

SAINT LUCIA

No. 33 of 2003

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I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General..

28th December, 2003

SAINT LUCIA

No. 33 of 2003

AN ACT to make provision for the transfer of certain inmates to the country of which they are nationals for the completion of their sentence in accordance with an agreement to that effect and for related matters.

[On Order]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows :

Short title and commencement

1.— (1) This Act may be cited as the Repatriation of Inmates Act, 2003.

(2) This Act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2. In this Act —

“appropriate authority” means a person who is authorised by the receiving state to receive the inmate at the port of entry on behalf of the receiving state;

“Director” means Director of the Correctional Facility;

“escort officer” means the correctional officer or police officer specified in the warrant issued under section 3 as the escort officer for the inmate;

“inmate” means a person who has been sentenced by a court to be detained in a correctional facility, a hospital or any other institution;

“Minister” means the Minister for Justice;

“national” means a citizen of Saint Lucia;

“receiving state” means a state designated a receiving state by the Attorney-General by notice published in the *Gazette* to which an inmate may be transferred to serve his or her sentence or a part of his or her sentence by virtue of the existence of a repatriation agreement;

“repatriation agreement” means an agreement that provides for the transfer of inmates between Saint Lucia and a receiving state;

“sentencing state” means a state from which an inmate may be transferred to Saint Lucia by virtue of the existence of a repatriation agreement;

“warrant” means a document issued by the Attorney-General giving instructions to the Director to make arrangements for the transport of an inmate to whom this Act applies to a receiving

state specified in the warrant, in the manner outlined under this Act.

Issue of warrant for transfer out of Saint Lucia

3.— (1) Subject to subsection (2), the Attorney-General shall issue a warrant in the form prescribed in Form 1 of the Schedule to the Director instructing that the inmate be transferred out of Saint Lucia to the receiving state specified in the warrant where the Attorney-General —

- (a) is satisfied that Saint Lucia is a party to a repatriation agreement with the receiving state;
- (b) and the appropriate authority of the receiving state has agreed in writing to the transfer of an inmate in accordance with the provisions of the repatriation agreement; and
- (c) the inmate has consented to being transferred to the receiving state.

(2) The warrant referred to under subsection (1) shall not be issued unless —

- (a) all appeal procedures in respect of the inmate have been completed, the sentence is final and no procedure for review of sentence is pending at the proposed date for the issue of the warrant;
- (b) at the time of the receipt of the request for the transfer to the receiving state, the inmate has at least six months of his or her sentence left to serve;
- (c) the inmate consents to being transferred, or where,
 - (i) by reason of physical or mental incapacity, or
 - (ii) by virtue of being a minor,

the inmate is unable to consent, the legal representative of the inmate consents to the transfer on behalf of the inmate; and

- (d) the offence for which the sentence has been imposed constitutes an offence in the receiving state.

Issue of warrant for transfer into Saint Lucia

4.— (1) Where a request has been made to the Attorney-General for the transfer of an inmate to Saint Lucia from a sentencing state, the Attorney-General shall ensure that —

- (a) the inmate in respect of whom the request is made is a national of Saint Lucia or a person who is registered as a permanent resident within the meaning of the Immigration Ordinance, Cap. 76 at the date of the request;
- (b) all the requirements set out in —
 - (i) section 3(1)(a) - (c); and
 - (ii) section 3(2)(a) - (d);have been met; and
- (c) the offence for which the sentence has been imposed constitutes an offence in Saint Lucia.

(2) A warrant for the transfer of an inmate into Saint Lucia shall be in the form prescribed in Form 2 of the Schedule.

Consent

5.— (1) Where a request has been made in accordance with section 4, the inmate shall be informed in writing in his or her own language —

- (a) of the substance, so far as is relevant to the inmate's case, of the repatriation agreement relating to the proposed transfer of the inmate to the receiving state;
- (b) in the case of a transfer out of Saint Lucia, of the law in relation to the offence committed; and
- (c) of the powers of the Attorney-General under section 3.

