



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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MINISTRY OF HOME AFFAIRS, IMMIGRATION, SAFETY AND SECURITY

No. 337

2022

NOTICE OF RATIFICATION OF AGREEMENT ON TRANSFER OF SENTENCED OFFENDERS OR PERSONS DEPRIVED OF LIBERTY BETWEEN REPUBLIC OF NAMIBIA AND REPUBLIC OF ANGOLA: TRANSFER OF CONVICTED OFFENDERS ACT, 2005

In terms of subsection (3) of section 20 of the Transfer of Convicted Offenders Act, 2005 (Act No. 9 of 2005), I give notice that the National Assembly has, on 30 November 2021, ratified the Agreement on Transfer of Sentenced Offenders or Persons Deprived of Liberty between the Republic of Namibia and the Republic of Angola, the text of which is set out in the Schedule, entered into under subsection (1) of that section.

DR. A. KAWANA
MINISTER OF HOME AFFAIRS, IMMIGRATION,
SAFETY AND SECURITY

Windhoek, 14 October 2022

SCHEDULE**AGREEMENT
ON TRANSFER OF SENTENCED OFFENDERS OR
PERSONS DEPRIVED OF LIBERTY****BETWEEN****THE REPUBLIC OF NAMIBIA****AND****THE REPUBLIC OF ANGOLA**

PREAMBLE

The Republic of Angola and the Republic of Namibia, hereinafter referred to as the Parties:

Guided by the spirit of friendship and by the excellent relations of cooperation that exist between the peoples and Governments of the two States;

Encouraged by the desire to broaden juridical ties on basis of respect and observation of principles and norms applicable and universally acceptable by international law;

Seeking to facilitate the rehabilitation and social reintegration process of sentenced offenders or persons deprived of liberty by allowing them to serve sentences in their countries of origin;

AGREED the following:

Article 1 Definitions

For the purpose of this Agreement:

“legal representative” means a person or entity that, in compliance with the laws and the regulations of the country of sentenced offender or person deprived of liberty and international treaties to which the parties are signatories, is authorized to act on behalf of the sentenced offender.

“sentenced offender or person deprived of liberty” means a person upon whom a sentence has been imposed;

“administering State” means the State to which the sentenced offender or person deprived of liberty may be, or has been, transferred in order to serve his or her sentence;

“sentencing State” means the State in which the sentence was imposed on the sentenced offender or person deprived of liberty who may be, or has been, transferred;

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

“national” means:

- (a) in relation to the Republic of Angola, a national as defined in its Constitution and specific legislation;
- (b) in relation to the Republic of Namibia, a citizen as defined in Article 4 of the Namibian Constitution;

“proper authority” means:

- (a) in relation to the Republic of Angola, the Minister of Justice and Human Rights;
- (b) in relation to the Republic of Namibia, the Minister of Safety and Security;

“Central Organs” means the organs responsible for the execution of the Agreement;

“sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate or indeterminate period of time in the exercise of its criminal jurisdiction.

Article 2
Objective

As per this Agreement the Parties have committed themselves to transfer any sentenced offenders or persons deprived of liberty by the courts to the other Party to continue serving the sentence in their country of origin.

Article 3
Scope of Application

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

Article 4
General Principles

1. The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced offenders or persons deprived of liberty in accordance with the provisions of this Agreement.
2. A person sentenced to imprisonment in the territory of one Party may be transferred, in accordance with the provisions of this Agreement, to the territory of the other Party in order to serve the remainder of that sentence in the territory of that other Party.
3. Transfer may be requested by the proper authority of either the sentencing State or the administering State or by the sentenced offender or his or her legal representative.

Article 5
Central Organs

1. The Central Organs responsible for execution of this Agreement are:
 - (a) For the Republic of Angola, the Ministry of Justice and Human Rights;
 - (b) For the Republic of Namibia, the Ministry of Safety and Security.
2. Where there are changes of Central Organs, the Party where the changes occurred shall, without undue delay, inform the other Party of such changes.

Article 6
Conditions for transfer

1. A sentenced offender or person deprived of liberty may be transferred under this Agreement only on the following conditions:
 - (a) if that sentenced offender or person deprived of liberty is a national of the administering State;
 - (b) if the judgment in respect of the offence committed is final and not subject to appeal or review; and
 - (c) if at the time of receipt of the request for transfer, the sentenced offender or person deprived of liberty still has at least six months of the sentence to serve or the sentence is indeterminate: Provided that, in exceptional cases, the Parties may agree to a transfer even if the remaining period to be served by the sentenced offender or person deprived of liberty is less than six months; and

- (d) if the sentenced offender or person deprived of liberty consents in writing to the transfer or, where in view of his or her age or his or her physical or mental condition one of the Parties considers it necessary, by his / her legal representative; and
 - (e) if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and
 - (f) if there are no legal obstacles for the continuation of the sentence; and
 - (g) if both the sentencing State and administering State agree to the transfer.
2. The request for transfer may be rejected if:
- (a) the sentencing State deems that the transfer of the sentenced offender or person deprived of liberty may affect its sovereignty, security, public order or other essential interests; or
 - (b) the sentenced offender or person deprived of liberty did not abide by any financial obligations arising from the judicial decision; or
 - (c) the sentencing State considers that, it did not receive enough guarantee about the fulfilment of obligations referred to in (b) above.

