

EXTRADITION ACT 67 OF 1962

[ASSENTED TO 13 JUNE 1962]

[DATE OF COMMENCEMENT: 20 JUNE 1962]

(English text signed by the State President)

as amended by

General Law Further Amendment Act 93 of 1963

General Law Amendment Act 70 of 1968

General Law Amendment Act 101 of 1969

General Law Amendment Act 29 of 1974

Extradition Amendment Act 46 of 1987

General Law Amendment Act 49 of 1996

Extradition Amendment Act 77 of 1996

Judicial Matters Amendment Act 42 of 2001

Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004

ACT

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

1 Definitions

In this Act, unless the context otherwise indicates-

'**associated State**' means any foreign State in respect of which section *six* applies;

'**designated State**' means any foreign State designated by the President under section 2

(1) (b);

[Definition of 'designated State' inserted by s. 1 (a) of Act 77 of 1996.]

'**extraditable offence**' means any offence which in terms of the law of the Republic and of the foreign State concerned is punishable with a sentence of imprisonment or other form of deprivation of liberty for a period of six months or more, but excluding any offence under military law which is not also an offence under the ordinary criminal law of the Republic and of such foreign State;

[Definition of 'extraditable offence' inserted by s. 1 (a) of Act 77 of 1996.]

'**extradition agreement**' means an agreement in force or deemed to be in force under section 2 including a multilateral convention to which the Republic is a signatory or to which it has acceded and which has the same effect as such agreement;

[Definition of 'extradition agreement' substituted by s. 1 (b) of Act 77 of 1996.]

'**foreign State**' includes any foreign territory;

'**magistrate**' includes an additional magistrate and an assistant magistrate;

[Definition of 'magistrate' amended by s. 1 of Act 49 of 1996.]

'**Minister**' means the Minister of Justice;

'**The Republic**'

[Definition of 'The Republic' deleted by s. 1 of Act 49 of 1996.]

2 Extradition agreements

(1) The President may, on such conditions as he or she may deem fit, but subject to the provisions of this Act-

- (a) enter into an agreement with any foreign State, other than a designated 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 an extraditable offence or offences specified in such agreement and may likewise agree to any amendment or revocation of such agreement; and

- (b) designate any foreign State for purposes of section 3 (3), and may at any time amend the conditions to which such designation was subjected to or revoke such designation.

[Sub-s. (1) substituted by s. 2 (a) of Act 77 of 1996.]

- (2)

[Sub-s. (2) deleted by s. 2 (b) of Act 77 of 1996.]

(3) No such agreement or designation or any amendment thereof, or revocation of the designation, shall be of any force or effect-

- (a) until the ratification of, or accession to, or amendment or revocation of such agreement or designation has been agreed to by Parliament;

[Para. (a) substituted by s. 2 (d) of Act 77 of 1996.]

- (b)

[Para. (b) deleted by s. 2 (e) of Act 77 of 1996.]

- (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 or an offence of which he may lawfully be convicted on a charge of the offence in respect of which extradition was sought or an offence of which he may lawfully be convicted on a charge of the offence in respect of which extradition was sought or that no such person shall be so detained or tried without the consent of himself or the Minister.

[Para. (c) substituted by s. 53 of Act 70 of 1968 and by s. 1 of Act 46 of 1987.]

[Sub-s. (3) amended by s. 2 (c) of Act 77 of 1996.]

(3)*bis* Notwithstanding the provisions of paragraph (c) of subsection (3) any such agreement may provide that any person surrendered to the foreign State in question may with the consent of the Minister and with a view to his surrender to another foreign State be detained in such first-mentioned State for an offence which was committed prior to his surrender to such State and to which the agreement relates.

[Sub-s. (3)*bis* inserted by s. 18 of Act 93 of 1963.]

(3)*ter* The Minister shall as soon as practicable after Parliament has agreed to the ratification of, or accession to, or amendment or revocation of an agreement or the designation of a foreign State, give notice thereof in the *Gazette*.

[Sub-s. (3)*ter* inserted by s. 2 (f) of Act 77 of 1996.]

(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.

- (5)

[Sub-s. (5) added by s. 15 of Act 29 of 1974 and deleted by s. 2 (g) of Act 77 of 1996.]

3 Persons liable to be extradited

(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.

