

(Unofficial Translation)

**REPUBLIC OF SOMALILAND
TRANSFER OF PRISONERS LAW
LAW NO. 53/2012**

The House of Representatives

Having Seen: Articles 10, 26, 27, 28, 34(2), 35(3) and 39 of the Constitution of the Republic of Somaliland;

Having Seen: The President's proposals, reference JSL/M/SHGW/081/2-936/022012 dated 16/02/2012, relating to the attached Transfer of Prisoners Law;

Convinced of: The need for the Transfer of Prisoners Law;

Has passed:

The Transfer of Prisoners Law - Law No. 53/2012

PART I - Definitions

1. In this Law :

"Appropriate authority" means, in relation to Somaliland, the Minister of Justice or other person designated by the Minister of Justice for the purpose of this Law, and, in relation to any other State, means the Authority responsible for the administration of and the transfer of prisoners;

"Commandant" means the Commandant of Custodial Corps;

"Designated Country" means any country designated under Article 3 of this Law ;

"Minister" means the Minister of Justice;

"Prisoner" means a person who is in a prison under a sentence, or a prisoner serving his sentence in a hospital, or a prisoner serving his sentence on parole;

"Transfer" means transfer of a prisoner from a designated country to Somaliland or from Somaliland to a designated country;

PART II – TRANSFER OF PERSONS TO SOMALILAND

Article 2: Purpose of this Law

This Transfer of Prisoners Law is a law relating to Somaliland and to other countries, the purpose of which is to enable the transfer of sentenced prisoners from the country in which they were sentenced to another country where they can serve their prison terms.

Article 3: Designated country

Where an agreement for transfer of prisoners has been made between Somaliland and any other designated country, the Minister of Justice shall by order published in state Official Gazette declare that the provisions of this Law shall apply in relation to that country subject to such conditions, particulars and qualifications as specified in the agreement.

Article 4: Request for transfer

1. Where the Minister receives a request from an appropriate authority of a designated country stating that:
 - (a) a prisoner or his representative has applied for a transfer to Somaliland and that country has agreed to such transfer; or
 - (b) that country requests such transfer of the prisoner where, under the relevant international agreement, the prisoner's consent is not required.
2. The Minister shall, after consultation with the Attorney General, determine whether or the transfer should be agreed.
3. A request made under this Article for the transfer of a prisoner shall be accompanied by the documents and supporting evidence required of the designated country or other authorities in accordance with the international agreement and including a certified copy of the prisoner's judgment or other court orders.

Article 5: Conditions relating to the prisoner's request

1. The Minister may request the following particulars in respect of the prisoner transfer request made in accordance with this Law:
 - (a) the name, gender (male or female), date and place of birth (*and*) if the date of birth is not known, then the approximate age of the prisoner shall be given;
 - (b) the prisoner's address, if any, in Somaliland;
 - (c) the medical report or other information pertaining to the prisoner including a report of the prisoner's treatment in the designated country together with any recommendation for further treatment in Somaliland;
 - (d) the address of the prisoner's last residence;
 - (e) the names and addresses of three persons who can be contacted if the prisoner is not a Somaliland partial¹ and is not someone officially resident² in Somaliland;

¹ This is wider than someone born in Somaliland and reflects Somaliland citizenship as defined in Law No. 22/2002 (Article 2).

- (f) any other information which the Minister deems necessary for the transfer of the prisoner.

Article 6: Further particulars

1. The Minister may, in relation to any request under Article 4 of this Law, request the designated country to furnish him with further particulars relating to information relating to the following:
 - (a) The reasons for the prisoner's request for transfer to Somaliland or his consent to the transfer.
 - (b) Where the prisoner by reason of his physical and mental condition or age appears to be incapable of making the request, the application has been made by another person authorised to act on behalf of the prisoner.
 - (c) The request was made in accordance with Articles 3, 4, 5, 6, 7, 8, 10, 11 (*Of this Law*).

Article 7: Prohibited transfer

The Minister shall not agree, except in exceptional circumstances, to a transfer of a prisoner in accordance with this Law if the prisoner has less than six months of his sentence remaining to be served.

