

REPUBLIC OF KIRIBATI
(No. 6 of 1984)

I assent,

M. Tabai
Beretitenti.
8/12/1984

AN ACT FOR THE CARRYING INTO EFFECT OF ARRANGEMENTS
MADE FOR THE TRANSFER OF PERSONS/CITIZENS CONVICTED
IN OTHER COUNTRIES OF CRIMINAL OFFENCES AND FOR THE
ENFORCEMENT OF SENTENCES PASSED UPON THEM; AND FOR
CONNECTED PURPOSES.

Commencement:
10 December 1984.

MADE by the Maneaba ni Maungatabu and assented to by the
Beretitenti.

- Short title and commencement 1. This Act may be cited as the Transfer of Offenders Act 1984 and shall come into operation on such date as the Minister may by notice appoint.
- Interpretation 2. In this Act, unless the context otherwise requires -
"convicted" includes a finding of guilt;
"foreign offender" means an offender who is a citizen of a scheduled country;
"imprisonment" includes detention;
"offender" means a person, irrespective of age, being a citizen of Kiribati who has been convicted of an offence by a court of competent jurisdiction and upon whom any sentence has been imposed in consequence thereof;
"prescribed" means prescribed by regulations made under section 14;
"sentence" includes imprisonment, and supervision while at liberty on parole or on probation or community service;
"schedule country" means a country named in the Schedule to this Act -
 (a) of which Schedule the Minister may by order amend from time to time; and
 (b) with which Kiribati has made arrangements for the transfer of offenders or for the enforcement of sentences;
"transferred" means transferred from a scheduled country to the Republic of Kiribati.

Request for transfer and signification of agreement

3(1) When the Minister is informed by the responsible authority of a scheduled country that an offender has requested transfer to Kiribati and that the government of that country has agreed to, and requests such transfer, the Minister shall cause the said authority to be advised whether the Government of Kiribati agrees or does not agree to such transfer, and if both governments agree to such transfer the Minister shall initiate the prescribed procedure.

(2) The agreement of the Government of Kiribati to the transfer of an offender from a scheduled country, and to the enforcement of a sentence imposed upon him in a scheduled country, shall not be given unless the offender has completed the prescribed form and that form has been delivered to the Minister.

Transferred offenders.

4. A transferred offender shall be dealt with, and the sentence imposed upon him shall be enforced, in accordance with the provisions of this Act.

Effect of transfer.

5(1) When an offender is transferred to Kiribati the conviction and sentence recorded by the court in the scheduled country shall, subject to subsection (3), be deemed for all purposes to be a conviction recorded and a sentence imposed by a court of competent jurisdiction in Kiribati.

(2) On the transfer of an offender any document transmitted by the responsible authority of the scheduled country from which the offender is transferred, being a document in which the conviction of, and the sentence imposed upon, the offender is set out, shall, if that document purports to be signed by a judicial officer or authority, or by the person in charge of any penal institution in that country, be accepted as evidence of the facts stated therein unless the contrary is proved, without proof of the signature or the official character of the person by whom it purports to be signed; and thereafter any such document shall be treated as a like document signed by a person convicted and sentenced in Kiribati, and shall, subject to the provisions of this Act, have effect according to the tenor thereof.

(3) The conviction of, and the sentence imposed upon, an offender shall not be subject to any appeal or to any form of review in Kiribati.

Prisoner to be deemed in prison.

6. A transferred offender who has been sentenced to a term of imprisonment shall be detained in prison or in such other institution as the Minister may direct.

Juvenile offenders.

7(1) A transferred offender sentenced to a term of imprisonment who would, if he had been convicted in Kiribati, have been treated, by reason of his age, as a child/juvenile/young person and sentenced accordingly, shall be dealt with as his age dictates in accordance with subsection (2).

(2) An offender to whom subsection (1) applies shall be produced before the Court having jurisdiction to try the offence of which the offender has been convicted and that court shall sentence him on the basis of the conviction by the court in the scheduled country and with regard to the nature of the offence and to any observations made by the convicting court in passing sentence as if the offender had been convicted of that offence by the court in Kiribati.

Remission.

8(1) A transferred offender sentenced to a term of imprisonment -

(a) shall be credited with any remission of that term to which he had become entitled at the date of his transfer in accordance with the law in that behalf in force in the scheduled country; and

(b) shall be eligible to earn remission as if he had been sentenced to a term of imprisonment of the same length by a court in Kiribati.

(2) Any remission of imprisonment referred to in subsection (1)(a) shall be liable to forfeiture for a disciplinary offence as if it were remission earned by virtue of subsection (1)(b).

Parole.

9(1) The Prisons Ordinance as may be in force from time to time shall apply to a transferred offender as if he had been convicted and sentenced to a term of imprisonment of the same length by a court in Kiribati.

(2) A transferred offender serving a term of imprisonment who is not at the date of his transfer on parole shall become eligible for parole on the date on which he would have become eligible for parole if he had been convicted and sentenced in Kiribati.

(3) If a transferred offender has, before his transfer, been released on parole in the ~~scheduled~~ country in which he was convicted and sentenced and that parole was subsequently revoked, then the time spent on parole shall count towards the completion of his sentence in Kiribati.

(4)(a) A transferred offender who is, at the date of his transfer, on parole in the scheduled country in which he was convicted and sentenced shall be deemed for all purposes to have been convicted and sentenced in Kiribati and to have been released on parole, notwithstanding that a person actually so convicted and sentenced might not be eligible for parole.

(b) A breach of any condition on which parole was granted shall render the offender liable to the same consequences as if he had been released on parole on condition and he had broken that condition.

Pardon.

