

No. 67, 1962.]

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ACT

To provide for the extradition of persons accused or convicted of certain offences and for other incidental matters.

(English text signed by the State President.)
(Assented to 13th June, 1962.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. In this Act, unless the context otherwise indicates— Definitions.

- (i) "associated State" means any foreign State in respect of which section *six* applies; (v)
- (ii) "extradition agreement" means an agreement in force or deemed to be in force under section *two*; (iv)
- (iii) "foreign State" includes any foreign territory; (vi)
- (iv) "magistrate" includes an additional magistrate and an assistant magistrate and, in relation to the area in the territory of South-West Africa beyond the Police Zone, as defined in section *three* of the Prohibited Areas Proclamation, 1928 (Proclamation No. 26 of 1928 of that territory), a native commissioner, an assistant native commissioner and any officer in charge of native affairs; (ii)
- (v) "Minister" means the Minister of Justice; (iii)
- (vi) "the Republic" includes the territory of South-West Africa. (i)

2. (1) The State President may, on such conditions as he may deem fit, but subject to the provisions of this Act, enter into an agreement with any foreign State providing for the surrender on a reciprocal basis of persons accused or convicted of the commission within the jurisdiction of the Republic or such State or any territory under the sovereignty or protection of such State, of offences specified in such agreement and may likewise agree to any amendment of such agreement. Extradition agreements.

(2) The offences so specified shall be limited to acts, including acts of omission, which if committed in the Republic would be punishable therein as an offence.

(3) No such agreement or any amendment thereof shall be of any force or effect—

- (a) until it has been published by the State President by proclamation in the *Gazette*; or
- (b) after the publication of a like proclamation that it is no longer in force; or
- (c) unless provision is made by the law of the foreign State or by the agreement, that no person surrendered to such State shall, until he has been returned or had an opportunity of returning to the Republic, be detained or tried in the foreign State for any offence committed prior to his surrender other than the offence in respect of which extradition was sought.

(4) Any arrangement made with any foreign State which, by virtue of the provisions of the Extradition Acts, 1870 to 1906 of the Parliament of the United Kingdom as applied in the Republic, was in force in respect of the Republic immediately prior to the date of commencement of this Act, shall be deemed to be an agreement entered into and published on the said date by the State President under this section.

3. (1) Any person accused or convicted of an offence included in an extradition agreement and committed within the jurisdiction of a foreign State a party to such agreement, shall, subject to the provisions of this Act, be liable to be surrendered to such State in accordance with the terms of such agreement, whether or not the offence was committed before or after the commencement of this Act or before or after the date upon which the agreement comes into operation and whether or not a court in the Republic has jurisdiction to try such person for such offence. Persons liable to be extradited.

(2) Any person accused or convicted of an offence contemplated by sub-section (2) of section *two* and committed within the jurisdiction of a foreign State not a party to an extradition agreement shall be liable to be surrendered to such foreign State, if the State President has in writing consented to his being so surrendered.

4. (1) Subject to the terms of any extradition agreement any request for the surrender of any person to a foreign State shall be made to the Minister by a person recognized by the Minister as a diplomatic or consular representative of that State or by any Minister of that State communicating with the Minister through diplomatic channels existing between the Republic and such State. Requests for extradition from Republic.

(2) Any such request received in terms of an extradition agreement by any person other than the Minister shall be handed to the Minister.

(3) The provisions of sub-sections (1) and (2) do not apply in respect of a request for the endorsement for execution of a warrant of arrest under section *six*.

5. (1) Any magistrate may, irrespective of the whereabouts or suspected whereabouts of the person to be arrested, issue a warrant for the arrest of any person— Warrants of arrest issued in Republic.

(a) upon receipt of a notification from the Minister to the effect that a request for the surrender of such person to a foreign State has been received by the Minister; or

(b) upon such information of his being a person liable to be surrendered to a foreign State, as would in the opinion of the magistrate justify the issue of a warrant for the arrest of such person, had it been alleged that he committed an offence in the Republic.

(2) Any warrant issued under this section shall be in the form and shall be executed in the manner as near as may be as prescribed in respect of warrants of arrest in general by or under the laws of the Republic relating to criminal procedure.

6. Whenever an extradition agreement with any foreign State in Africa provides for the endorsement for execution of warrants of arrest on a reciprocal basis, any magistrate to whom is produced a warrant issued in such State for the arrest of any person alleged to be a person liable to be surrendered to such State, may, irrespective of the whereabouts or suspected whereabouts of the person to be arrested, endorse such warrant for execution in the Republic, if he is satisfied that it was lawfully issued, whereupon it shall be executed in the same manner as a warrant issued under section *five*. Warrants of arrest issued in certain foreign States in Africa.

7. (1) Any magistrate may issue a warrant for the further detention of any person arrested without warrant under any law of the Republic providing for the arrest without warrant of persons liable to be apprehended under any law relating to extradition. Warrants for further detention of persons arrested without warrant.

(2) Such a warrant for the further detention of any person may be issued upon such information of his being a person liable to be surrendered to a foreign State, as would in the opinion of the magistrate justify the issue of a warrant for the arrest of such person, had it been alleged that he committed an offence in the Republic.