Article 8: The Minister's decision

1. Where the Minister determines a request for a transfer, he shall:
 - (a) inform the appropriate authority of the relevant designated country of the decision to refuse the request; (*or*)
 - (b) if he agrees to the transfer, issue an order for that purpose.
2. A prisoner or the prisoner's representative who is aggrieved by the decision of the Minister may apply for a review of the decision by the competent court³.

Article 9: Prisoner transfer order

² Permanent residence is defined in Article 11 of the Somaliland Immigration Law (Law No. 72 of 27 November 1995)

³ The competent court, under Article 9(4)(c) of the Somaliland Organisation of the Judiciary Law (Law No. 23/2003), is the Supreme Court which deals with appeals against final administrative decisions. The time limit for such a review is 30 days from the date of the notification of the decision (Article 11(4) of the 1962 Organisation of Judiciary Law – Legislative Decree No. 3 of 12 June 1963). The Supreme Court's decisions are final (Article 14(6) of the 2003 Judiciary Law).

1. Where the Minister agrees to the transfer of a prisoner, he shall issue an order authorising :
 - (a) the transfer of the prisoner from the designated country to Somaliland;
 - (b) the taking of the prisoner by an authorised officer to such place of detention as may be indicated in the order; and
 - (c) the detention of the prisoner in accordance with such directions as set out in the order, which shall include such specified directions that are appropriate for the transfer procedures and the planned arrangements for the transfer of the prisoner.

Article 10: Special circumstances

1. Where a citizen of Somaliland, having been charged with an offence in a designated country, has been:
 - (a) ordered by a court of that country to be detained because the person has been found to be insane or mentally defective or mentally disordered and unfit to stand trial;
 - (b) found guilty of an offence but was insane at the time of the commission of the offence and has been ordered by a court to be detained.
2. Such a person set out above (*in the preceding Clause of this Article*) may be transferred to Somaliland at the request of the appropriate authority of that country and with the consent of the Attorney General.

Article 11: Written documents

1. Every request for the transfer of a prisoner and every reply thereto shall be made in writing.
2. All the matters relating to the transfer of the prisoner shall be undertaken as prescribed.

Article 12: Acceptance of the documents

1. The copy of the judgement or of the orders referred to in Article 4 shall:
 - (a) be accepted as conclusive proof of the matters stated therein; (*and*)
 - (b) have effect as if it were a judgment or order of the relevant court of Somaliland which has the competent jurisdiction.

- (c) All documents required under this Law shall be accepted as certified if the documents purport to be certified or signed by a judge or by the person in charge of any penal institution in the country in which the prisoner was detained, and shall be accepted as evidence of the matters stated therein unless the contrary is proved.
- 2. A document referred to in this Article shall, when accepted:
 - (a) be treated as though it was certified or signed in relation to a person convicted (*and sentenced*) in Somaliland; and
 - (b) subject to this Law, have effect according to the terms thereof.

Article 13: Remission of the sentence of the prisoner

- 1. A transferred prisoner sentenced to a term of imprisonment shall have the right to be credited:
 - (a) with any time served in the country in which the prisoner was detained prior to the transfer;
 - (b) with any remission of that term to which the prisoner had become entitled at the date of the prisoner's transfer in accordance with the law relating to remission of prison sentences in the designated country;
 - (c) to earn remission of the remaining term of imprisonment as if the prisoner has been sentenced to a term of imprisonment of the same length by a court in Somaliland.
- 2. Any remission of imprisonment in accordance with Clause (1)(b) of this Article shall be liable to forfeiture for a disciplinary offence as if it were a remission earned by a prisoner sentenced by a court in Somaliland.

Article 14: The place of detention of the prisoner

- 1. Subject to the provisions of this Article, a transferred prisoner shall be detained in a prison or such other institution as the Minister may direct for the remaining part of the prisoner's sentence.
- 2. A transferred prisoner, who would, if the prisoner had been convicted in Somaliland, have been by reason of his young age dealt with under the law for juvenile offenders, shall be treated in accordance with the provisions of the Somaliland Juvenile Justice Law⁴.

