

EXTRADITION ACT 1974

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THE EXTRADITION ACT 1974

1974, No. 12

AN ACT to provide for the extradition of fugitive offenders.

(30 December 1974)

1. Short title - This Act may be cited as the Extradition Act 1974.

2. Interpretation - (1) In this Act, unless the context otherwise requires:

"Authority to proceed" means an authority to proceed within the meaning of section 7(1) of this Act;

"Court of committal" in relation to a person whose extradition is requested under this Act, means the Court referred to in section 9(1) of this Act;

"Extradition country" means:

(a) A Commonwealth country that is designated by Order under section 3 of this Act, together with the dependencies (if any) of that country; or

(b) A foreign country with which an extradition treaty is in force.

"Extradition offence" in relation to an extradition country, means:

(a) An offence (including an offence of a purely fiscal character) against the law of that extradition country that:

(i) Is an offence for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; and

(ii) Is constituted by an act or omission that would constitute an offence against the law of Western Samoa if it took place within Western Samoa or in the case of an extra-territorial offence, in corresponding circumstances outside Western Samoa; or

(b) An offence (including an offence of a purely fiscal character) against the law of that extradition country that does not carry a penalty under the law of that country but is constituted by conduct that, under an extradition treaty in relation to that country, is required to be treated as an offence for which the surrender of persons is permitted by that country and Western Samoa.

"Extradition treaty" means a treaty or agreement relating to extradition, being:

(a) A treaty made by Western Samoa with a foreign country; or

(b) A treaty made before the 1st day of January 1962 that extends to and is binding on, Western Samoa.

"Foreign Country" means any country outside Western Samoa (other than a Commonwealth Country), and includes every constituent part and dependency of such a country;

"Minister" means the Minister of Justice.

(2) A reference in this Act to the law of any country includes a reference to a law of, or in force in, any part of that country.

REQUIREMENTS FOR EXTRADITION

3. Designated Commonwealth countries - (1) The Head of State, acting on the advice of Cabinet may, by Order published in the *Western Samoa Gazette*, or in the Savali, designate a Commonwealth country as a designated Commonwealth country for the purposes of this Act.

(2) The Head of State, acting on the advice of Cabinet, may by Order so published direct that this Act shall have effect for the return of persons to, or in relation to persons returned from, any Commonwealth country so designated subject to such exception, adaptations or modifications as may be specified in the Order.

(3) The Head of State, acting on the advice of Cabinet, may, by Order so published, direct that extradition between Western Samoa and a Commonwealth country so designated that is specified in the Order is to be conducted on the basis of record of case.

4. Person liable to extradition - Subject to the provisions of this Act, a person found in Western Samoa who is accused of an extradition offence an extradition country or who is alleged to be unlawfully at large after conviction of an extradition offence in an extradition country may be arrested and returned to that extradition country as provided by this Act.

5. Repealed by section 6 of the Extradition Amendment Act 1994.

6. General restrictions on extradition - (1) A person shall not be extradited under this Act to an extradition country or committed to or kept in custody for the purposes of such extradition if it appears to the Minister, or to the Court of committal or the Supreme Court on an application for *habeas corpus* or for review of the order of committal:

(a) That the offence of which that person is accused or was convicted is an offence of a political character;

(aa) That the offence of which the person is accused or was convicted is an offence under the military law, but not under the ordinary criminal law, of the requesting country;

(b) That the request for extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, ethnic identity, nationality or political opinions; or

(c) That he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, ethnic identity, nationality or political opinions.

(2) A person accused of an offence shall not be extradited under this Act to any country, or committed to or kept in custody for the purpose of his extradition, if it appears as aforesaid,

that if charged with the offence in Western Samoa he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be extradited under this Act to any country, or committed or kept in custody for the purposes of such extradition, unless provision is made by the law of that country, or by an arrangement made with the country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Western Samoa, be dealt with in that country, for or in respect of any offence committed before his extradition under this Act other than:

- (a) The offence in respect of which the extradition under this Act is requested;
- (b) Any lesser offence proved by the facts proved before the Court of committal; or
- (c) Any other offence being an extradition offence in respect of which the Minister may consent to his being so dealt with.