8. Any magistrate who, under paragraph (b) of sub-section (1) of section *five* or under section *seven*, issues a warrant for the arrest or further detention of any person other than a person alleged to have committed an offence in an associated State, shall forthwith furnish the Minister with particulars relating to the issue of such warrant. Magistrate to furnish Minister with particulars relating to issue of certain warrants.

9. (1) Any person detained under a warrant of arrest or a warrant for his further detention, shall, as soon as possible be brought before a magistrate in whose area of jurisdiction he has been arrested, whereupon such magistrate shall hold an enquiry with a view to the surrender of such person to the foreign State concerned. Persons detained under warrant to be brought before magistrate for holding of an enquiry.

(2) Subject to the provisions of this Act the magistrate holding the enquiry shall proceed in the manner in which a preparatory examination is to be held in the case of a person charged with having committed an offence in the Republic and shall, for the purposes of holding such enquiry, have the same powers, including the power of committing any person for further examination and of admitting to bail any person detained, as he has at a preparatory examination so held.

(3) Any deposition, statement on oath or affirmation taken, whether or not taken in the presence of the accused person, or any record of any conviction or any warrant issued in a foreign State, or any copy or sworn translation thereof, may be received in evidence at any such enquiry if authenticated in the manner foreign documents may be authenticated to enable them to be produced in any court in the Republic or in the manner provided for in the extradition agreement concerned.

(4) At any enquiry relating to a person alleged to have committed an offence—

(a) in a foreign State other than an associated State, the provisions of section *ten* shall apply;

(b) in an associated State, the provisions of section *twelve* shall apply.

10. (1) If upon consideration of the evidence adduced at the enquiry the magistrate finds that the person brought before him is liable to be surrendered to the foreign State concerned and, in the case where such person is accused of an offence, that there would be sufficient reason for putting him on trial for the offence, had it been committed in the Republic, the magistrate shall issue an order committing such person to prison to await the Minister's decision with regard to his surrender, at the same time informing such person that he may within fifteen days appeal against such order to the Supreme Court.

Enquiry where offence committed in foreign State other than associated State.

(2) If the magistrate finds that the evidence does not warrant the issue of an order of committal or that the required evidence is not forthcoming within a reasonable time, he shall discharge the person brought before him.

(3) The magistrate issuing the order of committal shall forthwith forward to the Minister a copy of the record of the proceedings together with such report as he may deem necessary.

11. The Minister may order any person committed to prison under section *ten* to be surrendered to any person authorized by the foreign State to receive him.

Minister may order surrender to foreign State, other than associated State.

12. (1) If upon consideration of the evidence adduced at the enquiry the magistrate finds that the person brought before him is liable to be surrendered to the associated State concerned, the magistrate shall, subject to the provisions of sub-section (2), issue an order for his surrender to any person authorized by such associated State to receive him at the same time informing him that he may within fifteen days appeal against such order to the Supreme Court.

Enquiry where offence committed in associated State.

(2) If the magistrate is of opinion that by reason of the trivial nature of the offence or by reason of the surrender not being required in good faith or in the interests of justice, or that for any other reason it would, having regard to the distance, the facilities for communication and to all the circumstances of the case, be unjust or unreasonable or too severe a punishment to surrender the person required to be surrendered either at all or until the expiration of a certain period, the magistrate may discharge such person or order that he shall not be surrendered until after the expiration of a period stated in such order or may make such other order as to the magistrate seems just.

(3) If the magistrate finds that the evidence does not warrant the issue of an order under sub-section (1) or that the required evidence is not forthcoming within a reasonable time, he shall discharge the person brought before him.

13. (1) Any person against whom an order has been issued under section *ten* or *twelve* may within fifteen days after the issue thereof, appeal against such order to the provincial or local division of the Supreme Court having jurisdiction.

Appeal.

(2) On appeal such division may make such order in the matter as it may deem fit.