Article 15: Inspecting and checking the status of the transferred prisoner

⁴ Law No. 36/2007

1. Local, regional or international inspectors shall be allowed to have full access to inspect and check the status of the transferred prisoners in accordance with the provisions of the international agreements⁵ on transfer of prisoners such as the right to interview the transferred prisoners without the presence of the country's authorities.
2. The Minister, in consultation with the Minister of Foreign Affairs, the Minister of Interior and the Attorney General, shall issue in Regulations the procedures for the conduct of inspections by local, regional or international inspectors.

Article 16: Presidential pardon

1. The powers of Pardon of the President referred to in the Constitution⁶ of the Somaliland shall not be interpreted in a different manner under this Law.
2. Where the powers of pardon have been exercised (*by the designated country*) in favour of a prisoner who is to be transferred (*to Somaliland*) but is still in the designated country, the pardon shall be implemented in a manner consistent with the powers of the President under the Somaliland Constitution.

PART III - TRANSFER OF PRISONERS FROM SOMALILAND

Article 17: Notifying the prisoner to be transferred

1. Where an agreement for transfer of prisoners between Somaliland and a designated country has been entered into, the Commandant of the Custodial Corps shall inform prisoners who are citizens of such designated country of the purpose of the agreement.
2. A prisoner may apply in writing to the Minister through the Commandant of the Custodial Corps for a transfer to a designated country.
3. Notwithstanding Clause 2 of this Article, the Minister may seek the transfer of a prisoner from Somaliland without an application from, or consent of, the prisoner where such a transfer is provided for under the relevant agreement with the designated country.
4. Where the Minister agrees to the transfer of the prisoner, the Minister shall send to the appropriate authority of the designated country the request and:
 - (a) the application for transfer made by the prisoner, or a certified copy of the application; or

⁵ These will be essentially bilateral agreements as Somaliland (or the pre 1991 Somali Republic) has not acceded as non-members to some of the regional international agreements on transfer of sentenced prisoners.

⁶ Article 90(5) - powers of pardon and amnesty.

- (b) the application made by the Minister for the transfer of the prisoner in accordance with Clause 3 (*of this Article*) ; and
- (c) the particulars of the kind set out in Article 4 of this Law.

Article 18: The transfer of the prisoner

1. Where the designated country agrees to the transfer of the prisoner, the Minister shall send to the appropriate authority of that country a request for an order authorising the taking of the prisoner from the prisoner's place of detention to a place of departure in Somaliland and the prisoner's delivery at that place into the custody of the authority responsible for the prison to which the prisoner is to be transferred in the designated country.
2. Notwithstanding the other provisions of this Law, where a designated country has agreed to receive certain prisoners who are citizens of that country for the purpose of serving the unexpired part of their sentence in that country, the Minister may, in terms of that agreement, take steps under Article 4⁷ relating to the transfer of the prisoner to that country.

PART IV - CUSTODY AND TRANSFER OF PRISONERS

Article 19: The Status of the prisoner during transfer

1. The prisoner to be transferred to or from Somaliland shall be deemed to be someone in custody and his escorting person shall be deemed to be the officer responsible for guarding the prisoner.
2. Where a prisoner referred to in the preceding Clause (*1 of this Article*) escapes from such lawful custody, he shall be treated in the same manner as prisoner escaping from the custody that he was held under the order issued by the competent authority in Somaliland.

Article 20: Incompatibility of the sentence with the law of the country

1. Notwithstanding the provisions of this Law, where the sentence imposed by the designated country upon a prisoner who is transferred to Somaliland by its nature or duration is incompatible with the laws of Somaliland, the sentence shall be adapted, with due regard to the transfer of prisoner agreement, to conform to one for a similar offence under the laws of Somaliland. Somaliland shall also have the right to receive the full particulars of the offence, the judgement, the court order and the sentence imposed on the prisoner. The prison term of the prisoner should correspond to the sentence and should not be more severe in its nature and duration. In any case, the

⁷ The reference here appears to be to Article 4 which deals with requests for a transfer to Somaliland, but in this Article relating transfers from Somaliland to the designated country, this reference is likely to be to Clause 4 of the preceding Article 17.

punishment of the prisoner should not exceed the limits set in Somaliland for that offence and the Somaliland judiciary shall not be able to convert a prison sentence to a fine.

2. The President may extend a pardon as set out in Article 90(5) of the Constitution of the Republic of Somaliland in so far as it can practicably apply to the foreign sentence.

