

## **SCHEME FOR THE TRANSFER OF CONVICTED OFFENDERS WITHIN THE COMMONWEALTH**

### **GENERAL PRINCIPLES**

1. A person convicted and sentenced to a term of imprisonment in one country ("the sentencing country") for an offence may be transferred, in accordance with the provisions of this scheme, to another country ("the administering country") in order that he may serve the remainder of that sentence in that other country.

### **DEFINITIONS**

2. For the purposes of this Scheme -
  - (a) each of the following is a separate country, that is to say -
    - (i) each sovereign and independent country within the Commonwealth, together with any dependent territories which that country designates, and
    - (ii) each country within the Commonwealth which, although not sovereign and independent, is not designated for the purposes of the preceding sub-paragraph;
  - (b)
    - (i) "administering country" means the country to which the convicted offender" may be, or has been, transferred in order to serve his sentence;
    - (ii) "convicted offender" means a person upon whom a sentence has been imposed.
    - (iii) "judgement" means a decision or order of a court or tribunal imposing a sentence;
    - (iv) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time in the exercise of its criminal jurisdiction;
    - (v) "sentencing country" means the country in which the sentence was imposed on the convicted offender who may be, or has been, transferred.

## **TRANSFER OF CONVICTED OFFENDER**

3. (1) A convicted offender to whom this Scheme may apply shall be informed by the sentencing country of the substance of the Scheme.
- (2) A convicted offender may only be transferred following a request by either the sentencing country or the administering country, but the convicted offender may apply for transfer.
- (3) When a convicted offender applies for his transfer, the country which receives that application shall, as soon as practicable, so inform the other country.

## **CONDITIONS FOR TRANSFER**

4. (1) A convicted offender may be transferred under the Scheme only on the following conditions
  - (a) if that person -
    - (i) is a national of the administering country, notwithstanding that he may also be a national of any other country, including the sentencing country, or
    - (ii) has close ties with the administering country of a kind that may be recognised by that country for the purposes of this Scheme; and
  - (b) if the judgment is final; and
  - (c) if at the time of 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; and
  - (d) if the transfer is consented to by the convicted offender or, where in view of his age or his physical or mental condition one of the two countries considers it necessary, by a person entitled to act on behalf of the convicted offender; and
  - (e) if the sentencing and administering countries agree to the transfer.

- (2) In exceptional cases it is open to the sentencing and administering countries to agree to a transfer even if the time to be served by the sentenced person is less than that specified in sub-paragraph (l)(c).
- (3) A country may, at any time, define as far as it is concerned the term "national" for the purposes of this Scheme.

#### **OBLIGATIONS TO FURNISH INFORMATION**

5. (1) For the purposes of enabling a decision to be made on a request or an application under this Scheme, the sentencing country shall send the following information and documents to the administering country, unless either country has already decided that it will not agree to the transfer -
  - (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 in the sentencing country and any recommendation for his further treatment in the administering country; and
  - (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 prisoner and the sentencing country of the full consequences of transfer for the prisoner under its law.
- (2) The administering country, if requested by the sentencing country, shall send to it a document or statement indicating whether the convicted offender satisfies the requirements of paragraph 4(1)(a).

#### **REQUESTS AND REPLIES**

6. (1) Requests and applications for transfer and replies shall be made in writing.
- (2) Communications between sentencing and administering countries shall be conducted through the channels notified in pursuance of paragraph 19.

#### **SUPPORTING DOCUMENTS**

7. Except as provided in paragraph 5(1)(c), documents sent in accordance with this Scheme need not be certified.

#### **CONSENT AND ITS VERIFICATION**

8. (1) The sentencing country shall ensure that the person required to give consent to the transfer in accordance with paragraph 4(1)(d) does so voluntarily and in writing with full knowledge of the legal consequences thereof. The procedure for such consent shall be governed by the law of the sentencing country.
- (2) The sentencing country shall afford an opportunity to the administering country to verify that the consent is given in accordance with the conditions set out in sub-paragraph (1).

#### **NOTIFICATION OF DECISIONS**

9. A convicted offender shall be informed, in writing, of any action taken by the sentencing country or the administering country, as well as of any decision taken by either country, on a request for his transfer.

#### **EFFECT OF TRANSFER FOR SENTENCING COUNTRY**

10. The enforcement of the sentence by the administering country shall, to the extent that it has been enforced, have the effect of discharging that sentence in the sentencing country.

#### **EFFECT OF TRANSFER FOR ADMINISTERING COUNTRY**

11. (1) The competent authorities of the administering country shall continue the enforcement of the sentence immediately or through a court or administrative order under the conditions set out in paragraph 12.
- (2) Subject to the provisions of paragraph 13, the enforcement of the sentence shall be governed by the law of the administering country

and that country alone shall be competent to take all appropriate decisions.

- (3) Any country which, according to its national law cannot avail itself of the procedure referred to in sub-paragraph (1) to enforce measures imposed in another country on a person who, for reasons of mental condition, has been held not criminally responsible for the commission of an offence, and which is prepared to receive such a person for further treatment, may indicate the procedure it will follow in such a case.

#### **CONTINUED ENFORCEMENT**

12. (1) The administering country shall be bound by the legal nature and duration of the sentence as determined by the sentencing country.
- (2) If, however, the sentence 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, adapt the sanction to a punishment or measure prescribed by its own law. As to its nature the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the sentencing country. It shall not aggravate, by its nature or duration, the sanctions imposed in the sentencing country.

#### **PARDON, AMNESTY, COMMUTATION, REVIEW**

13. (1) Unless the sentencing and the administering countries otherwise agree the sentencing country alone may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.
- (2) The sentencing country alone may decide on any application for review of the judgment.

#### **TERMINATION OF ENFORCEMENT**

14. The administering country shall terminate enforcement of the sentence as soon as it is informed by the sentencing country of any decision or measure as a result of which the sentence ceases to be enforceable.

#### **INFORMATION ON ENFORCEMENT**

15. (1) The administering country shall notify the sentencing country -

- (a) when it considers enforcement of the sentence to have been completed; or
  - (b) if the convicted offender escapes from custody before enforcement of the sentence has been completed.
- (2) The sentencing country may, at any time, request a special report from the administering country concerning the enforcement of the sentence.

## **TRANSIT**

16. Each country shall afford reasonable co-operation in facilitating the transit through its territory of convicted offenders who are being transferred between other countries pursuant to this Scheme. Advance notice of such transit shall be given by the country intending to make the transfer.

## **COSTS**

17. The cost of the transfer of a convicted offender shall be defrayed by the sentencing country and the administering country in such proportions as they may agree either generally or in regard to any particular transfer.

## **TEMPORAL APPLICATION**

18. The Scheme shall be applicable to the enforcement of sentences imposed before as well as after its adoption.

## **ACCEPTANCE OF SCHEME**

19. Any country which enacts legislation to give effect to this Scheme shall notify the Commonwealth Secretary-General of that fact and shall inform him of the proper channel for communication and deposit with him a copy of the legislation.