(4) Any such arrangement as is mentioned in subsection (3) of this section may be or an arrangement made for the particular case an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Minister of Foreign Affairs confirming the existence of an arrangement with a country and stating its terms shall be conclusive evidence of the matters contained in the certificate.

PROCEEDINGS FOR EXTRADITION

7. Authority to proceed - (1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with thereunder except in pursuance of an order of the Minister (in this Act referred to as an authority to proceed) issued in pursuance of a request made to him by or on behalf of the extradition country in which the person to be extradited is accused or was convicted.

(2) Subject to subsection (2A) of this section, a request made on behalf of any extradition country (in this subsection and in subsections (2A) and (2B) of this section called the requesting country) for the extradition of a person accused of an offence shall be accompanied by:

- (a) A warrant for the arrest of the person issued in the requesting country; and
- (b) Particulars of the person; and
- (c) Particulars of the facts upon which, and the law under which, the person is accused; and
- (d) Evidence for the purposes of section 9(4) (a) of this Act.

(2A) If the requesting country is a Commonwealth country and an order under section 3(3) of this Act directs that extradition between Western Samoa and the requesting country is to be conducted on the basis of record of case, the request shall be accompanied by:

(a) A record of the case in respect of the alleged offence that contains the following particulars and documents:

(i) Particulars of the description, identity, nationality and, if available, the whereabouts of the person sought;

(ii) Particulars of each offence in respect of which extradition is sought, specifying the date and place of commission, the legal definition of the offence and the relevant provisions of the law of the requesting country, including a certified copy of any such definition in the written law of the requesting country;

(iii) The original, or a certified copy, of any warrant or process issued in the requesting country against the person sought;

(iv) A recital of the evidence acquired to support the extradition of the person sought;

(v) A certified copy, reproduction or photograph of each exhibit, or item of documentary evidence, mentioned in that recital of evidence; and

(b) An affidavit, sworn statement or affirmation of an officer of the investigating authority of the requesting country stating that:

(i) The record was prepared by, or under the direction of, that officer; and

(ii) The evidence referred to in the record has been preserved for use in Court; and

(c) A certificate of the Attorney-General of the requesting country stating that, in his opinion, the record discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.

(2B) A certification required by subsection (2A)(a) of this section may be done by any person in the requesting country who is, or holds office as, the Attorney-General or a Legal practitioner, Notary public, Commissioner of oaths or Commissioned Police Officer.

(2C) A request made on behalf of any extradition country for the extradition of a person unlawfully at large after conviction of an offence shall be accompanied by:

(a) A certificate of the conviction and sentence in that country; and

(b) A statement of the amount (if any) of that sentence which has been served; and,

(c) Particulars of the person; and

(d) Particulars of the facts upon which, and the law under which the person was convicted.

(3) On receipt of such a request the Minister may issue an authority to proceed unless it appears to him that an order for extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

8. Arrest for the purposes of committal - (1) A warrant for the arrest of a person accused of an extradition offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued by a Magistrate:

(a) On the receipt of an authority to proceed by a Magistrate;

(b) Without such an authority by a Magistrate upon information that the said person is or is believed to be on his way to Western Samoa, -

and any warrant issued by virtue of paragraph (b) of this subsection is in this Act referred to as a provisional warrant.

(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the Magistrate, authorise the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence.

(3) Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Minister, and transmit to him the information and evidence, or certified copy of the information and evidence, upon which it was issued; and the Minister may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

(4) A warrant of arrest issued under this section may be executed by any person to whom it is directed or by any police officer.

9. Proceedings for committal - (1) A person arrested in pursuance of a warrant under section 8 of this Act shall (unless previously discharged under subsection (3) of that section) be brought as soon as practicable before a Court presided over by a Magistrate (in this Act referred to as the Court of committal).

(2) For the purpose of proceedings under this section, a Court of committal shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as if the proceedings were the hearing of an information for an offence triable before a Magistrate.