Article 21: End of the sentence

1. Where a prisoner is serving a sentence in Somaliland consequent upon a transfer, and the Minister is aware that the designated country from which the prisoner has been transferred has exercised the power of pardon or any other power which reduces the sentence or renders the sentence no longer enforceable, and these steps have been taken immediately before the prisoner was transferred to Somaliland or the sentence has completed, the Minister shall, on the advice of the Attorney General, order that, because of the sentence, the prisoner shall no longer be held in custody.
2. Where a prisoner transferred from Somaliland is serving, in accordance with this Law, a sentence in a designated country and the power of pardon or reduction of sentences which renders the sentence no longer enforceable in Somaliland has been exercised or where the sentence has been completed, the Minister shall inform the designated country to which the prisoner was transferred that, because of the sentence, the prisoner can no longer be held in custody.

Article 22: Cost of the Prison Transfer

1. The cost of the transfer of a prisoner under this Law shall be borne by Somaliland and the designated country as agreed between them.
2. Where a prisoner who is a Somaliland partial is transferred to Somaliland, the cost of transfer shall be borne by the prisoner or his agent and the Minister may require a surety as an undertaking to pay back the cost to the Government.
3. Where a prisoner who is not a Somaliland citizen is transferred to Somaliland, the cost of the transfer and those of keeping the prisoner shall be borne by the transferring (*designated*) country.
4. Any cost referred to in Clause 2 (*of this Article*) shall be regarded as civil debt owed to the Government.
5. The provisions of Clauses 2 and 3 shall not apply where it appears to the Minister that it would not be just and fair for the Minister to exercise the power conferred by those Clauses because of the following reasons:
 - (a) The existence of exceptional circumstances of the case.

- (b) The means of the prisoner are insufficient to meet the required cost, and considering the prisoner or any other person who is his agent, the recovery of the cost is impracticable.
 - (c) The designated country has agreed with a third country to transfer a prisoner into or out of its country pursuant to an agreed arrangement relating to the transfer of prisoners.
6. Where a prisoner is transferred from Somaliland, the cost shall, in the same way, be borne by the designated country.

Article 23: Transit of prisoner

- 1. A country seeking permission for a prisoner and an escorting guard to land and transit in Somaliland during the course of the transfer shall apply to the Minister for permission to land and transit in Somaliland.
- 2. The Minister may refuse to issue a permit for transit where:
 - (a) the person sought to be transferred is a citizen of Somaliland; and also⁸
 - (b) the offence for which the sentence was imposed is not an offence under the laws of Somaliland; or
 - (c) the person being transferred is wanted in Somaliland in respect of any offence against the laws of Somaliland.
- 3. A permit issued under Clause 1 of this Article shall authorise the holding of a prisoner in custody in Somaliland for such time as is reasonably necessary to facilitate the transfer between the requesting country and the country of destination.
- 4. A prisoner who is being held temporarily pursuant to a permit issued under Clause 1 of this Article shall not, while in Somaliland, be detained or otherwise held in respect of an offence committed or sentence imposed in Somaliland prior to his transfer.

Article 24: Regulations

- 1. The Minister shall have the power to make regulations for the better implementation of this Law.
- 2. Regulations made under this Law may provide for:
 - (a) the form and manner in which a prisoner may apply to be transferred to or from Somaliland;

⁸ This is likely to “or”, rather than “and also” as this condition stands on its own would necessitate a refusal of a permit. If that is not the case, Article 35(2) of the Constitution which forbids any extradition of a Somaliland citizen may be invoked by any citizen who is in the country even for a brief period.

(b) any matter which is referred to in this Law or is required to be set out in the Regulations.

3. Different regulations may be made in respect of different designated countries.

Article 25: Coming into force

This Law shall come into force after it is passed by the Legislative Houses and signed⁹ by the President.

C/risaaq Siciid Ayaanle
Xog. Guud ee Golaha Wakiilada

C/raxmaan Maxamed C/laahi (Cirro)
Gudoomiyaha Golaha Wakiilada JSL

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[Note: This Law has been passed by the House of Representatives on 21 February 2012 and the House of Elders on 15 March 2012 and was signed into law by the President on 21 March 2012.]

⁹ The President signed the law on 21 March 2012.