

Transfer of Prisoners (Republic of Seychelles) Regulations 2016

GN No. 24 of 2016

Government Gazette of Mauritius No. 17 of 27 February 2016

THE TRANSFER OF PRISONERS ACT

Regulations made by the Minister under sections 3, 4, 10 and 15 of the Transfer of Prisoners Act

- 1.** These regulations may be cited as the **Transfer of Prisoners (Republic of Seychelles) Regulations 2016**.
- 2.** In these regulations -

“Act” means the Transfer of Prisoners Act;

“Agreement” means the agreement entered into between Mauritius and the Republic of Seychelles pursuant to section 3 of the Act and as set out in the First Schedule.
- 3.** For the purpose of section 4 of the Act, a warrant for the transfer of a prisoner from the Republic of Seychelles to Mauritius shall be in the form set out in the Second Schedule.
- 4.** For the purpose of section 10 of the Act, a warrant for the transfer of a prisoner from Mauritius to the Republic of Seychelles shall be in the form set out in the Third Schedule.
- 5.** These regulations shall be deemed to have come into operation on 23 October 2015.

Made by the Minister on 9 February 2016.

FIRST SCHEDULE

[Regulation 2]

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES ON THE TRANSFER OF PRISONERS

The Government of the Republic of Seychelles and the Government of the Republic of Mauritius hereinafter referred to individually as a “Party” and collectively as the “Parties”:

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries;
and

Considering that this objective should be fulfilled by giving nationals of both countries, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows: -

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- (b) “national” means:
 - (i) in relation to the Republic of Seychelles, a national of Seychelles according to its laws and constitution;
 - (ii) in relation to the Republic of Mauritius, a national of Mauritius according to its laws and constitution.

- (c) “prisoner” means a person who is required to be detained in a prison, a hospital or any other institution in the transferring State by virtue of a judgment made by a court in the course of the exercise of its criminal jurisdiction;
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a period of time in the course of the exercise of its criminal jurisdiction;
- (e) “transferring State” means the State in which the sentence was imposed on the prisoner who may be, or has been, transferred;
- (f) “receiving State” means the State to which the prisoner may be, or has been, transferred in order to serve his sentence.

ARTICLE 2

General Principles

1. The Parties undertake to afford each other the widest measure of cooperation in respect of the transfer of prisoners in accordance with the provisions of this Agreement and their respective national laws.
2. A person sentenced in the territory of one Party may be transferred to the territory of the other Party, in accordance with the provisions of this Agreement, in order to serve the sentence imposed on him/her. To that end, the person may express his/her interest to the transferring State or to the receiving State in being transferred under this Agreement.
3. Transfer may be requested by either the transferring State or the receiving State.

ARTICLE 3
Conditions for Transfer

A prisoner may be transferred under this Agreement only if the following criteria are met:

- (a) the prisoner is a national of the receiving State;
- (b) the judgment is final and no other legal proceedings relating to the offence or any other offence committed by the prisoner are pending in the transferring State;
- (c) at the time of receipt of the request for transfer, the prisoner still has at least six months of the sentence to serve. In exceptional cases, the Parties may agree to a transfer even if the prisoner has less than six months of the sentence left to serve;
- (d) the prisoner consents to the transfer or, where in view of the prisoner's age, physical or mental condition, one of the Parties considers it necessary, the prisoner's legal representative does so on his/her 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 receiving State or would constitute a criminal offence if committed on its territory;
- (f) transfer of custody of the prisoner to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
- (g) the transferring and receiving States agree to the transfer;
- (h) the death penalty will not be awarded or enforced against the convicted person in the receiving country; and
- (i) the receiving State gives an undertaking that any transferred person will be treated humanely and in accordance with international human rights law, will not be subject to torture or cruel, inhuman or degrading treatment or punishment, will receive adequate accommodation and nourishment, access to medical treatment and will be able to

carry out religious observance.

