- (b) in the case of misbehaviour, be subject to the same punishment as if he or she were in prison in Uganda and as if the person conducting him or her were a prison officer.

(2) If the offender escapes or attempts to escape from custody, he or she and any other person aiding or attempting to aid him or her in the escape is liable to the same penalty as if the escape or attempt to escape were an escape or an attempt to escape from a prison in Uganda.

14. Co-operation in respect of other offenders in transit.

The Government of Uganda shall afford reasonable co-operation in facilitating the transit through its territory of a convicted offender who is being transferred from one Commonwealth country to another under any law of those countries which is substantially similar to this Act.

15. Effect of continued enforcement and remission of sentence.

(1) Subject to subsection (2), where a convicted offender is transferred to Uganda, the sentence imposed in another country shall, in respect of its legality and duration, have the same force and effect as if it had been imposed in accordance with the laws of Uganda.

(2) If the sentence is, by its nature or duration, incompatible with the law of Uganda or if the law of Uganda so requires, the proper authority may, by court adapt the sentence to a punishment or other measure prescribed by the law of Uganda which corresponds with the sentence imposed by the other country and which shall not be more onerous in its nature or duration.

(3) A convicted offender under a sentence of imprisonment transferred to Uganda shall—

- (a) be credited with any remission of sentence to which he or she has become entitled at the date of his or her transfer in accordance with the relevant law in force in the sentencing country; and

- (b) in respect of the remainder of the sentence to be served in Uganda, be eligible to earn remission as if he or she had been sentenced to imprisonment of the same length by a court in Uganda and liable to forfeit any part of that remission for a disciplinary offence.

16. Prisoner to be detained in prison.

Except as otherwise provided in this Act, a convicted offender who has been sentenced to imprisonment in another country and transferred to Uganda shall be detained in prison.

17. Child offenders.

A convicted offender transferred to Uganda and sentenced to imprisonment who would, if he or she had been convicted in Uganda, have been treated by reason of his or her age as a child, and sentenced accordingly, shall be dealt with as his or her age dictates, in accordance with in accordance with the law for the time being in force in Uganda relating to the treatment of child offenders.

18. Persons of unsound mind.

(1) If a person who is a citizen of Uganda, having been charged with an offence and whether or not he or she is convicted of that offence, is ordered by a court in another country to be detained because he or she is incapable by reason of mental illness to stand his or her trial or for the same reason, is incapable in law of being convicted of that offence, that person may be transferred to Uganda at the request of the proper authority of that country and with the agreement of the proper authority in Uganda and the provisions of section 6(d) requiring him or her to make an application for a transfer in writing shall not apply.

(2) A person transferred by virtue of subsection (1) shall be detained in a mental asylum and he or she shall be taken for all purposes to be a person ordered to be detained by a court in Uganda in similar circumstances.

19. Pardon, commutation and review.

(1) Unless in any particular case of a convicted offender on whom a sentence is imposed in Uganda the proper authority in Uganda agrees otherwise with the proper authority of another country, the competent authority in Uganda may grant pardon or commutation of the sentence in accordance with its Constitution or other law in respect of a convicted offender transferred from Uganda.

(2) The conviction of, and the sentence imposed upon a convicted offender transferred to Uganda, shall not be subject to any appeal or any form of review in Uganda and any appeal from or review of, the conviction or sentence relating to an offender transferred from Uganda shall, in Uganda, have no legal effect unless it has been made by a competent court or tribunal in Uganda.

20. Termination of enforcement.

The proper authority in Uganda shall terminate or cause to be terminated the enforcement of a sentence being served by a convicted offender transferred to Uganda as soon as it receives information from the proper authority of the sentencing country of any decision or measure as a result of which the sentence ceases to be enforceable.

21. Information on enforcement.

(1) After a convicted offender is transferred to Uganda, the proper authority in Uganda shall notify the sentencing country—

- (a) when it considers enforcement of the sentence to be completed;
- (b) if the convicted offender escapes from custody before the enforcement of the sentence is completed;
- (c) if the offender commits any other offence while serving sentence; or
- (d) if the offender dies while serving sentence.

(2) In addition to subsection (1), the proper authority in Uganda shall, if requested by the proper authority of the sentencing country, provide that authority with a report or reports concerning the enforcement of the sentence.

(3) There shall be a regular inspection of penal institutions and correctional services of the administering country by qualified and experienced inspectors appointed by the proper authority to ensure that these institutions are administered in accordance with existing laws and regulations and to bring about the objectives of penal and correctional services.

22. Costs of transfer.

Without prejudice to the right of the proper authority of the sentencing country or the administering country to defray all expenses connected with the transfer of a convicted offender, the cost of transfer shall be defrayed in such proportions as may be agreed upon either generally or in any particular case between the proper authority in Uganda and that of the other country involved in the transfer.

23. Power of Minister to apply Act to other countries.

(1) The Minister may by statutory instrument, apply the provisions of this Act to a country which is not in the Commonwealth, if is satisfied that that country has in force a law providing for the transfer of convicted offenders from its territory to Uganda on substantially similar terms as are provided in this Act.

(2) Where a statutory instrument has been made by the Minister applying the provisions of this Act to a country under subsection (1), this Act shall apply with necessary modifications to that country as if it were a Commonwealth country, in respect of the transfer of convicted offenders from Uganda to that country or from that country to Uganda.

(3) The Minister may also by statutory instrument, apply the provisions of this Act to any other country not being a Commonwealth country or country to which subsection (1) applies, being a country with which Uganda has entered into arrangement providing for the transfer of convicted offenders from Uganda to that country or from that country to Uganda for the convicted offender to serve the remainder of his or her sentence in that country or in Uganda as the case may be.

(4) Where a statutory instrument is made under subsection (3) the application of this Act in respect of the other country shall be subject to such modifications as are provided for in the arrangement as a result of which the statutory instrument is made and the modifications shall be specified in the statutory instrument.

(5) A certificate under the hand of the Minister certifying that, from the documents laid before him or her, it appears that the person named in the certificate has been sentenced, the period of imprisonment specified in the certificate shall be accepted as proof during the continuity of such period, that that person is lawfully detained in accordance with the provisions of this section.

(6) For the avoidance of doubt, statutory Instruments made under this section shall be laid before Parliament within six months.

24. Regulations.

The Minister may make regulations—

- (a) prescribing the form and manner in which a convicted offender may apply to be transferred to or from Uganda;
- (b) prescribing the procedure to be followed for the enforcement in Uganda of a sentence imposed on a convicted offender in another Commonwealth country designated for the purposes of section 2(a) or in any other country to which this Act has been applied; and
- (c) generally for the carrying into effect the purposes of this Act.