(2) Any person accused or convicted of an extraditable offence committed within the jurisdiction of a foreign State which is not a party to an extradition agreement shall be liable to be surrendered to such foreign State, if the President has in writing consented to his or her being so surrendered.

[Sub-s. (2) substituted by s. 3 (a) of Act 77 of 1996.]

(3) Any person accused or convicted of an extraditable offence committed within the jurisdiction of a designated State shall be liable to be surrendered to such designated State, whether or not the offence was committed before or after the designation of such State and whether or not a court in the Republic has jurisdiction to try such person for such offence.

[Sub-s. (3) added by s. 3 (b) of Act 77 of 1996.]

4 Requests for extradition from Republic

(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.

(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 subsections (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 Warrants of arrest issued in the Republic

(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-

- (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 or her being a person accused or convicted of an extraditable offence committed within the jurisdiction of 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 or she committed an offence in the Republic.

[Para. (b) substituted by s. 4 of Act 77 of 1996.]

(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 Warrants of arrest issued in certain foreign States in Africa

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*.

7 Warrants for further detention of persons arrested without warrant

(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.

(2) Such a warrant for the further detention of any person may be issued upon such information of his or her being a person accused or convicted of an extraditable offence committed within the jurisdiction of 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 or she committed an offence in the Republic.

[Sub-s. (2) substituted by s. 5 of Act 77 of 1996.]

8 Magistrate to furnish Minister with particulars relating to issue of certain warrants

(1) Any magistrate who, under paragraph (b) of subsection (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.

(2) The Minister may at any time after having been notified that a warrant has been issued as contemplated in subsection (1)-

(a) in the case where the warrant has not yet been executed, direct the magistrate concerned to cancel the warrant; or

(b) in the case where the warrant has been executed, direct that the person who has been arrested be discharged forthwith,

if the Minister is of the opinion that a request for the extradition of the person concerned is being delayed unreasonably, or for any other reason that the Minister may deem fit.

[Sub-s. (2) added by s. 6 of Act 77 of 1996.]

9 Persons detained under warrant to be brought before magistrate for holding of an enquiry

(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.

(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 such document is-

(a) (i) accompanied by a certificate according to the example set out in Schedule B;

(ii) authenticated in the manner provided for in the extradition agreement concerned; or

(iii) authenticated by the signature and seal of office-

(aa) of the head of a South African diplomatic or consular mission or a person in the administrative or professional division of the public service serving at a South African diplomatic, consular or trade office in a foreign State or a South African foreign service officer grade VII or an honorary South

- African consul-general, vice-consul or trade commissioner;
- (bb) of any government authority of such foreign State charged with the authentication of documents in terms of the law of that foreign State;
- (cc) of any notary public or other person in such foreign State who shall be shown by a certificate of any person referred to in item (aa) or (bb) or of any diplomatic or consular officer of such foreign State in the Republic to be duly authorized to authenticate such document in terms of the law of that foreign State; or
- (dd) of a commissioned officer of the South African National Defence Force in the case of a document executed by a person on active service; or

[Para. (a) substituted by s. 7 (b) of Act 77 of 1996.]

- (b) certified as original documents or as true copies or translations thereof by a judge or magistrate, or by an officer authorized thereto by one of them, of the associated State concerned, in the case of an enquiry with the view to the extradition of a person to an associated State.

[Sub-s. (3) substituted by s. 2 (a) of Act 46 of 1987 and amended by s. 7 (a) of Act 77 of 1996.]

- (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 10 shall apply;
 - (b) in an associated State-
 - (i) the provisions of section 10 shall apply in the case of a request for extradition contemplated in section 4 (1); and
 - (ii) the provisions of section 12 shall apply in any other case.

[Sub-s. (4) substituted by s. 2 (b) of Act 46 of 1987.]

10 Enquiry where offence committed in foreign State

(1) If upon consideration of the evidence adduced at the enquiry referred to in section 9 (4) (a) and (b) (i) the magistrate finds that the person brought before him or her is liable to be surrendered to the foreign State concerned and, in the case where such person is accused of an offence, that there is sufficient evidence to warrant a prosecution for the offence in the foreign State concerned, the magistrate shall issue an order committing such person to prison to await the Minister's decision with regard to his or her surrender, at the same time informing such person that he or she may within 15 days appeal against such order to the Supreme Court.

