
AGREEMENT BETWEEN THE KINGDOM OF SWAZILAND AND THE
UNITED NATIONS ON THE ENFORCEMENT OF SENTENCES OF THE
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

The Kingdom of Swaziland, hereinafter called the "requested State", and

The United Nations, acting through the International Criminal Tribunal for Rwanda, hereinafter called "the Tribunal",

Recalling Article 26 of the Statute of the Tribunal adopted by Security Council Resolution 955 (1994) of 8 November 1994, according to which imprisonment of persons sentenced by the Tribunal shall be served in Rwanda or in any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons;

Noting the willingness of the requested State to enforce sentences imposed by the Tribunal;

Recalling the provisions of the Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990;

In order to give effect to the judgments and sentences of the Tribunal,

Have agreed as follows:

Article 1. Purpose and Scope of the Agreement

This Agreement shall govern matters relating to or arising out of all requests to the requested State to enforce sentences imposed by the Tribunal.

Article 2. Procedure

1. A request to the requested State to enforce a sentence shall be made by the Assistant Secretary-General appointed in terms of Article 16 of the Statute of the International Criminal Tribunal for Rwanda (hereinafter referred to as "the Registrar"), with the approval of the President of the Tribunal.

2. The Registrar shall provide the following documents and items to the requested State when making the request:

- a) A certified copy of the judgment;
- b) A statement indicating how much of the sentence has already been served including information on any pre-trial detention;
- c) When appropriate, any medical or psychological reports on the convicted person, any recommendation for his/her further treatment in the requested State and any other factor relevant to the enforcement of the sentence;

d) Certified copies of identification papers of the convicted person in the Tribunal's possession.

3. All communications to the requested State relating to matters provided for in this Agreement shall be made to the Minister, responsible for Correctional Services through the Minister, responsible for Foreign affairs.

4. The requested State shall promptly decide upon the request of the Registrar, in accordance with national law or practice and inform the Registrar of its decision whether or not to agree to receive the convicted person (s).

Article 3. Enforcement

1. In enforcing the sentence pronounced by the Tribunal, the competent national authorities of the requested State shall be bound by the duration of the sentence so pronounced.

2. The conditions of imprisonment shall be governed by the law of the requested State, subject to the supervision of the Tribunal, as provided for in Articles 6 to 8 and paragraphs 2 and 3 of Article 9 below.

3. Conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners.

Article 4. Transfer of the Convicted Person

1. The Registrar shall make the appropriate arrangements for the transfer of the convicted person from the Tribunal to the competent authorities of the requested State. Prior to his/her transfer, the convicted person shall be informed by the Registrar of the content of this Agreement.

2. If, after transfer of the convicted person to the requested State, the Tribunal, in accordance with its Rules of Procedure and Evidence, orders that the convicted person appear as a witness in a trial before it, the convicted person shall be transferred temporarily to the Tribunal for that purpose, conditional on his/her return to the requested state within the period decided by the Tribunal.

3. The Registrar shall transmit the order for the temporary transfer of the convicted person to the national authorities of the requested State. The Registrar shall ensure the proper transfer of the convicted person from the requested State to the Tribunal and back to the requested State for the continued imprisonment after the expiration of the period of temporary transfer decided by the Tribunal. The convicted person shall receive credit for the period he/she may have spent in the custody of the Tribunal.

Article 5. Non bis in idem

The convicted person shall not be tried before a court of the requested State for acts constituting serious violations of international humanitarian law under the Statute of the Tribunal, for which he/she has already been tried by the Tribunal.

Article 6. Inspection

1. The competent authorities of the requested State shall allow the inspection of the conditions of detention and treatment of the convicted person(s) at any time and on a periodic basis by the International Committee of the Red Cross (ICRC) or such other person or body as the Tribunal may designate for that purpose. The frequency of such visits shall be determined by the ICRC or the designated person or body. The ICRC or the designated person or body shall submit a confidential report based on the findings of these inspections to the requested State and to the President of the Tribunal.

2. Representatives of the requested State and the President of the Tribunal shall consult each other on the findings of the report referred to in paragraph 1. The President of the Tribunal may thereafter request the requested State to inform him/her of any changes made in the conditions of detention as suggested by the ICRC or the designated person or body.