14. No order for the surrender of any person shall be executed—
- Limitation of execution of orders for the surrender of any person.
- (a) before the period allowed for an appeal under section *thirteen* has expired, unless he has in writing waived his right of appeal;
 - (b) before such an appeal has been disposed of;
 - (c) if upon such an appeal his discharge from custody is ordered;
 - (d) in the case of a person charged or convicted of an offence in the Republic, until the charge has been disposed of and any sentence which may have been imposed in respect of such offence has been executed;
 - (e) in the case of an order of the Minister, if after the expiration of two months—
 - (i) after the issue of an order of committal under section *ten*, where no appeal has been or is to be heard under section *thirteen*; or
 - (ii) after an appeal under section *thirteen* has been dismissed,
 any provincial or local division of the Supreme Court has upon application made after reasonable notice to the Minister, ordered his discharge from custody on the ground that there is not sufficient cause for his further detention;
 - (f) in the case of an order of a magistrate, if after the expiration of one month after the order becomes operative, any provincial or local division of the Supreme Court has upon application made after reasonable notice to the Minister, ordered his discharge from custody on the ground that there is not sufficient cause for his further detention.
15. The Minister may at any time order the cancellation of any warrant for the arrest of any person issued or endorsed under this Act, or the discharge from custody of any person detained under this Act, if he is satisfied that the offence in respect of which the surrender of such person is or may be sought, is an offence of a political character or that the surrender of such person will not be sought.
- Minister may order cancellation of warrants of arrest or discharge of detained persons.
16. (1) Any person ordered to be surrendered under this Act may be removed from the Republic in the custody of the person authorized to receive him and if he escapes while being so removed he may be arrested without warrant by any person.
- Removal of persons surrendered.
- (2) Any person who—
- (a) while being so removed, escapes or attempts to escape from custody; or
 - (b) rescues or attempts to rescue from custody any person being so removed,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.
17. (1) Any attorney-general or any person delegated by him or any public prosecutor may appear at any enquiry held under this Act.
- Attorney-general or public prosecutor may appear at extradition proceedings.
- (2) Any attorney-general or any person delegated by him may appear at any proceedings in the Supreme Court under this Act.
18. The Minister may make regulations prescribing forms of notices, warrants, recognizances, orders and other forms to be used for the purposes of this Act.
- Power to prescribe forms.
19. No person surrendered to the Republic by any foreign State in terms of an extradition agreement shall, until he has been returned or had an opportunity of returning to such foreign State, be detained or tried in the Republic for any offence committed prior to his surrender other than the offence in respect of which extradition was sought.
- Persons surrendered to Republic not to be detained or tried for certain offences in certain circumstances.
20. The Minister or, in the case of any person surrendered for trial or detention in the territory of South-West Africa, the Administrator thereof may at the request of any person surrendered to the Republic return such person to the foreign State in or on his way to which he was arrested, if—
- Certain persons surrendered, may be returned.

- (a) in the case of a person accused of an offence, criminal proceedings against him are not instituted within six months after his arrival in the Republic; or
- (b) he is acquitted of the offence for which his surrender was sought.

21. (1) Any person entering and passing through the Republic in custody by virtue of any warrant or order lawfully issued in any foreign State, shall during his passage through the Republic be deemed to be in lawful custody if—

Entry and passage through the Republic of persons in custody.

- (a) the warrant or order was issued in an associated State; or
- (b) the Minister has, at the request of the foreign State in which the warrant or order was issued, authorized such passage in custody.

(2) A certificate by the Minister that any such warrant or order was lawfully issued, shall be conclusive proof of that fact.

22. (1) This Act shall apply also in the territory of South-West Africa, including that portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of that territory, and the Eastern Caprivi Zipfel referred to in sub-section (3) of section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).

Application of Act to South-West Africa.

(2) All expenditure incurred in connection with the extradition of persons arrested in the said territory or in connection with the return of persons surrendered to the Republic for trial or detention in the said territory, shall be paid out of the territory revenue fund established under section *thirty-six* of the South-West Africa Constitution Act, 1925 (Act No. 42 of 1925).

23. The laws specified in the Schedule are hereby repealed to the extent set out in the fourth column thereof.

Repeal of laws.

24. This Act shall be called the Extradition Act, 1962.

Short title.

Schedule.

LAWS REPEALED.

Country or Province.	No. and year of Law.	Title or subject matter.	Extent of Repeal.
United Kingdom.	1870 to 1906.	Extradition Acts, 1870 to 1906.	In so far as they apply in the Republic, except section <i>twenty-four</i> of the Extradition Act, 1870 and section <i>five</i> of the Extradition Act, 1873.
„	44 and 45 Vict. c.69 (1881).	Fugitive Offenders Act, 1881.	In so far as it applies in the Republic, except section <i>fifteen</i> .
Cape.	Act No. 6 of 1895.	Extradition Transit Act, 1895.	The whole.
Natal.	Law No. 6 of 1877.	Extradition Law, Natal 1877.	The whole.
„	Law No. 13 of 1882.	Extradition Law, 1882.	The whole.
„	Law No. 6 of 1892.	Extradition Law, 1892.	The whole.
„	Act No. 3 of 1895.	Extradition Act, 1895.	The whole.
„	Act No. 4 of 1896.	Amendment of the Extradition Act, 1895.	The whole.
„	Act No. 13 of 1906.	To provide for the more convenient administration of the Fugitive Offenders Act, 1881, of the Imperial Parliament.	The whole.
Transvaal.	Proclamation No. 25 of 1901.	Fugitive Offenders.	The whole.
South-West Africa.	Proclamation No. 26 of 1920.	Fugitive Offenders and Neighbouring Territories Evidence Proclamation, 1920.	Part I.
Republic.	Act No. 27 of 1912.	Administration of Justice Act, 1912.	Section <i>twenty-eight</i> .
„	Government Notice No. 696 of 1913.	Order-in-Council-Extradition.	The whole.
„	Proclamation No. 133 of 1913.	South Africa Fugitive Offenders Order-in-Council, 1913.	The whole.
„	Act No. 13 of 1926.	Fugitive Criminals (Further Provision) Act, 1926.	The whole.
„	Proclamation No. 78 of 1934.	Extradition (South-West Africa) Proclamation, 1934.	The whole.
„	Act No. 8 of 1936.	Extradition Act, 1936.	The whole.