

TRANSFER OF CONVICTED PERSONS ACT, 2007 (ACT 743)

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REPUBLIC OF GHANA

**THE SEVEN HUNDRED AND FORTY-THIRD
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
TRANSFER OF CONVICTED PERSONS ACT, 2007**

AN ACT to facilitate the transfer of convicted persons from the Republic to another country and from another country to the Republic for the purpose of serving a prison term and to provide for connected purposes.

DATE OF ASSENT: 20th August, 2007.

ENACTED by the President and Parliament:

Section 1—Application

This Act shall apply where the Republic is a party to an international arrangement providing for the transfer of convicted persons to or from the Republic.

Transfer of a convicted person to Ghana

Section 2—Request made to the Republic by a competent authority of a sentencing country

(1) A competent authority of a sentencing country may apply to the Attorney-General, through the Minister for Foreign Affairs to request the transfer of a convicted person who is or is believed to be a Ghanaian from the sentencing country to Ghana.

(2) The application shall be in writing, signed by the competent authority of the specified country and shall

- (a) state the full name of the convicted person,
- (b) state the age of the convicted person,
- (c) state the act or omission constituting the offence and the law under which the convict was prosecuted,
- (d) state the nationality or believed nationality of the convict,

- (e) state the remaining term of imprisonment of the convict,
 - (f) provide the medical and social report on the convicted person together with information about the medical treatment of the convict in the sentencing country and recommendations for the convicts further medical treatment in Ghana, and
 - (g) have a certified true copy of the order of the court of competent jurisdiction which committed the convict to prison attached to the application.
- (3) The Attorney-General shall, within sixty days of receipt of an application, communicate a decision on the request to the competent authority of the specified country after consultation with the Minister for Interior, the Director-General of the Prisons Service and other relevant state bodies.
- (4) The Attorney-General may require the competent authority of the sentencing country to provide further information on the convicted person before giving a response to a request for transfer.

Section 3—Request by a convicted person

- (1) A person convicted of an offence in a country other than Ghana may apply to the Attorney-General through the Minister for Foreign Affairs for an arrangement to be made with the competent authority of the sentencing country for that person to be transferred to Ghana to serve the remaining term of imprisonment of the convict.
- (2) The application shall be in writing, signed by the convict or the lawful attorney of the convict and shall be submitted with the particulars specified in subsection (2) of section 2.
- (3) The Attorney-General shall communicate a response in writing to the convict or the lawful attorney of the convict after consultation with the Minister for Interior, the Director-General of Prisons and other relevant state bodies.
- (4) The response of the Attorney-General shall be submitted within sixty days to the convict through the competent authority of the sentencing country where the convict applied for transfer.

Section 4—Conditions for the transfer of a convicted person

The transfer of a convict to Ghana shall be subject to the following conditions:

- (a) that the convict is a citizen of Ghana;
- (b) that the order by which the sentence of imprisonment was imposed on the convict is a final order;
- (c) where the judgement is intended to be adopted as a judgement of a Ghanaian court of competent jurisdiction, that the conviction was for a criminal offence which accords with the standard prescribed under article 19(11) of the Constitution;
- (d) that the convict has more than six months of the sentence left to serve or that the term of imprisonment imposed was for an unspecified period;
- (e) that the legal effect and consequences flowing from a requested transfer is explained to the convict in a language the convict understands and the convict appeared to have understood;

(f) that the competent authority of the sentencing country and the Attorney-General have both consented to the transfer; and

(g) that the convict consents to the transfer or where, in view of the age, physical or mental status of the convict, the convict is unable to give consent, the consent is given by a person designated either by the Attorney-General or the appropriate authority of a sentencing country as being competent to give consent on behalf of the convict.

Section 5—Grant of application for transfer to Ghana

The Attorney-General may advise the Minister for Interior to issue a warrant accepting the transfer of a convict to Ghana after assessing the merits of an application made under sections 2 or 3.

Section 6—Issue of a warrant by the Minister for Interior

- (1) The Minister for Interior shall issue a warrant on the advice of the Attorney-General.
- (2) The copy of the order attached to an application made under sections 2 or 3 shall be proof of the facts stated in the order and the order shall be referred to in the warrant to have effect as if imposed by a court of competent jurisdiction in Ghana.

Section 7—Convict to be received by the Director-General of Prisons

- (1) A convict transferred from another country to Ghana on warrant, shall be handed over to the Director-General who shall keep the convict in a facility that appears to the Director-General to be appropriate to give effect to the sentence of imprisonment.
- (2) The enforcement of the sentence of imprisonment imposed on a transferred convict shall be in accordance with the Criminal Procedure Code, 1960 (Act 30).
- (3) Subject to section 9, the Director-General shall be bound by the legal nature and duration of the prison sentence of a transferred convict.

Section 8—Information on enforcement

- (1) The Director-General shall notify a sentencing country through the Ministry of Interior and the Ministry of Foreign Affairs
 - (a) of the completion of a prison sentence imposed on a convict, or
 - (b) of the escape of a convict from custody before the sentence is completed.
- (2) Despite subsection (1), a sentencing country may request a special report from the Director-General concerning the enforcement of a prison sentence imposed on a transferred convict.

Section 9—Application to adapt and adopt a foreign order

- (1) The Attorney-General may, where the legal nature and duration of an order imposing a prison sentence is inconsistent with a similar offence under a law in Ghana, apply to a court of competent jurisdiction in Ghana for the order, to be adapted and adopted to accord with the law corresponding to the law that formed the basis for the order imposed by the sentencing country.
- (2) Despite subsection (1), an order adapted and adopted shall not by its nature and duration be made to aggravate the sentence imposed by the sentencing country.