Article 7. Information

1. The requested State shall immediately notify the Registrar of the following:

- a) The completion of the sentence by the convicted person, two months prior to such completion;
- b) If the convicted person has escaped from custody before the sentence has been completed;
- c) If the convicted person is deceased.

2. Notwithstanding the provisions of the preceding paragraph, the Registrar and the requested State shall consult each other on all matters relating to the enforcement of the sentence, upon request of either party.

Article 8. Commutation of sentence, pardon and early release

1. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for commutation of sentence, pardon or any form of early release, the requested State shall notify the Registrar accordingly.

2. The President of the Tribunal shall determine, in consultation with the Judges of the Tribunal, whether commutation of sentence, pardon or any form of early release is appropriate. The Registrar shall communicate the President's determination to the requested State, which shall act accordingly.

Article 9. Termination of Enforcement

1. The enforcement shall cease:
 - a) When the sentence has been completed;
 - b) Upon pardon of the convicted person or upon completion of the sentence as commuted in accordance Article 8 of this Agreement;
 - c) Following a decision of the Tribunal, as provided for in paragraph 2 of this Article;
 - d) Upon the demise of the convicted person.
2. The Tribunal may at any time decide to request the termination of the enforcement of the sentence in the requested State and transfer the convicted person to another State or to the Tribunal.
3. The competent authorities of the requested State shall terminate the enforcement of the sentence as soon as the requested State is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 10. Impossibility to Enforce Sentence

If, at any time after the decision has been taken to enforce a sentence, further enforcement has, for any legal or practical reason, become impossible, the requested State shall promptly so inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of the requested State shall allow at least sixty days following the notification of the Registrar before taking other measures on the matter.

Article 11. Costs

1. Unless the parties agree otherwise:
 - a) The Tribunal shall bear the expenses related to: (i) the transfer of the convicted person to and from the requested State; (ii) the repatriation of the convicted person upon completion of his/her sentence; (iii) in the case of death, repatriation of the body of the convicted person.
 - b) The requested State shall pay all other expenses incurred in the enforcement of the sentence.
2. The Tribunal undertakes to approach donor countries and donor agencies with a view to securing financial assistance for any projects aimed at upgrading to international standards imprisonment conditions under which convicted persons are to serve their sentences pursuant to this Agreement.
3. To that end, the requested State may, where necessary, submit to the Registrar a request relating to such projects as are referred to in the preceding paragraph for the purpose of arriving through consultation, at a mutually agreed understanding on any necessary action.
4. The Tribunal in approaching the donor countries or donor agencies referred to in paragraph 2 above, shall bring to their attention any special circumstances which may entail

extraordinary costs in respect of a convicted person who is to serve a sentence in the requested State pursuant to this Agreement.

Article 12. Substitution clause

In the event that the Tribunal is to be wound up, the Registrar will inform the Security Council of any sentences whose enforcement remains to be completed pursuant to this Agreement.

Article 13. Entry into Force

This Agreement shall enter into force provisionally upon the signature of both parties, and definitively upon the date of notification by the requested State of ratification or approval of the Agreement by its competent authorities.

Article 14. Duration of the Agreement

1. Either of the parties may, after consulting the other party, terminate this Agreement by giving at least sixty days' prior notice in writing to the other party of its intention that the Agreement be terminated.

2. This Agreement shall, however, continue to apply for a period not exceeding six months with regard to any convicted person in respect of whom the requested State is, at the time of the termination of this Agreement, enforcing a sentence pronounced by the Tribunal.

Article 15. Amendment

This Agreement may be amended by mutual consent of the parties.

In witness whereof, the undersigned, duly authorised thereto, have signed this Agreement.

Done at Mbabane, this 30th day of August 2000, in duplicate, in English and French, both texts being equally authentic.

For the Kingdom of Swaziland:

ALBERT H.N. SHABANGU
Minister of Foreign Affairs and Trade

For the United Nations :

AGWU UKIWE OKALI
Assistant Secretary-General
Registrar of the International Criminal Tribunal for Rwanda