ARTICLE 4

Procedure for Transfer

1. Any prisoner to whom this Agreement may apply shall be informed by the transferring State of the substance of this Agreement.
2. If the transferring State is prepared, in principle, to approve any prisoner's request for transfer, it shall provide the receiving State with the following information:
 - (a) the name, nationality, date and place of birth of the prisoner;
 - (b) his address, if any, in the receiving State;
 - (c) the nature, duration and date of commencement of the sentence that has been imposed;
 - (d) a statement of the facts upon which the sentence was based;
 - (e) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission and any other factor relevant to the enforcement of the sentence;
 - (f) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the prisoner;
 - (g) the request of the sentenced person to be transferred or of a person entitled to act on his behalf;
 - (h) where appropriate, a medical or social report on the prisoner, information about the prisoner's treatment in the transferring State and any recommendation for his further

treatment in the receiving State; and

(i) any other relevant information requested by the receiving State.

3. If the receiving State having considered the information which the transferring State has supplied, is willing to consent to the prisoner's transfer, it shall furnish the transferring State with the following:

(a) a statement indicating that the prisoner is a national of that State;

(b) a copy of the relevant law of the receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the transferring State constitute a criminal offence according to the law of the receiving State or would constitute a criminal offence if committed on its territory;

(c) a statement of the effect, in relation to the prisoner, of any law or regulation relating to that person's detention in the receiving State after that person's transfer, including a statement, if applicable, of the effect of paragraph 2 of Article 8 of the Agreement upon that person's transfer;

(d) the willingness of the receiving State to accept the transfer of prisoner and an undertaking to administer the remaining part of the sentence of the prisoner;

(e) an undertaking to comply with the conditions, if any, specified by the transferring State; and

(f) any other information or document which the transferring State may consider necessary.

4. Transfer of the prisoner from the custody of the authorities of the transferring State into the custody of the authorities of the receiving State shall take place on the territory of the transferring State.

ARTICLE 5

Requests and Replies

1. A request for transfer shall be made in writing in prescribed proforma and addressed through the Central Authority of the transferring State through diplomatic channels to the Central Authority of the receiving State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the Central Authority shall be, in relation to Mauritius, the Secretary for Home Affairs of the Prime Minister's Office and in relation to Seychelles, the Ministry responsible for prison services. Either party may change its Central Authority in which case it shall forthwith notify the other party of the change in writing.
3. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its Verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with sub-paragraph (d) of Article 3 of this Agreement does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify, through a consul or other official agreed upon with the receiving State, that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of Transfer for Transferring State

1. The taking into charge of the prisoner by the authorities of the receiving State shall have the effect of suspending the enforcement of the remainder of the sentence in the transferring State.
2. The transferring State may no longer enforce the remaining sentence if the receiving State considers enforcement of the sentence to have been completed.

ARTICLE 8

Procedure for Enforcement of Sentence

1. The continued enforcement of the sentence after transfer shall be governed by the law of the receiving State and that State shall be competent to take all appropriate decisions.
2. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. If, however, the sentence is by its nature or duration incompatible with the law of the receiving State, that State may, by a court or administrative order and with the agreement of the transferring State prior to transfer, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. It shall not, however, aggravate, by its nature or duration, the sanction imposed in the transferring State, nor exceed the maximum penalty prescribed by the law of the receiving State.

ARTICLE 9

Review of Judgment

1. The transferring State alone shall have the right to decide on any application for review of the judgment.
2. If the transferring State revises, modifies or overturns the judgment pursuant to paragraph

1 of this Article or otherwise reduces, commutes or terminates the sentence, the receiving State shall, upon being notified of the decision, give effect thereto in accordance with this paragraph.

3. Unless both Parties otherwise agree, the transferring State alone may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.

ARTICLE 10

Information Regarding Enforcement of Sentence

1. The receiving State shall provide information to the transferring State concerning enforcement of the sentence:
 - (a) when the sentence has been completed;
 - (b) if the prisoner has escaped from custody before the sentence has been completed. In such cases the receiving State should make arrangement for his arrest and make him liable for committing an offence under relevant section of the law of the receiving State; or
 - (c) if the transferring State requests a special report.
2. The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 11

Transit of sentenced person

1. If either Party enters into the arrangements for the transfer of prisoners with any third State,

the other Party shall, in accordance with its national laws, co-operate in facilitating the transit through its territory of prisoners being transferred pursuant to such an arrangement.

