

PRESIDENT'S OFFICE

No. 1877. 20 November 1996

NO. 77 OF 1996: EXTRADITION AMENDMENT ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

ACT

To amend the Extradition Act, 1962, so as to add certain definitions and to amend a definition; to provide for the designation of States to which extradition may be effected in the absence of formal agreements; to further provide in respect of persons liable to be extradited; to further provide in respect of the issuing of warrants of arrest of persons and for further detention; to grant to the Minister certain powers after a warrant has been issued; to make further arrangements in connection with the evidence that may be received by a magistrate at the enquiry of a detained person; to further regulate the holding of enquiries concerning offences committed in foreign and associated States; to grant to the Minister the power to refuse extradition under certain circumstances; and to further regulate the procedure regarding an appeal by a person against whom an order for extradition has been issued; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 6 November 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 67 of 1962

1. Section 1 of the Extradition Act, 1962 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the insertion after the definition of "associated State" of the following definitions:

" 'designated State' means any foreign State designated by the President under section 2(1)(b);

'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;"; and

(b) by the substitution for the definition of "extradition agreement" of the following definition:

'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;"

Amendment of section 2 of Act 67 of 1962, as amended by section 18 of Act 93 of 1963, section 53 of Act 70 of 1968, section 15 of Act 29 of 1974 and section 1 of Act 46 of 1987

2. Section 2 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) The State 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.";

(b) by the deletion of subsection (2);

(c) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

"No such agreement or designation or any amendment thereof, or revocation of the designation, shall be of any force or effect-";

(d) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) until it has been published by the State President by proclamation in the Gazette the ratification of, or accession to, or amendment or revocation of such agreement or designation has been agreed to by Parliament; or";

(e) by the deletion of paragraph (b) of subsection (3);

(f) by the insertion after subsection (3)bis of the following subsection:

"(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."; and

(g) by the deletion of subsection (5).

Amendment of section 3 of Act 67 of 1962

3. Section 3 of the principal Act is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

" (2) Any person accused or convicted of an offence contemplated by subsection (2) of section two and 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 State President has in writing consented to his or her being so surrendered."; and

(b) by the addition of the following subsection:

"(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."

Amendment of section 5 of Act 67 of 1962

4. Section 5 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) upon such information of his or her being a person liable to be surrendered to a foreign State 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."

Amendment of section 7 of Act 67 of 1962

5. Section 7 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Such a warrant for the further detention of any person may be issued upon such information of his or her being a person liable to be surrendered to a foreign State 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."

Amendment of section 8 of Act 67 of 1962

6. Section 8 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(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."

Amendment of section 9 of Act 67 of 1962, as amended by section 2 of Act 46 of 1987

7. Section 9 of the principal Act is hereby amended-

(a) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

"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-"; and

(b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

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

(ii) 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; 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".

Substitution of section 10 of Act 67 of 1962

8. The following section is hereby substituted for section 10 of the principal Act:

"Enquiry where offence committed in foreign State

10. (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 would be sufficient reason for putting him on trial for the offence had it been committed in the Republic 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.

(2) (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.

(3) (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."

Substitution of section 11 of Act 67 of 1962

9. The following section is hereby substituted for section 11 of the principal Act:

"Minister may order or refuse surrender to foreign State

11. 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."

Substitution of section 12 of Act 67 of 1962

10. The following section is hereby substituted for section 12 of the principal Act:

"Enquiry where offence committed in associated State

12. (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) If the magistrate is of the opinion that 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 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 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 the that person brought before him."

Amendment of section 13 of Act 67 of 1962

11. Section 13 of the principal Act is hereby amended by the addition of the following subsections:

"(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.

(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 No. 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."

Addition of Schedule B to Act 67 of 1962

12. The following Schedule is hereby added to the principal Act, the existing Schedule becoming Schedule A.

"Schedule B (section 9(3)(a)(i))

Apostille

(Convention de la Haye du 5 Octobre 1961)

1. Country.....

This public document

2. has been signed by.....

3. acting in the capacity of.....

4. bears the seal/stamp of.....

5. at.....

6. the (date).....

7. by.....

8. No.

9. Seal/stamp: 10. Signature.....

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Amendment of section 23 of Act 67 of 1962

13. Section 23 of the principal Act is hereby amended by the substitution for the word "Schedule" of the expression "Schedule A".

Transitional provisions

14.(1) Any enquiry pending before a magistrate in terms of section 9(1) of the principal Act, immediately before the commencement of this Act, shall be continued and concluded as if this Act has not been passed.

(2) For the purposes of subsection (1) an enquiry shall be deemed to be pending if the magistrate has proceeded with the enquiry as contemplated in section 9(2) of the principal Act, and it shall be deemed to have been concluded if the magistrate -

(a) has issued an order referred to in section 10(1) or 12(1) or (2); or

(b) has discharged a person in terms of section 10(3) or 12(3), of the principal Act.

Short title and commencement

15. This Act shall be called the *Extradition Amendment Act, 1996*, and shall come into operation on a date fixed by the President by proclamation in the Gazette.