

GOVERNMENT OF ZAMBIA

---

# ACT

No. 26 of 1998

Date of Assent: 22nd December, 1998

**An Act to provide for the transfer between Zambia and other specified or designated countries of persons for the time being imprisoned in prisons, hospitals or other institutions under orders made in the course of the exercise by courts and tribunals of their criminal jurisdiction; and to provide for matters connected with or incidental to the foregoing.**

[28th December, 1998

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Transfer of Convicted Persons Act, 1998, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title and commencement

2. (1) In this Act unless the context otherwise requires—

Interpretation

“ appropriate authority ” means the person responsible under an enactment of a specified or designated country for administering the transfer of convicted persons to and from that specified or designated country, and includes the lawful delegate of such person;

“ Commissioner ” means the person appointed Commissioner of Prisons under section *ten* of the Prisons Act;

Cap. 97

“ Commissioner for Juvenile Welfare ” means the person appointed Commissioner for Juvenile Welfare under section *five* of the Juveniles Act;

Cap. 53

“ convicted person ” means any person who—

- (a) is a citizen or an ordinary or permanent resident of Zambia, or has close ties with Zambia; and
- (b) is convicted and sentenced in a specified or designated country to—
  - (i) an effective term of imprisonment of which the unexpired portion at the time that an application under section *four* is made is not less than six months; or
  - (ii) an indeterminate period of imprisonment; and includes a convicted person released on licence from such sentence;

“ designated country ” means any country, not being a Commonwealth country, designated as such by the Minister under section *three*;

“ foreign convicted person ” means any person who—

- (a) is not a citizen of Zambia;
- (b) is a citizen of, or is ordinarily or permanently resident in, a specified or designated country or has close ties with a specified or designated country; and
- (c) is convicted and sentenced in Zambia to—
  - (i) an effective term of imprisonment, of which the unexpired portion at the time that an application in terms of section *four* is made, is not less than six months; or
  - (ii) an indeterminate period of imprisonment; and includes a foreign convicted person released on licence from such sentence;

“ imprisonment ” includes—

- (a) the placement of juvenile in a training institute or reform school in terms of section *ten* of the Juveniles Act;

(b) the detention of a person, at the pleasure of the President, in an institution in terms of section *one hundred and sixty-three* of the Criminal Procedure Code; and Cap.88

(c) any form of restraint of liberty analogous to paragraph (a) or (b) that applies in a specified or designated country.

“judgement” means the final judgement of a court or tribunal in which a person is convicted and sentenced;

“juvenile” means a person below the age of nineteen years;

“mentally disordered convicted person” means any convicted person who has been certified as being mentally disordered by a medical doctor;

“specified country” means a Commonwealth country or territory specified under section *three*;

“transferred convicted person” means a convicted person transferred under section *five*.

(2) In determining whether or not a person has close ties with any country, the following factors shall be taken into account:

(a) whether or not that person is a citizen of that country;

(b) whether or not that person was born in that country or is descended from persons who were born in that country;

(c) whether or not that person has resided in that country, and if so, the period of such residence;

(d) whether or not that person has any relatives by birth or marriage in that country and the degree of relationship;  
or

(e) any cultural or religious ties that the person may have with that country.

3. (1) This Act shall apply to the transfer of convicted persons and foreign convicted persons to and from Zambia and any specified or designated country— Application

(a) with which Zambia has entered into an agreement for the transfer of convicted persons; and

(b) which has enacted similar legislation.

(2) The Minister may, after consultation with the Attorney-General, by statutory order—

(a) specify a Commonwealth country or territory for the purposes of this Act; and

(b) designate any country not being a Commonwealth country as a designated country for the purposes of this Act.

Application  
for and  
agreement to  
transfer  
convicted  
persons

4. (1) Subject to the other provisions of this section, an application under this Act may be made to the appropriate authority by—

(a) the convicted person;

(b) the Attorney-General;

(c) a relative; or

(d) any other interested person or body.

(2) Notwithstanding the provisions of subsection (1) an application under this Act may be made in Zambia on behalf of a foreign convicted person by any other person where there is provision for a similar application to be made on behalf of a convicted person in the specified or designated country to which the foreign convicted person wishes to be transferred.

(3) Notwithstanding the other provisions of this section an application for a transfer shall not be made under the provisions of this Act where the convicted person or the convicted foreign person is convicted and sentenced to death.