2. The Party in whose territory the transit occurs may refuse to grant transit to any prisoner.
3. The Party intending to make such a transfer will gain prior approval of the other Party of such transit.

ARTICLE 12

Costs

Any costs incurred in the transfer of a prisoner under this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the cost of transfer from the prisoner or from some other source.

ARTICLE 13

Territorial Application

This Agreement shall apply:

- (a) in relation to the Republic of Seychelles and to any other territory for the international relations which the Agreement shall have been extended to by mutual agreement between the Parties, by an Exchange of Diplomatic Notes;
- (b) in relation to the Republic of Mauritius and to any other territory for the international relations which the Agreement shall have been extended to by mutual agreement between the Parties, by an Exchange of Diplomatic Notes.

ARTICLE 14

Temporal Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

ARTICLE 15

Amendment

This Agreement may be amended or modified at any time through mutual consent of the Parties. Such amendment or modification shall enter into force when confirmed by an Exchange of Diplomatic Notes.

ARTICLE 16

Settlement of Disputes

Any dispute concerning the interpretation or application of this Agreement shall be settled in so far as is possible through negotiation between the Parties.

ARTICLE 17

Language

Requests and supporting documents shall be accompanied by a translation into the English language or a language which is one of the official languages of the Party that receives the documents, either in its capacity of transferring or requesting State as defined in this Agreement.

ARTICLE 18

Final Provisions

1. Each of the Parties shall notify the other upon completion of their internal constitutional legal procedures required to allow this Agreement to enter into force.
2. This Agreement shall enter into force on the date of receipt of the last notification referred to in paragraph 1 of this Article.
3. Either of the Parties may terminate this Agreement by means of written notification to the other Party. Such termination shall become effective on the expiration of a six months' period after the date of receipt of the notification.
4. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoners who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Victoria, Seychelles on the 23rd day of October 2015, in the English language.

Honourable Seetannah Luchmeenaraidoo
Minister of Finance and Economic
Development

For the Government of the
Republic of Mauritius

Mr Joel Morgan
Minister for Foreign Affairs and
Transport

For the Government of the
Republic of Seychelles

SECOND SCHEDULE

[Regulation 3]

Warrant of Transfer of Prisoner to the Republic of Mauritius
*(Section 4 of the Transfer of Prisoners Act and regulation 3 of the
Transfer of Prisoners (Republic of Seychelles) Regulations 2016)*

To the Commissioner of Police and the Commissioner of Prisons

Whereas.....("the prisoner") was
sentenced on

by theCourt ofto
undergo

Whereas the prisoner has applied for transfer to the Republic of Mauritius and I am
satisfied that all the conditions and formalities for his transfer have been fulfilled.

Whereas I have agreed to the transfer of the prisoner to the Republic of Mauritius.

These are therefore in the State's name to command you to bring the prisoner from
.....to the
Republic of Mauritius and take him to his place of detention, that is

Date:

.....

Prime Minister

THIRD SCHEDULE

[Regulation 4]

Warrant of Transfer of Prisoner from the Republic of Mauritius

(Section 10 of the Transfer of Prisoners Act and regulation 4 of the Transfer of Prisoners (Republic of Seychelles) Regulations 2016.)

To the Commissioner of Police and the Commissioner of Prisons

Whereas("the prisoner") was sentenced on by the Court of to undergo

Whereas the prisoner has applied for transfer to the Commissioner of Prisons to be transferred to the Republic of Seychelles and the Republic of Seychelles has agreed to the transfer.

OR

Whereas the responsible authority of the Republic of Seychelles has made a request for the transfer of the prisoner to the Republic of Seychelles and I have agreed to the transfer.*
*(delete as appropriate)

These are therefore in the State's name to command you to take the prisoner from his place of detention at Prisons in Mauritius to his place of departure from Mauritius at and deliver him at the place v to the lawfully delegated representative of the responsible authority of the Republic of Seychelles.

Date:

.....

Prime Minister