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## Extradition Act, 1968

Act 13 of 1968

Legislation as at 1 December 1998

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## Extradition Act, 1968

### Act 13 of 1968

Assented to on 6 August 1968

Commenced on 9 August 1968

[This is the version of this document at 1 December 1998.]

**An Act to provide for the Extradition of persons accused or convicted of certain offences.**

#### 1. Short title

This Act may be cited as the Extradition Act, 1968.

#### 2. Interpretation

In this Act unless the context otherwise requires—

“**application for *habeas corpus***” means an application for a writ of *habeas corpus* or of *homine libero exhibendo*;

“**court of committal**” means a court established under the Magistrate’s Courts Act, [No. 66 of 1938](#), and presided over by a magistrate specially designated for the purposes of this Act, by the Chief Justice, by notice published in the *Gazette*;

“**extradition agreement**” or “**agreement**” means an agreement in force or deemed to be in force in terms of [section 3](#);

“**magistrate**” means a person entitled under section 4(2)(a) of the Magistrate’s Courts Act, [No. 66 of 1938](#), to hold a court;

“**Minister**” means the Prime Minister;

“**State**” means foreign state and includes any territory and shall be deemed to include any vessel on the high seas or aircraft registered in the state under its law relating to such registration.

#### 3. Application

- (1) Where an agreement has been made between the Minister and a State for the surrender on a reciprocal basis of persons accused or convicted of the commission within the jurisdiction of Swaziland or such State of any offence specified in such agreement or any amendment thereof, the Minister may, by notice published in the *Gazette*, direct that this Act shall apply in the case of such State during the continuance of such agreement or any amendment thereof.
- (2) Subject to the terms of such agreement, this Act shall, apply on the publication of the said notice in the *Gazette*.
- (3) Any arrangement made between the Government of the United Kingdom and Northern Ireland and the government of a State to surrender to that State or its protectorates any fugitive criminals and in respect of which the repealed Fugitive Criminals Surrender Proclamation (Cap. 37) applied and which is in force at the date of the commencement of this Act shall be deemed to be an agreement entered into on the said date and this Act shall apply to it without the notice referred to in subsections (1) and (2).

#### 4. Persons liable to be extradited

Any person accused or convicted on an offence included in an extradition treaty and committed within the jurisdiction of a State which is a party to such agreement shall, subject to this Act, be liable to be surrendered to such State in accordance with the terms of such agreement, whether or not such offence was committed before or after the date of commencement of this Act or before or after the date upon which such agreement comes into operation and whether or not a court in Swaziland has jurisdiction to try such person for such offence.

#### 5. General restrictions on surrender

A person shall not be extradited under this Act to any State, or be committed to, or kept in, custody for the purpose of such extradition, if it appears to the court of committal or to the High Court on an application for *habeas corpus* or on appeal or review against the decision of the court of committal that—

- (a) the offence of which the person is accused or was convicted is an offence of a political character;
- (b) the request for his extradition (though purporting to be made on account of an offence specified in the extradition agreement) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;
- (c) the person might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or,
- (d) provision is not made by the law of such State or by the agreement that no person surrendered to such State shall be detained or tried in such State for any offence committed prior to his surrender other than the offence in respect of which extradition was sought until he has been returned to Swaziland or until the expiry of at least forty-five days after he has had an opportunity of so returning.

#### 6. Requests for extradition from Swaziland

- (1) Subject to any extradition agreement, any request for the surrender of any person to any State shall be made to the Minister by a person recognized by him as a diplomatic or consular representative of such State or by any Minister of such State communicating with the Minister through diplomatic channels existing between Swaziland 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.

#### 7. Warrants of arrest issued in Swaziland

- (1) Any magistrate may, irrespective of the whereabouts or suspected whereabouts of the person to be arrested, issue a warrant for his arrest—
  - (a) upon receipt of a notification from the Minister to the effect that a request for the surrender of such person to a State or for his provisional arrest in connexion with an intended request for such surrender has been received by the Minister; or,
  - (b) upon information of his being a person liable to be surrendered to a State which would, in the opinion of the magistrate, justify the issue of a warrant for his arrest, had it been alleged that he had committed an offence in Swaziland.
- (2) Any warrant issued under this section shall be in the form and shall be executed in the manner as near as may be so prescribed in respect of arrest in general by or under the law of Swaziland relating to criminal procedure.

- (3) If a warrant for arrest has been issued under subsection (1), any magistrate may issue a warrant empowering a police officer to search for and seize property which—
  - (a) may be required as evidence at the trial of the person to be surrendered for the offence; or,
  - (b) has been acquired as a result of such offence.

## 8. Warrants for further detention of persons arrested without warrants

- (1) Any magistrate may issue a warrant for the further detention of any person arrested without warrant under any law of Swaziland providing for the arrest without warrant of persons liable to be apprehended under any law relating to extradition.
- (2) Such warrant may be issued upon information of his being a person liable to be surrendered to a State which 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 Swaziland.