(2) Where an inmate has received the written information referred to in subsection (1), the inmate may give his or her written consent to be transferred to the receiving state in the form prescribed in Form 3 of the Schedule and in accordance with section 3(2)(c).

(3) Where an inmate gives his or her consent in accordance with subsection (2), that consent shall not be withdrawn after a warrant has

been issued in respect of the inmate; and any purported withdrawal of that consent after the issue of the warrant shall not affect the validity of the warrant.

Procedure for transfer out of Saint Lucia

6.— (1) Where an inmate gives his or her consent to be transferred to a receiving state and both the Attorney-General and the receiving state agree to the transfer, the Director shall forward to the Attorney-General for submission to that receiving state, the following details in respect of that inmate —

- (a) the name, date and place of birth of the inmate;
- (b) the offence committed and the statement of facts on which the sentence was based;
- (c) the nature, duration and date of commencement of the sentence of the inmate;
- (d) a statement indicating how much of the sentence has already been served, including information of -
 - (i) any detention on remand;
 - (ii) the grant of remission of the sentence for good conduct or other cause; and
 - (iii) any other facts relevant to the enforcement of the sentence.
- (e) a copy of the judgment certified by the Registrar of the Supreme Court and the law on which it is based;
- (f) a medical and social report on the inmate, including any information on medical treatment and recommendations for further medical treatment in the receiving state; and
- (g) a copy of the written consent given by the inmate.

(2) Where an inmate has given his or her consent to be transferred to the receiving state, the inmate shall be informed of any action taken by the sentencing state or receiving state under subsection (1) as well as any evidence taken by either state on the request by the inmate for the transfer.

(3) Upon a request by the receiving state for documentary proof of the nature set out in subsection (1), the Attorney-General may furnish the receiving state with the relevant documents.

Effect of transfer out of Saint Lucia

7.— (1) A warrant issued under section 3 shall have the effect of authorising the taking of the inmate to whom the warrant relates to a place of departure from Saint Lucia into the custody of a person who is the appropriate authority of the receiving state.

(2) The inmate referred to in subsection (1) shall be deemed to be in the legal custody of the Government of Saint Lucia at any time while being transported to the appropriate authority of the receiving state and shall be accompanied by an escort officer who shall have, while in Saint Lucia all the power, authority and protection as is accorded to a Saint Lucian police officer.

(3) For the purposes of this Act, where an inmate referred to in subsection (1) has been placed into the custody of the appropriate authority of the receiving state, the enforcement of the sentence of that inmate in Saint Lucia has the effect of being suspended; and the Government of Saint Lucia shall not enforce the sentence where the receiving state considers enforcement to have been completed.

Effect of transfer into Saint Lucia

8.— (1) An inmate who is transferred to Saint Lucia shall be deemed to be lawfully confined in the correctional facility or other institution within Saint Lucia and shall be subject to the rules and regulations applicable to all inmates within the correctional facility or other institution.

(2) Where it is proposed that an inmate be transferred into Saint Lucia from a state to which section 3(1)(a) applies, but the sentence imposed by that state is incompatible with that prescribed by the laws of Saint Lucia for a similar offence, the Attorney-General may, after considering the sentence, seek an order of the High Court to have that sentence adapted to a sentence prescribed by the laws of Saint Lucia for a similar offence; and subject to subsection (3), the Court shall, adapt the sentence if the Court considers it fit to do so.

(3) An Order made by the High Court under subsection (2) shall not by its nature or duration aggravate the sentence imposed in the sentencing state nor exceed the maximum prescribed by the laws of Saint Lucia.

(4) The decision of the Attorney-General to seek an Order under subsection (2) shall be communicated to the sentencing state prior to the transfer of the inmate into Saint Lucia.