(4) Where an appropriate authority agrees to give effect to an application to transfer a convicted person to Zambia in terms of this Act, it shall submit to the Minister—

(a) the application in the prescribed form;

(b) a copy of the judgement relating to the convicted person which shall be certified as correct and signed by the appropriate authority; and

(c) such other document or information that the Minister may require for the purposes of processing the convicted person's application for a transfer.

(5) A copy of the judgement referred to in subsection (4) shall be accepted as conclusive proof of the facts stated therein and shall have effect as if it were a judgement of a court of competent jurisdiction within Zambia.

(6) The conviction or sentence of a convicted person transferred to Zambia under this Act shall not be subject to any appeal or review in Zambia.

5. (1) Upon receipt of an application under subsection (1) of section *four* the Minister shall, after consultation with the Attorney-General and the Commissioner, indicate in writing, to the appropriate authority, whether or not the Minister agrees to transfer to Zambia the person applying for such a transfer.

Grant or  
refusal of  
application  
by Minister

(2) The Minister shall refuse the convicted person's application for a transfer where—

- (a) the convicted person has not obtained final judgement on appeal from the final court of appeal of the specified or designated country; or
- (b) there is no agreement regarding the cost of the transfer as provided under section *fourteen*.

6. (1) If the Minister agrees to transfer to Zambia a convicted person under subsection (1) of section *five* the Minister shall, at the time of indicating agreement to the appropriate authority or after such further consultations with the appropriate authority as may be necessary, issue a warrant in the prescribed form to the appropriate authority—

Issue of  
warrant

- (a) authorising the transfer of the convicted person to Zambia from the specified or designated country concerned; and
- (b) specifying or confirming any arrangements for effecting the transfer of the convicted person.

(2) The Minister shall at the time of issuing a warrant under subsection (1) cause a copy of the warrant to be served on the Commissioner.

7. A transferred convicted person shall be imprisoned in Zambia for the unexpired term of the convicted person's imprisonment:

Imprisonment  
of convicted  
person

Provided that the period between the issue of a warrant in respect of the convicted person in terms of section *six* and the date of the convicted person's arrival in Zambia shall count as part of the convicted person's sentence of imprisonment.

8. (1) A transferred convicted person shall—

Remission

- (a) be credited with any remission of a sentence of imprisonment to which the convicted person has become entitled at the date of the convicted person's transfer in

accordance with the law relating to remission in force in the specified country from which the convicted person has been transferred; and

Cap. 97

(b) be entitled to earn remission under Part XIV of the Prisons Act in respect of the unexpired term of the convicted person's sentence that remains to be served on the date of the convicted person's arrival in Zambia as if the convicted person had been sentenced to a term of imprisonment of the same length by a court in Zambia.

(2) Any remission of a sentence of imprisonment referred to in paragraph (a) of subsection (1) shall be liable to forfeiture under Part XIII of the Prisons Act.

Cap. 97

Pardon,  
amnesty and  
commutation

9. (1) Subject to the other provisions of this Act the Minister shall, in granting the application of the foreign convicted person under section *eleven*, set the following conditions—

(a) that the Head of State of the specified or designated country shall not, except with the written consent of the Minister, grant to such transferred foreign convicted person a pardon or amnesty on a sentence imposed by a Zambian Court or have such sentence commuted under the constitution or other laws of the specified or designated country concerned;

(b) that the conviction or sentence of a foreign convicted person transferred to a specified or designated country under this Act shall not be subject to any appeal or review in the specified or designated country concerned.

(2) The President may, with the consent of the appropriate authority of the specified or designated country concerned pardon a transferred convicted person under Article 59 of the Constitution.

Cap. 1

Juvenile and  
mentally  
disordered  
convicted  
person

10. (1) Where an application under section *four* relates to a convicted person who is a juvenile the Minister shall, after consultation with the Commissioner for Juvenile Welfare, indicate in writing to the appropriate authority whether or not the Minister agrees to transfer to Zambia the juvenile convicted person.

(2) Where the Minister agrees to transfer to Zambia a juvenile convicted person under subsection (1) the Minister shall issue a prescribed warrant to the appropriate authority under subsection (1) of section *six*.