10. Where the prerogative of mercy has been exercised in a scheduled country in respect of an offender, that offender shall no longer be detained in prison or otherwise, or be subject to parole or to supervision on probation by reason only of the sentence imposed for the offence for which pardon has been granted.

Persons of
unsound mind.

11(1) If a person who is a citizen of Kiribati, having been charged with an offence but whether or not convicted of that offence, has been ordered to be detained by a court in a scheduled country because he has been found to be incapable by reason of insanity to stand his trial or to have been for the same reason, not criminally responsible for that offence, that person may be transferred at the request of the government of that country, notified by the responsible authority of that country, and with the agreement of the Government of Kiribati to Kiribati, and section 3(2) shall not apply to such person.

(2) A person transferred by virtue of subsection (1) shall be detained in prison or in such institution as the Minister may direct, and he shall be deemed for all purposes to be a person ordered to be so detained by a court in Kiribati in like circumstances.

(3) Section 5 shall apply in relation to a person to whom this section applies as if he were a transferred offender.

Offenders in
lawful custody
during transfer.

12. An offender shall, while he is being transferred, be deemed to be in the lawful custody of the person duly authorised to conduct him and to be subject to the same restraint and, in the event of misbehaviour, to the same punishment as if he were in prison in Kiribati and as if the person conducting him were a prison officer; and if the offender escapes or attempts to escape from such custody the offender and any person aiding or attempting to aid him in such escape shall be liable on conviction to the same penalty as if such escape or attempt to escape were an escape or an attempt to escape from such a prison.

Transfer of
offenders from
Kiribati.

13. A foreign offender may request transfer to a scheduled country by applying to the Minister and if his transfer is agreed by the Government of Kiribati and by the Government of that country the offender may be conveyed to that country and delivered to the authority designated by that government.

Regulations.

14. The Minister may make regulations -

- (a) prescribing the form to be completed by an offender who wishes to be transferred to Kiribati;
- (b) prescribing the form and manner in which a foreign offender may apply to the Minister for transfer to a scheduled country;

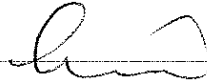
- (c) prescribing the procedure to be followed for the enforcement in Kiribati of a sentence imposed on an offender in a scheduled country; and
- (d) generally for the carrying into effect of the purposes of this Act.

SCHEDULE

(Sec. 2).

Countries with which arrangements have been made.

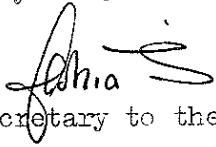
This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 19th day of November, 1984 and it is found by me to be a true and correctly printed copy of the said Bill.



Clerk to the Maneaba ni
Maungatabu

Published by exhibition -

- (a) at the Public Office of the Beretitenti
this 10th day of December 1984.



Secretary to the Cabinet

- (b) at the Maneaba ni Maungatabu 10th Dec, 1984.



Clerk to the Maneaba ni
Maungatabu.

THE TRANSFER OF OFFENDERS ACT 1984

EXPLANATORY MEMORANDUM

1. This Act provides for the carrying into effect of arrangements which the Government of Kiribati may in the future wish to make with any foreign country for the transfer of Kiribati citizens to Kiribati, who had been convicted of criminal offences and also for the enforcement of sentences passed upon them in that foreign country.
2. Presently no such arrangements has had yet ever been made by Kiribati. It is essential therefore that such arrangements are negotiated and made before and after the Act is brought into operation.
3. This Act under section 1 provides that the Act is to be brought into operation on such date as the Minister may by notice appoint.
4. Section 3 provides that not only the consent of a Kiribati citizen who wishes to be transferred from one country to Kiribati be required but the consent of both the Government of Kiribati and that other country concerned will be required. The initiative for requesting the transfer of a Kiribati citizen serving a prison sentence or otherwise detained in custody will lie either with that citizen or with the Government in which he is incarcerated. The Government of Kiribati and whatever other Government concerned must consider individually each case of request for transfer and decide whether or not to accept the responsibility for enforcement.
5. Section 5 provides that when an offender is transferred to Kiribati the conviction and sentence recorded by the Court in the scheduled country is to be regarded as if such conviction and sentence were imposed by the Kiribati Court except that they cannot be appealed against nor be reviewed in Kiribati.
6. Section 6 empowers the Minister to detain a transferred offender who has been sentenced to a term of imprisonment whether in prison or in other institutions in accordance with his directions.
7. Section 7 provides for the transfer of juvenile offenders who must be brought before a court in Kiribati of competent jurisdiction to be sentenced in accordance with the law and practice of Kiribati. The conviction and sentence however recorded and imposed in a scheduled country is to be regarded as a conviction recorded and sentence imposed by the Kiribati court.
8. Section 8 entitles a transferred offender to be credited with remission of the term of imprisonment which he had become entitled to in the scheduled country at the date of his transfer. He is also eligible to earn remission in Kiribati as if he had been sentenced to a term of imprisonment of the same length in Kiribati.

9. Section 9 entitles a transferred offender who is a prisoner to become eligible for parole in Kiribati.

10. Section 10 provides for the release from prison of a transferred offender if pardoned by a scheduled country through the exercise of the powers of prerogative of mercy.

11. Section 11 provides for the transfer of a person of unsound mind who is a citizen of Kiribati who has been ordered in a scheduled country to be detained.

12. Section 12 provides that an offender who is being transferred is regarded to be in a lawful custody of the person authorised to conduct his transfer.

13. Section 13 provides for the transfer of a foreign offender who may request transfer from Kiribati to a scheduled country.

Michael Neaua Takabwebwe
The Attorney General

LEGAL REPORT

I hereby certify that none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

Michael Neaua Takabwebwe
The Attorney General
2 April 1984