(5) Where the High Court adapts the sentence in accordance with subsection (2), the Court, in addition to the requirement referred to under subsection (3), shall —

- (a) be bound by the findings as to the facts as they appear explicitly or implicitly from the judgement of the Court of the sentencing state;
- (b) not convert a sanction involving deprivation of liberty into a pecuniary sanction;
- (c) deduct the full period of deprivation of liberty served by the sentenced person.

(6) Where an inmate has been returned by a sentencing state into Saint Lucia to serve the remainder of his or her sentence in Saint Lucia, the Attorney General shall furnish the sentencing state with details of —

- (a) the date on which the enforcement of the sentence is computed; and
- (b) any escape in the event that the inmate escapes from custody prior to the completion of the sentence.

Operation of warrants

9.— (1) Where in accordance with a warrant issued under section 3 or 4, an inmate is taken on board a ship or aircraft or to or from any place, that inmate shall be deemed to be in the legal custody of the Government of Saint Lucia until the inmate is handed over to the appropriate authority of the receiving state in accordance with this Act or the repatriation agreement.

(2) The Attorney-General may at any time designate any additional escort officers as the circumstances may require, and those persons shall

be authorised for the purposes of the warrant to take the inmate to or from any place pursuant to the warrant or to keep the inmate in custody pursuant to the warrant.

(3) Where an inmate who is being transferred to a receiving state escapes legal custody before the transfer is effected pursuant to subsection (4) and is unlawfully at large, that inmate may be arrested without warrant by a police officer and taken to any police station.

(4) The Government of Saint Lucia shall be deemed to have relinquished custody of an inmate at the time at which that inmate is handed over to the appropriate authority in the receiving state.

Notice of appeal or review of sentence

10. Where an appeal or review of sentence in the sentencing state has revised, modified, or overturned, or any other way reduces, commutes or terminates a sentence, the Attorney-General shall give notice of this occurrence to the receiving state; and the information given under section 6 shall be varied accordingly.

Costs

11. All costs incurred in the transfer of inmates out of Saint Lucia shall be borne by the receiving state except those incurred exclusively in Saint Lucia, which shall be defrayed out of moneys voted for that purpose by Parliament.

Variation or revocation of warrants

12.— (1) Where it appears to the Attorney-General at any time that the circumstances surrounding the issue of a warrant have changed after the duty to issue has arisen under section 3, and as a result of the change, the transfer becomes inappropriate, the Attorney General may, where the warrant has —

- (a) not been issued, not issue the warrant; or
- (b) been issued, revoke the warrant in the form prescribed in Form 4 of the Schedule.

(2) The Attorney-General may also vary a warrant to give effect to a repatriation agreement.

(3) Where a warrant is to be varied, the Attorney-General may issue a new warrant under this Act containing a provision superseding some or all the provisions of the previous warrant.

Prerogative of mercy preserved

13. Nothing in this Act shall be deemed to affect the exercise by the Governor-General of his or her prerogative of mercy under section 74 of the Saint Lucia Constitution Order 1978.

Amendment of Schedules

14. The Attorney-General may by Order amend the Schedule.

Regulations

15. The Attorney-General may make regulations —

- (a) prescribing matters necessary or convenient for carrying out or giving effect to this Act;
- (b) providing the manner in which notices and other documents referred to under this Act may be given or served; and
- (c) generally to give effect to this Act.

SCHEDULE

(Section 3)

FORM 1

WARRANT FOR TRANSFER OUT OF SAINT LUCIA

TO: THE DIRECTOR OF CORRECTIONAL FACILITY AND TO THE ESCORT OFFICERS

WHEREAS (*full name of inmate*) (in this warrant referred to as “the inmate”) was on (*date*) at (*Court*) for the offence(s) (short description of the offence) sentenced to (term) of imprisonment:

AND WHEREAS (*name*) **ATTORNEY GENERAL** of Saint Lucia, following the receipt of a written request on behalf of the inmate for transfer to (*country*) to serve the remainder of the sentence(s) of imprisonment:

AND WHEREAS the inmate has given his or her written consent (or consent has been given on behalf of the inmate) to the transfer to (*country*):

NOW THEREFORE COMMAND YOU

- (a) the above-mentioned Director to deliver the inmate together with this warrant, into the custody of the escort officer(s);
- (b) the escort officer(s) forthwith to take and safely keep custody of the inmate for the purpose of conveying the inmate from Saint Lucia to (*country*) and of delivering the inmate, together with this warrant into the custody of the Director or other appropriate authority in (*country*) for the purpose of facilitating that inmate to serve the remainder of the sentence in (*country*) and for your so doing, this warrant shall be your sufficient authority.

Dated this day of , 20 .

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ATTORNEY GENERAL

FORM2

(Section 4)

WARRANT FOR TRANSFER INTO SAINT LUCIA

TO: THE DIRECTOR OF CORRECTIONAL FACILITY AND TO THE ESCORT OFFICER(S)

WHEREAS (*full name of inmate*) (in this warrant referred to as “the inmate”) was on (*date*) at (*Court*) in (*country*) for the offence(s) (short description of the offence(s)) sentenced to (term) of imprisonment:

AND WHEREAS I, (*name*) **ATTORNEY-GENERAL** of Saint Lucia, following receipt of a written request on behalf of the inmate to be returned to Saint Lucia to serve the remainder of the sentence(s) of imprisonment:

AND WHEREAS the inmate is a citizen of Saint Lucia and has given (his/her) written consent (or consent has been given on behalf of the inmate) to return to Saint Lucia:

NOW I THEREFORE COMMAND YOU the above-mentioned Director and escort officer(s) to receive the inmate from the appropriate authority of (*country*) on the day of at the (specify port of entry) at (*time*) and transport that inmate to the Bordelais Correctional Facility for the purpose of facilitating that inmate to serve the remainder of (his/her) sentence, and for your so doing this warrant shall be your sufficient authority.

Dated this day of , 2003.

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ATTORNEY-GENERAL

FORM 3

(Section 5)

INMATE'S CONSENT

I (name of inmate) , a citizen of (country) having been sentenced to (set out details of sentence) on the (day)

(date) and having been informed of the (specify International Agreement) which makes provisions for my transfers to (country) to allow me to serve the remainder of my sentence in (country).

I HEREBY DECLARE that I consent to the transfer to (country) and **I DECLARE** that I fully comprehend all that has been explained to me by (state whether director or legal representative) with respect to my transfer.

AND I FURTHER DECLARE that I may not at any time withdraw this consent.

Sworn before me)
this day of)
at)
in Saint Lucia)

Signature of inmate

FORM 4

(Section 12)

REVOCATION OF WARRANT

TO: THE DIRECTOR OF INMATES

WHEREAS (*full name of inmate*) (in this Warrant referred to as “the inmate”) was on (*date*) at (*Court*) in (*country*) for the offence(s) of (short description of offence(s)) sentenced to (term) of imprisonment:

AND WHEREAS on _____ date I _____ (name) Attorney-General of Saint Lucia issued a warrant to you for the transfer of the inmate (into or out of) _____ Saint Lucia:

AND WHEREAS it is no longer desired that the inmate be transferred (into or out of) Saint Lucia:

I THEREFORE HEREBY REVOKE the **WARRANT** mentioned above and **HEREBY COMMAND YOU**, the abovementioned Director to retain the inmate in your custody for the purpose of serving the sentence(s) at present upon the inmate and for your so doing this warrant shall be your sufficient authority.

Dated this _____ day of _____, 2003.

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ATTORNEY-GENERAL

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No. 33]

Repatriation of Inmates Act

[2003.

Passed in the House of Assembly this 18th day of November, 2003.

J. BADEN ALLAIN,
Speaker of the House of Assembly.

Passed in the Senate this 5th day of December, 2003.

THERESA ROMULUS,
Deputy President of the Senate.