Article 7

Obligation to furnish information

Any sentenced offender or person deprived of liberty to whom this Agreement may apply shall be informed by the proper authority of the sentencing State of the substance of this Agreement.

Article 8

Requests for transfer

1. If the sentenced offender or person deprived of liberty has expressed an interest to the proper authority of the sentencing State in being transferred under this Agreement, the proper authority of that State shall so inform the proper authority of the administering State as soon as practicable after the judgment becomes final.
2. For the purpose of enabling a decision to be made on a request or an application for the transfer of a sentenced offender or person deprived of liberty, the proper authority of the sentencing State shall send the following information to the proper authority of the administering State:
 - (a) the name, date and place of birth of the sentenced offender or person deprived of liberty;
 - (b) his or her residential address, if any, in the administering State;
 - (c) a statement of the facts upon which the conviction and sentence were based;
 - (d) the nature, duration and date of commencement of the sentence;
 - (e) whenever appropriate, any medical or social reports on the sentenced offender or person deprived of liberty, information about his or her treatment in the sentencing State and any recommendation for his or her further treatment in the administering State; and

- (f) any other information which the administering State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced offender or person deprived of liberty and the sentencing State of the full consequences of transfer for the offender under its law.
3. If the sentenced offender or person deprived of liberty has expressed his or her interest for being transferred under this Agreement to the proper authority of the administering State, the proper authority of the sentencing State shall, on request, communicate to the proper authority of the administering State the information referred to in paragraph 2 above.
4. The sentenced offender or person deprived of liberty shall be informed, in writing, of any action taken by the proper authority of the sentencing State or the administering State under the preceding paragraphs, as well as of any decision taken by the proper authority of either State, on a request for his or her transfer.
5. Requests and applications for transfer and replies shall be made in writing.
6. Requests, applications, replies and any other communication under this Agreement shall be conducted through diplomatic channels and shall be addressed to the proper authorities of the Parties: Provided that, in case of urgency the proper authorities may use direct channels while original documents take the normal diplomatic channels.
7. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

Article 9 **Supporting documents**

1. The proper authority of the administering State, if requested by the proper authority of the sentencing State, shall send to it:
- (a) documents or declaration certifying that the sentenced offender or person deprived of liberty is a national of that State;
 - (b) certified copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory;
 - (c) information about possible juridical effect on the sentenced offender or person deprived of liberty arising from the application of any legislation or policy on the continued enforcement of sentence in the administering State, in particular information regarding the application of paragraph 2 of Article 13.
2. If the transfer is requested, the proper authority of the sentencing State shall provide the following documents to the proper authority of the administering State, unless either State has already indicated that it will not agree to the transfer:
- (a) a certified copy of the judgment and the law on which it is based;
 - (b) a statement indicating how much of the sentence has already been served, including information on remission of sentence and any other factor relevant to the enforcement of the sentence; and

- (c) a declaration containing the consent to the transfer as referred to in paragraph 1(d) of Article 6.
3. The proper authority of either Party may request to be provided with any of the documents or statements referred to in paragraphs 1 or 2 of this Article before making a request or taking a decision on whether or not to agree to the transfer.
4. Except as provided in paragraph 2(a) of this Article, original documents sent for the purpose and in accordance with this Agreement need not be certified.

Article 10
Consent and its verification

1. The proper authority of the sentencing State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(d) of Article 6 does so voluntarily and in writing with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.
2. The proper authority of the sentencing State shall afford an opportunity to the proper authority of the administering State to verify through a Consul or a Commissioner of Oath, that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

Article 11
Effect of transfer for sentencing State

1. The handing over of the sentenced offender or person deprived of liberty from the custody of the authorities of the sentencing State into custody of the authorities of administering State shall take place on the territory of the sentencing State.
2. The proper authorities of the Parties shall agree, on each particular case, on the exact place, date, time and procedures of handing over the sentenced offender or person deprived of liberty.
3. The taking into charge of the sentenced offender or person deprived of liberty by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.
4. The sentencing State may no longer enforce the sentence if the administering State considers enforcement of sentence to have been completed.