(2) For purposes of satisfying himself or herself that there is sufficient evidence to warrant a prosecution in the foreign State the magistrate shall accept as conclusive proof a certificate which appears to him or her to be issued by an appropriate authority in charge of the prosecution in the foreign State concerned, stating that it has sufficient evidence at its disposal to warrant the prosecution of the person concerned.

(3) 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.

(4) 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.

[S. 10 substituted by s. 8 of Act 77 of 1996.]

11 Minister may order or refuse surrender to foreign State

The Minister may-

- (a) order any person committed to prison under section 10 to be surrendered to any

- person authorized by the foreign State to receive him or her; or
- (b) order that a person shall not be surrendered-
- (i) where criminal proceedings against such person are pending in the Republic, until such proceedings are concluded and where such proceedings result in a sentence of a term of imprisonment, until such sentence has been served;
 - (ii) where such person is serving, or is about to serve a sentence of a term of imprisonment, until such sentence has been completed;
 - (iii) at all, or before the expiration of a period fixed by the Minister, if he or she is satisfied 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 concerned; or
 - (iv) if he or she is satisfied that the person concerned will be prosecuted or punished or prejudiced at his or her trial in the foreign State by reason of his or her gender, race, religion, nationality or political opinion.

[S. 11 substituted by s. 9 of Act 77 of 1996.]

12 Enquiry where offence committed in associated State

(1) If upon consideration of the evidence adduced at the enquiry referred to in section 9 (4) (b) (ii) the magistrate finds that the person brought before him or her is liable to be surrendered to the associated State concerned, the magistrate shall, subject to the provisions of subsection (2), issue an order for his or her surrender to any person authorized by such associated State to receive him or her at the same time informing him or her that he or she may within 15 days appeal against such order to the Supreme Court.

(2) The magistrate may order that the person brought before him or her shall not be surrendered-

- (a) where criminal proceedings against such person are pending in the Republic, until such proceedings are concluded and where such proceedings result in a sentence of a term of imprisonment, until such sentence has been served;
- (b) where such person is serving, or is about to serve a sentence to a term of imprisonment, until such sentence has been completed; or
- (c) at all, or before the expiration of a period fixed by him or her, or make such order as to him or her seems just if he or she is of the opinion that-
 - (i) 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 for 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 concerned; or
 - (ii) the person concerned will be prosecuted or punished or prejudiced at his or her trial in the associated State by reason of his or her gender, race, religion, nationality or political opinion.

(3) If the magistrate finds that the evidence does not warrant the issue of an order under subsection (1) or that the required evidence is not forthcoming within a reasonable time and the

delay is not caused by the person brought before him or her, he or she shall discharge that person.

[S. 12 substituted by s. 10 of Act 77 of 1996.]

13 Appeal

(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.

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

(3) Any person who has lodged an appeal in terms of subsection (1) may at any time before such appeal has been disposed of, apply to the magistrate who issued the order in terms of section 10 or 12 to be released on bail on condition that such person deposits with the clerk of court, or with a member of the Department of Correctional Services, or with any police official at the place where such person is in custody, the sum of money determined by the magistrate.

[Sub-s. (3) added by s. 11 of Act 77 of 1996.]

(4) If the magistrate orders that the applicant be released on bail in terms of subsection (3), the provisions of sections 66, 67, 68 and 307 (3), (4) and (5) of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply to bail so granted, and any reference in those sections to-

- (a) the prosecutor who may act under those sections, shall be deemed to be a reference to such person who may appear at an enquiry held under this Act;
- (b) the accused, shall be deemed to be a reference to the person released on bail under subsection (3);
- (c) the court, shall be deemed to be a reference to the magistrate who released such person on bail; and
- (d) the trial or sentence, shall be deemed to be a reference to the magistrate's order under section 10 or 12.

[Sub-s. (4) added by s. 11 of Act 77 of 1996.]

14 Limitation of execution of orders for the surrender of any person

No order for the surrender of any person shall be executed-

- (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)

[Para. (d) deleted by s. 21 of Act 101 of 1969.]

- (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 Minister may order cancellation of warrants of arrest or discharge of detained persons

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.

16 Removal of persons surrendered

(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.

(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 Attorney-general or public prosecutor may appear at extradition proceedings

(1) Any attorney-general or any person delegated by him or any public prosecutor may appear at any enquiry held under this Act.

(2) Any attorney-general or any person delegated by him may appear at any proceedings in the Supreme Court under this Act.