(3) The Director-General shall be bound by the order as adapted and adopted.

Transfer of a convicted person out of Ghana

Section 10—Attorney-General to request the transfer of a convict

(1) The Attorney-General may make an application through the Minister for Foreign Affairs to a competent authority in a foreign country to request the transfer out of Ghana to the country of a convict who is a citizen of that country.

(2) Despite subsection (1), a convict who claims to be a citizen of a country other than Ghana may, through the Director-General, make an application to the Attorney-General to be transferred to the country of citizenship of the convict and the Attorney-General may make a request on behalf of the convict where it is considered appropriate.

(3) An application to make a request under this section shall be submitted with the necessary documentation that may be required by the competent authority of the country to which the request is made.

(4) Where, the Attorney-General makes an application for transfer at the request of a convict, the Attorney-General shall within sixty days of the application inform the convict in writing of the action or decision taken by the Ministry and the competent authority in the foreign country.

Section 11—Issue of a warrant for transfer out of Ghana

(1) The Attorney-General may request the Minister for Interior to issue a warrant authorising the transfer of a convict out of Ghana to the country of the convict.

(2) The Minister for Interior shall issue the warrant in the prescribed form on the advice of the Attorney-General.

(3) A warrant shall not be issued for the transfer of a convict out of Ghana, unless

(a) the convict is informed in writing of the effect and consequences of the transfer,

(b) where the convict is blind, deaf, dumb or is not literate, the contents of the document on the transfer is read and interpreted to the convict in a language the convict understands, and

(c) the convict consents to the transfer.

(4) The Minister for Interior shall, on the date of issue of a warrant, cause a copy to be served on the Attorney-General and Director-General.

(5) A warrant issued under subsection (1) shall be sufficient authority for

(a) the Director-General to deliver or cause the delivery of the convict to a person authorised to receive the convict, to keep the convict and deliver the convict to a person authorised by the competent authority of the country of the convict, to take custody of the convict, and

(b) the removal of the convict by the person to whom the convict is delivered to a place outside Ghana.

Section 12—Consent not to be withdrawn

On or after the issue of a warrant under section 5 or 11(2), the Consent given under sections 4(g) and 11(3)(c) in respect of which the warrant is issued shall not be withdrawn and accordingly a purported withdrawal of consent after the issue of a warrant shall not affect the validity of the warrant or directions given in relation to it.

General provisions

Section 13—Appeals

(1) A convict transferred to Ghana may appeal against the order imposing the prison sentence in the country from which the convict is transferred.

(2) Despite subsection (1), a convict who is transferred under section 5 and has had the order imposing the prison sentence adapted and adopted under section 9, may appeal against the order in a court of competent jurisdiction in Ghana.

(3) A convict transferred from Ghana to another country may appeal against the order that imposed the prison sentence, in Ghana unless the Order is adapted and adopted by that country in which case the convict may appeal to a competent court of that country.

Section 14—Pardon, amnesty, commutation or review

(1) Subject to an agreement to the contrary, a transferred convict may be granted pardon, amnesty, commutation or review by the country that imposed the sentence of imprisonment.

(2) A transferred convict who has had the order imposing the sentence of imprisonment adapted and adopted by a court of competent jurisdiction may be granted pardon, amnesty, commutation or review under the national legislation of the transferred convict.

Section 15—Transit

(1) A country which intends to transit a convict on transfer through Ghana may be permitted to do so if twenty one days notice is given to the Minister for Interior, through the Ministry of Foreign Affairs.

(2) The Minister for Interior shall, after notification take the necessary action in the interest of national security to facilitate the smooth transit of the convict.

Section 16—Costs of Transfer

(1) The cost associated with the transfer of a convict to or from Ghana shall be borne by

- (a) Ghana and the sentencing country, or
- (b) Ghana and the administering country

in proportions agreed on at the time of negotiating each transfer.

(2) Despite subsection (1), Ghana may enter into a long-term agreement with a country as to how costs associated with the transfer of a convict between Ghana and that country are to be apportioned.

Section 17—Non application of Part V Subpart 1 of Act 459

Sub-Part 1 of Part V of the Courts Act, 1993 (Act 459) does not apply to this Act.

Section 18—Regulations

The Attorney-General may by Legislative Instrument make Regulations generally for the proper implementation of this Act but in particular, make Regulations as to the form and content of a warrant issued under sections 6(2) and 11(2).

Section 19—Interpretation

Unless the context otherwise determines, in this Act

"administering country" means the country which enforces the prison sentence imposed by competent courts in a sentencing country,

"Attorney-General" means the Attorney-General and Minister for Justice;

"competent authority" means a person who has full powers of a country to either allow or refuse the transfer of a convicted person;

"convict" means a person who has committed an offence, been convicted and sentenced to a term of imprisonment;

"cost associated with the transfer of a convict" includes the cost of transport, security in transit, boarding and lodging;

"court of competent jurisdiction" means a national court of similar jurisdiction as the sentencing court;

"Director-General" means the Director-General of the Ghana Prisons Service;

"facility" means a prison or other place where a convicted person may be kept in custody;

"Ministry" means the Ministry of Justice;

"order" includes a decision or judgement of a court; and

"sentencing country" means the country in which a convict was tried, and sentenced to a term of imprisonment.

Date of Gazette Notification: 24th August, 2007.