Article 12
Effect of transfer for administering State

1. The proper authority of the administering State shall continue the enforcement of the sentence immediately or through a court or administrative order under the conditions set out in Article 13.
2. The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions.
3. Any Party which, according to its national law, cannot avail itself of one of the procedures referred to in paragraph 1 to enforce measures imposed in the territory of another Party on persons who, for reasons of mental condition, have been held not criminally responsible for the commission of the offence, and which is prepared to receive such person for further treatment, may indicate to the other Party the procedure it will follow in such cases.

4. The administering State shall not convict or sentence the transferred sentenced offender or person deprived of liberty for the same facts for which the offender was convicted and sentenced in the sentencing State.

Article 13
Continued enforcement

1. In the case of continued enforcement, the administering State shall be bound by the legal nature and the duration of sentence as determined by the sentencing State for the transferred sentenced offender or person deprived of liberty.
2. If, however, the sentence imposed upon the transferred sentenced offender is by its nature or duration incompatible with the laws of the administering State, or its law so requires, that State may, by court or administrative order, adapt the sanction to a punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.

Article 14
Pardon, amnesty, commutation

Either Party may grant pardon, amnesty or commutation of the sentence, in respect of the transferred sentenced offender or person deprived of liberty, in accordance with its Constitution or other laws.

Article 15
Termination of enforcement

The proper authority of the administering State shall terminate or cause to be terminated the enforcement of a sentence being served by the transferred sentenced offender or person deprived of liberty as soon as it is informed by the proper authority of the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 16
Information on enforcement

1. The proper authority of the administering State shall provide information to the proper authority of the sentencing State concerning the enforcement of the sentence:
 - (a) when it considers enforcement of the sentence to have been completed;
 - (b) when pardon or amnesty is granted or sentence is commuted;
 - (c) when decision in relation to Article 13 (2) is taken; or
 - (d) if the sentenced offender or person deprived of liberty escapes from custody before the enforcement of the sentence has been completed.
2. The proper authority of the sentencing State may, at any time, request a special report from the proper authority of the administering State concerning the enforcement of the sentence.

Article 17

Transit

1. Where one of the Parties enters into Agreement with a third country on transfer of sentenced offenders and in any case involving a sentenced offender or person deprived of liberty being transferred from that third country to the territory of one of the Parties, the other Party shall, if so requested, facilitate the transit through its territory of the sentenced offender or person deprived of liberty concerned.
2. The proper authority of the Party intending to make such a transfer shall give advance notice to the proper authority of other Party of such transit giving necessary information that can enable the requested Party to make a decision in compliance with the provision of paragraph 3 of this Article.
3. The requested Party may refuse to grant the permission for transit through its territory if the transferred sentenced offender or person deprived of liberty is the national of that Party or if the offence for which the offender was sentenced by the third country is not regarded as an offence according to the legislation of the requested Party.
4. When the request for transit is granted, the requested Party may keep the transferred sentenced offender or person deprived of liberty in its territory only for such a period necessarily required for the transit.
5. There shall be no need to request permission for transit if the transfer of the sentenced offender or person deprived of liberty from the third country is to be carried out by air without a stop-over in the territory of the other Party: Provided that, the Party transferring the sentenced offender or person deprived of liberty shall only notify the other Party of such transfer.

Article 18

Costs

The cost of transfer shall be defrayed in such proportions as may be agreed upon between the Parties in any particular case.

Article 19

Languages

For the purpose of implementation of the provisions of this Agreement, all requests, letters or other documents from one Party shall be written in the official language of that Party and forwarded to the other Party with the official translated version in the official language of that other Party.

Article 20

Settlement of disputes

Any dispute arising from the interpretation and application of this Agreement shall be resolved through consultation and negotiations between the Parties.

Article 21

Amendments

1. This Agreement may be amended by the initiative of either of the Parties and upon mutual Agreement on the initiated amendment.
2. The agreed amendments shall come into force in accordance with the provisions of paragraph 1 of Article 22.

Article 22
Entry into force and termination

1. This Agreement shall enter into force thirty (30) days after the date of receipt of the last written notice through diplomatic channels informing of the fulfilment of domestic legal procedures by the Parties.
2. This Agreement shall be valid for a period of five (5) years, automatically renewable for equal and successive period, unless either Party decides to terminate it, by notifying the other Party in writing through diplomatic channel of its intention, at least twelve (12) months in advance.
3. The present Agreement shall, however continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Agreement before the date on which such termination takes effect.

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

Done at Windhoek, this 5th day of April 2018, in duplicate in the English and Portuguese languages, both texts being equally authentic.

For the Republic of Namibia
Maj. Gen (RTD) Charles DNP Namoloh, MP
Minister of Safety and Security

For the Republic of Angola
Hon. Francisco Manuel Monteiro de Queiroz
Minister of Justice and Human Rights