(3) Where an application under section *four* relates to a mentally disordered convicted person the Minister shall, after consultation

with the person responsible for the movement of mentally disordered persons under the Mental Disorders Act indicate in writing to the appropriate authority whether or not the Minister agrees to the transfer to Zambia of the mentally disordered convicted person. Cap. 305

(4) Where the Minister agrees to transfer to Zambia a mentally disordered convicted person, the person responsible for the movement of mentally disordered persons under the Mental Disorders Act shall, upon arrival in Zambia of the mentally disordered or defective convicted person, make an application in terms of section six of the Mental Disorders Act for the issue of a warrant in respect of the mentally disordered convicted person. Cap. 305

**11. (1) Where a foreign person—**

(a) is convicted and sentenced after the commencement of this Act, the judge or magistrate convicting and sentencing that foreign person shall inform the foreign person of the provisions of this Act; or

(b) was convicted and sentenced before the commencement of this Act, the Commissioner shall inform the foreign convicted person of the provisions of this Act.

Transfer of  
foreign  
convicted  
persons

(2) If a foreign convicted person wishes to be transferred out of Zambia in terms of this section to a specified or designated country of which the foreign convicted person is a citizen or is ordinarily resident or to which the foreign convicted person has close ties, the foreign convicted person may apply in the prescribed form and submit the application to the Commissioner.

(3) The Commissioner shall forward any application made under subsection (2) to the Minister, together with such written recommendations on the application as the Commissioner thinks fit.

(4) Upon receipt of the application made under subsection (2) the Minister shall request the appropriate authority of the specified or designated country concerned to furnish information indicating whether or not the offence for which the foreign convicted person has been sentenced in Zambia is an offence in such specified or designated country.

(5) Where in response to the request made in subsection (4) the Minister is informed by the appropriate authority of the specified or designated country concerned that the offence for which the foreign convicted person has been sentenced in Zambia—

(a) is not an offence in the specified or designated country, the Minister shall not agree to the application;

(b) is an offence in the specified or designated country concerned, the Minister may, subject to the other provisions of this Act, agree to the application.

(6) Where the Minister agrees to an application made under subsection (2), the Minister shall submit to the appropriate authority of the specified or designated country concerned—

- (a) the application or a certified copy of the application;
- (b) a copy of the judgement relating to the foreign convicted person or an adequate summary of the judgement as may be required by the specified or designated country concerned, certified as correct and signed by the Registrar of the High Court or the clerk of magistrate's court which tried the foreign convicted person, as the case may be; and
- (c) such other document or information as the appropriate authority may require for the purposes of effecting the transfer of the foreign convicted person.

(7) If the specified or designated country concerned agrees to the transfer of the foreign convicted person—

- (a) the Minister shall order such transfer upon receipt by the Minister of a warrant or other document signed by the appropriate authority of the specified or designated country concerned authorising the transfer and specifying or confirming any arrangements for effecting the transfer; and
- (b) the Commissioner shall, upon being served by the Minister with such a warrant or document, effect the transfer in accordance with the arrangements stated in the warrant or document.

(8) An application for the transfer of a foreign convicted person under this section may, subject to section *four*, be made to the Commissioner on behalf of the foreign convicted person by—

- (a) an appropriate authority; or
- (b) a relative; or
- (c) any other interested person or body.

Applications of convicted persons or foreign convicted persons under legal or other disability

**12. (1)** Where an application under subsection (1) of section *four* relates to a juvenile or a mentally disordered convicted person, the person legally entitled to act on behalf of the convicted person concerned may complete the application.



(2) This section shall apply, with necessary modification, to foreign convicted persons.

**13.** (1) Where the convicted person or foreign convicted person is being transferred under this Act that person shall be deemed to be in lawful custody and subject, in the event of escape or an attempt to escape, to the same punishment as if the convicted person or foreign convicted person were in Zambia.

Convicted persons and foreign convicted persons in lawful custody during transfer

(2) Any person who aids a convicted person or foreign convicted person in escaping or attempting to escape from lawful custody while being transferred under this Act shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding seven years.

**14.** The cost of the transfer shall be borne by the Government of Zambia and the specified or designated country in such proportions as may be agreed by the two countries regarding any particular transfer.

Cost of transfer

**15.** The Minister may by regulation, prescribe—

Regulations

- (a) the form to be used in an application under sections *four* and *eleven*;
- (b) the procedure to be followed for the enforcement in Zambia of a sentence imposed on a convicted person in a specified or designated country;
- (c) the form of warrant to be issued under section *six*;
- (d) any other matter required or necessary to be prescribed under this Act.