

法規名稱：AGREEMENT Between THE GOVERNMENT OF THE REPUBLIC OF CHINA (TAIWAN) And THE GOVERNMENT OF THE KINGDOM OF ESWATINI on The Transfer of Convicted Offenders and Cooperation in the Enforcement of Penal Sentences

簽訂日期：民國 108 年 02 月 27 日

生效日期：民國 108 年 05 月 08 日

WHEREAS the Government of the Republic of China (Taiwan) and the Government of the Kingdom of Eswatini (hereinafter jointly referred to as the "Parties" and separately as a " Party");

CONSIDERING the principles of sovereign equality, territorial integrity, laws and regulations regarding law enforcement and administration of justice, in the respective States Parties;

RECOGNIZING the importance of giving nationals who are deprived their liberty as a result of their commission of criminal offences in the territory of the other Party the opportunity to serve their sentences within their territories;

DESIRING to enter into an Agreement on the transfer of convicted offenders and cooperation in the enforcement of penal sentences;

SEEKING the successful reintegration of convicted offenders into society;

DETERMINED to further strengthen the friendly relations and reinforce the cooperation already existing between the two Parties;

HAVE AGREED as follows:

ARTICLE 1

Interpretation

1.1 In this Agreement, in the absence of the express provision or statement to the contrary.

(a) “Judgment” means a decision or order of a court

- imposing sentence;
- (b) "National" means a citizen from the Republic China (Taiwan) and a permanent resident from The Kingdom of Eswatini;
- (c) "Convicted Offender" means a person upon whom a sentenced has been imposed by a court in the Transferring State;
- (d) "Receiving State" means the Party to which the convicted offender may be, or has been transferred;
- (e) "Sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction;
- (f) "Transferring State" means the Party from which the convicted offender may be, or has been transferred.

1.2 Words importing any one gender shall include the other.

ARTICLE 2

Objectives

The Parties enter into this Agreement to ensure that a national of one Party sentenced in the territory of the other Party may be transferred to the territory of the national in accordance with the provisions of this Agreement.

ARTICLE 3

Conditions for Transfer

The application of this Agreement shall be subject to the following conditions;

- (a) The acts or omissions on account of which the sentence has been imposed would constitute a criminal offence according to the law of the Receiving State if committed on its

- territory;
- (b) The convicted offender is a national of the Receiving State;
 - (c) The sentence imposed on the convicted offender is one of imprisonment, confinement or any other form of deprivation of liberty in any institution, for:
 - (i) life;
 - (ii) an unlimited period on account of mental capacity;
 - (iii) a fixed period
 - (d) The convicted offender may not be transferred unless he has served in the Transferring State any minimum period of imprisonment, confinement or deprivation of liberty stipulated by the law of the Transferring State;
 - (e) The judgment is final and no other legal proceedings relating to the offence or any other offence committed by the convicted offender are pending in the Transferring State;
 - (f) The Transferring and the Receiving States and the convicted offender all agree to the transfer, provided that, where in view of his age or physical or mental condition either Party considers it necessary, the convicted offender's consent may be given by a person entitled to act on his behalf.

ARTICLE 4

Procedure for transfer

1. Every transfer in terms of this Agreement shall be commenced by a written request from the Receiving State to the Transferring State, through the diplomatic channels either in Chinese or English with a translation into the other language.
2. If the Transferring State approves the request, it shall inform the Receiving State in writing through the diplomatic channels and initiate procedures to effect the transfer.
3. The Transferring State shall provide the Receiving State with the following information:
 - (a) a statement of the facts upon which the sentence were based;

- (b) the termination date of the sentence, length of time already served by the offender and any credits to which he is entitled on account of work done, good behavior, pretrial confinement or other relevant reasons
 - (c) a certified copy of all judgments and sentences concerning the offender from the date of his detention in the Transferring State and the law on which they are based;
 - (d) any other additional information requested by the Receiving State.
4. Either Party shall as far as possible, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether or not to agree to the transfer.
5. The Transferring State shall afford an opportunity to the Receiving State, if the Receiving State so desires, to verify through an official designated by the Receiving State, prior to the transfer, that the offender's consent to the transfer in accordance with Article 3 (f) above, has been given voluntarily and with full knowledge of the consequences thereof.
6. The delivery of the offender by authorities of the Transferring State to the authorities of the Receiving State shall occur on a date and at a place within the Transferring State, to be agreed upon by both Parties.

ARTICLE 5

Retention of Jurisdiction

In respect of sentences to be enforced pursuant to the laws of the Receiving State and this Agreement, the Transferring State shall retain exclusive jurisdiction regarding the judgments of its courts, the sentences imposed by them and any procedures for revision, modification or cancellation of those judgments and sentences.

ARTICLE 6

Continued Enforcement of Sentence

1. The continued enforcement of the sentence after transfer of the convicted offender, shall be governed by the laws and procedures of the Receiving State, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.
2. Subject to paragraph 3 of this Article, the Receiving State shall be bound by the legal nature and duration of the sentences as determined by the Transferring State.
3. No sentence of deprivation of liberty shall be enforced by the Receiving State in such a way as to extend it beyond the period specified in the sentence of the court of the Transferring State. Such enforcement shall as far as possible correspond with the sentence imposed in the Transferring State.
4. If the Transferring State revises, modifies or cancels the judgment or sentence pursuant to Article 5 of this Agreement, or otherwise reduces, commutes or terminates the sentence, the Receiving State shall upon being notified of the decision give effect thereto in accordance with this Article.
5. The Receiving State may treat under its law relating to juveniles any convicted offender so categorized under its law, regardless of his status under the law of the Transferring State.
6. The Receiving State shall provide information to the Transferring State concerning the continued enforcement of the sentence, if:
 - (a) the sentenced person is granted conditional release or when he is discharged on completion of the sentence;
 - (b) the sentenced person has escaped from custody before enforcement of the sentence has been completed;

(c) the Transferring State requests a report.

ARTICLE 7

Transit of Convicted Offenders

1. If either Party transfers a convicted offender from any third State, the other Party shall cooperate in facilitating the transit through its territory, of such a convicted offender.
2. The Party intending to make such a transfer shall give advance notice to the other Party.

ARTICLE 8

Expenses

1. The expenses incurred in the transfer of the convicted offender, or in the continued enforcement of the sentence, after the transfer, shall be borne by the Receiving State.
2. The Receiving State may, however, seek to recover all or part of the cost of transfer from the convicted offender.

ARTICLE 9

Final Provisions

1. This Agreement shall enter into force thirty (30) days after the Parties have formally notified in writing through diplomatic channels, the completion of the domestic procedures necessary to that effect.
2. This Agreement shall remain in force for a period of five (5) years from the date of entry into force unless terminated prior by either Party.
3. Either Party may terminate this Agreement by giving six (6) months written notice of its intention to terminate to the other Party through the diplomatic channel.
4. This Agreement may be amended by mutual consent of the Parties through the Exchange of Notes between the Parties through the diplomatic channel.

IN WITNESS WHEREOF the undersigned, being duly authorized by



their respective Governments, have signed this Agreement.

DONE at Taipei on this 27th day of February, 2019, in duplicate in the Chinese and English languages, both texts being equally authentic.

For the Government of the
Republic of China (Taiwan)

For the Government of the
Kingdom of Eswatini

Tsai, Ching-hsiang
Minister
Ministry of Justice

Thulisile Dladla
Minister
Ministry of Foreign Affairs
and International Cooperation