18 Power to prescribe forms

The Minister may make regulations prescribing forms of notices, warrants, recognizances, orders and other forms to be used for the purposes of this Act.

19 Persons surrendered to Republic not to be detained or tried for certain offences in certain circumstances

No person surrendered to the Republic by any foreign State in terms of an extradition agreement or by any designated State shall, until he or she has been returned or had an opportunity of returning to such foreign or designated State, be detained or tried in the Republic for any offence committed prior to his or her surrender other than the offence in respect of which extradition was sought or an offence of which he or she may lawfully be convicted on a charge of the offence in respect of which extradition was sought, unless such foreign or designated State or such person consents thereto: Provided that any such person may at the request of another foreign or designated State and with a view to his or her surrender to such State, be detained in the Republic for an extraditable offence which was so committed, provided such detention is not contrary to the laws of the State which surrendered him or her to the Republic.

[S. 19 amended by s. 19 of Act 93 of 1963, by s. 54 of Act 70 of 1968 and by s. 3 of Act 46 of 1987 and substituted by s. 3 of Act 42 of 2001.]

20 Certain persons surrendered, may be returned

The Minister 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-

(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.

[S. 20 amended by s. 1 of Act 49 of 1996.]

21 Entry and passage through the Republic of persons in custody

(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-

- (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 Extradition in respect of terrorist and related activities

(1) Notwithstanding the provisions of section 15, a request for extradition based on the offences referred to in section 4 or 5 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, may not be refused on the sole ground that it concerns a political offence, or an offence connected with a political offence or an offence inspired by political motives, or that it is a fiscal offence.

(2) The provisions of this section shall in no way affect the application of sections 11 (6) (iv) or 12 (2) (ii) of this Act.

(3) Promptly, after being detained as contemplated in section 7 or 9 of this Act a person who is not a-

- (a) South African citizen;
- (b) person ordinarily resident in the Republic; or
- (c) citizen of any State, must be informed that he or she is entitled, and must be permitted-
 - (i) to communicate without delay with the nearest appropriate representative of-
 - (aa) the State of which the person is a citizen;
 - (bb) if the person is not a citizen of any State, the State in whose territory the person ordinarily resides; or
 - (cc) the State, if any, that is otherwise entitled to protect the person's rights; and
 - (ii) to be visited by such representative.

[S. 22 amended by s. 20 of Act 93 of 1963, repealed by s. 1 of Act 49 of 1996 and inserted by s. 27 (1) of Act 33 of 2004.]

23 Repeal of laws

The laws specified in the [sic] Schedule A are hereby repealed to the extent set out in the fourth column thereof.

[S. 23 amended by s. 13 of Act 77 of 1996.]

24 Short title

This Act shall be called the Extradition Act, 1962.

Schedule A 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 6 of 1895	Extradition Transit Act, 1895	The whole
Natal	Law 6 of 1877	Extradition Law, Natal 1877	The whole
"	Law 13 of 1882	Extradition Law, 1882	The whole
"	Law 6 of 1892	Extradition Law, 1892	The whole
"	Act 3 of 1895	Extradition Act, 1895	The whole
"	Act 4 of 1896	Amendment of the Extradition Act, 1895	The whole
"	Act 13 of 1906	To provide for the more convenient administration of the Fugitive Offenders Act, 1881, of the Imperial Parliament	The whole
Transvaal	Proclamation 25 of 1901	Fugitive Offenders	The whole
South-West Africa	Proclamation 26 of 1920	Fugitive Offenders and neighbouring Territories Evidence Proclamation, 1920	Part I
Republic	Act 27 of 1912	Administration of, Justice Act, 1912	Section <i>twenty-eight</i>
"	Government Notice 696 of 1913	Order-in-Council-Extradition	The whole
"	Proclamation 133 of 1913	South African Fugitive Offenders Order-in-Council, 1913	The whole
"	Act 13 of 1926	Fugitive Criminals (Further Provision) Act, 1926	The whole
"	Proclamation 78 of 1934	Extradition (South-West Africa) Proclamation, 1934	The whole
"	Act 8 of 1936	Extradition Act, 1936	The whole

Schedule B

(Section 9 (3) (a) (i))

[Schedule B added by s. 12 of Act 77 of 1996.]

Apostille

(Convention de la Haye du 5 Octobre 1961)

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