## 9. Proceedings for committal

- (1) Any person detained under a warrant of arrest or a warrant for his further detention shall, without undue delay, be brought before a court of committal, whereupon it shall hold an inquiry with a view to the surrender of such person to the State concerned.
- (2) Subject to this Act, the court of committal shall proceed in the manner in which a preparatory examination is held in the case of a person charged with having committed an offence in Swaziland and shall, for the purpose of holding such inquiry, have the same powers, including the power of committing any person for further examination and admitting any person detained to bail, as it 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 any State, or any copy or sworn translation thereof, may be received in evidence at any such inquiry if authenticated in the manner in which foreign documents may be authenticated to enable them to be produced in any court in Swaziland or in the manner provided for in the extradition agreement concerned.
- (4) The testimony of any witness at an inquiry may be obtained in the same manner as in criminal cases before magistrate's courts.
- (5) At any inquiry relating to a person alleged to have committed or to have been convicted of an offence in any State [section 10](#) shall apply.

## 10. Powers and duties of court of committal

- (1) If, upon consideration of the evidence adduced at the inquiry, the court of committal finds that the person brought before it is liable to be surrendered to the State concerned and, if such person is accused of an offence, that there would be sufficient reason for putting him on trial for such offence had it been committed in Swaziland, it 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 High Court or apply to the High Court for *habeas corpus*.
- (2) If the court of committal finds that the evidence does not warrant in the issue of an order of committal or that the required evidence is not forthcoming within a reasonable time, it shall discharge the person brought before it.
- (3) The court of committal issuing the order of committal shall forthwith forward to the Minister a copy of the record of the proceedings together with such report as it may deem necessary.

## 11. Minister may order surrender to foreign State

The Minister may order any person committed to prison under [section 10](#) to be surrendered to any person authorized by the State to receive him and may order the handing over of any property seized in terms of [section 7\(3\)](#).

## 12. Appeal

- (1) Any person against whom an order has been issued in terms of [section 10](#) may, within fifteen days after such issue appeal against such order to the High Court.
- (2) On appeal, the High Court may make such order in the matter as it may deem fit.

## 13. Limitation of execution of order of surrender

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

- (a) before the period allowed for an appeal under [section 12](#) has expired, unless he has in writing waived his right of appeal;
- (b) before such appeal or an application for *habeas corpus* has been disposed of;
- (c) if, upon such appeal or application, his discharge from custody is ordered;
- (d) if he has been charged or convicted of an offence in Swaziland, until such charge has been disposed of and any sentence which may have been imposed in respect of such offence has been executed:

Provided that where the extradition agreement so provides, the surrender may be effected in accordance with conditions determined by agreement between the Minister and the State concerned;

- (e) if, after the expiry of two months from—
  - (i) the issue of an order of committal under [section 10](#), where no appeal has been or is to be heard under [section 12](#); or,
  - (ii) an appeal under [section 12](#) has been dismissed;the High Court has, upon application made for *habeas corpus* after reasonable notice to the Minister, ordered his discharge from custody on the ground that there is not sufficient cause for his detention;
- (f) if, after the expiry of forty-five days from the date on which the Minister informed the State of the place and date of the proposed surrender, such person has not been taken over by the State.

## 14. Minister's right to order cancellation of warrants of arrest or discharge

The Minister may at any time order the cancellation of any warrant issued under this Act, for the arrest of any person 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 real purpose for the request for such surrender is to prosecute or punish him on account of his race, religion, nationality or political opinions, or that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

## 15. Removal of persons surrendered

- (1) Any person ordered to be surrendered under this Act may be removed from Swaziland in the custody of the person authorized to receive him and if he escapes while being so removed may be arrested without warrant by any person.

- (2) Any person who—
- (a) while being so removed, escapes or attempts to escape; 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 not exceeding five years.

## 16. Custody

Any person arrested or remanded or committed under this Act shall be detained in a prison established under the Prisons Act, [No. 40 of 1964](#), as if he were an unconvicted person in terms of such Act or any regulation made thereunder.

## 17. Attorney-General's right to appear at extradition proceedings

The Attorney-General, or any person delegated by him, may appear at any inquiry under this Act or at any proceedings in the High Court under this Act.

## 18. Regulations as to notices, etc.

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

## 19. Detention of surrendered person for offences other than those in respect of which he was extradited

No person surrendered to Swaziland by any State in terms of any extradition agreement shall, until he has been returned or had an opportunity of returning to such State, be detained or tried in Swaziland for any offence committed prior to his surrender other than the offence in respect of which extradition was sought:

Provided that any such person may, at the request of another State and with a view to his surrender to such State, be detained in Swaziland for an offence which was so committed and to which that agreement relates, if such detention is not contrary to the laws of or the extradition agreement with the State which surrendered him to Swaziland and provided further that not less than forty-five days have expired after he has had an opportunity of returning to such State.

## 20. Return of person acquitted or not charged within a specified time

The Minister may, at the request of any person surrendered to Swaziland, return him to the 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 are not instituted within six months of his arrival in Swaziland; or,
- (b) he is acquitted of the offence for which his surrender was sought.

## 21. Entry into and passage through Swaziland of person in custody

- (1) A person entering into and passing through Swaziland in custody by virtue of any warrant or order lawfully issued in any State shall, during his passage through Swaziland, be deemed to be in lawful custody if the Minister has, at the request of the 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 deemed conclusive proof of such fact.

## 22. Rules of court

- (1) The Chief Justice may make rules of court which in his opinion are necessary in regard to inquiries or any applications or appeals made under this Act.
- (2) The Chief Justice shall by notice published in the *Gazette* designate a magistrate to preside over a court of committal for the purposes of this Act.