(3) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the Court of committal may fix a reasonable period (of which the Court shall give notice to the Minister) after which he will be discharged from custody unless such an authority has been received.

(4) Where:

(a) An authority to proceed has been issued in respect of the person arrested;

(b) Subject to subsection (5) of this section, the Court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extradition offence; and:

(i) Where that person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the Court;

(ii) Where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large; and

(c) Committal of the person is not prohibited by any other provision of this Act, the Court shall commit him to custody to await his extradition; but, if the Court is not so satisfied or if the committal of that person is so prohibited, the Court shall discharge him from custody.

(5) In a case in which the request for the extradition of a person for an alleged offence is accompanied, in accordance with section 7(2A), by a record of the case, the requirements of subsection (4) (b) of this section are met if the Court is satisfied that the record of the case indicates that:

(a) The offence to which the authority to proceed relates is an extradition offence; and

(b) According to the law of the country requesting the extradition of the person, the person has committed the offence to which the record relates.

10. Actions concerning personal liberty - (1) Where a person is committed to custody under section 9 of this Act, the Court shall inform him in ordinary language of his right of action in the Supreme Court for redress of a contravention of his right to personal liberty or for review of the order of committal, and shall forthwith give notice of the committal to the Minister.

(2) A person committed to custody under section 9 of this Act shall not be extradited under this Act:

(a) In any case, until the expiration of the period of 15 days beginning with the day on which the order for his committal is made;

(b) If an action has been instituted in the Supreme Court for redress of a contravention of his right to personal liberty or for review of the order of committal so long as proceedings on that action are pending.

(3) In any such action, the Supreme Court may, without prejudice to any other jurisdiction of the Court, order the person committed to be discharged from custody if it appears to the Court that:

(a) By reason of the trivial nature of the offence of which he is accused or was convicted; or

(b) By reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or

(c) Because the accusation against him is not made in good faith in the interests of justice, -

it would, having regard to all the circumstances, be unjust or oppressive to extradite him.

(4) On any such application the Supreme Court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 of this Act or under subsection (3) of this section.

(5) For the purposes of this section, proceedings in an action for redress of a contravention of a person's right to personal liberty or for review of an order shall be treated as pending until any appeal in those proceedings is disposed of; and an appeal shall be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if the appeal is not brought or the application made within that time.

11. Order for extradition - (1) Where a person is committed to await his extradition and is not discharged by order of the Supreme Court, the Minister may by warrant order him to be extradited to the country by which the request for his extradition was made unless the extradition of that person is prohibited or prohibited for the time being, by section 6 of this Act or this section, or the Minister decides under this section to make no such order in his case.

(2) An order shall not be made under this section in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in Western Samoa:

(a) In the case of a person serving such a sentence, until the sentence has been served;

(b) In the case of a person charged with an offence, until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment (not being a suspended sentence), until the sentence has been served.

(3) The Minister shall not make an order under this section in the case of any person if it appears to the Minister, on the ground mentioned in subsection (3) of section 10 of this Act, that it would be unjust or oppressive to return that person.

(4) The Minister may make no order under this section in the case of a person accused or convicted of a relevant offence not punishable with death in Western Samoa if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made.

(5) The Minister may make no order under this section for the return of a person committed in consequence of a request made on behalf of any country if another request for his return under this Act has been made on behalf of another country and it appears to the Minister, having regard to all the circumstances of the case and in particular:

(a) The relative seriousness of the offences in question;

(b) The date on which each such request was made; and

(c) The nationality or citizenship of the person concerned and his ordinary residence, -
that preference should be given to the other request.

(6) The Minister may in his discretion refuse to extradite a person who is a citizen of Western Samoa.

(7) Notice of the issue of a warrant under this section shall forthwith be given to the person to be extradited thereunder.

12. Discharge in case of delay in extraditing - (1) If any person committed to await his extradition is in custody in Western Samoa under this Act after the expiration of the following period, that is to say:

(a) In any case, the period of 2 months beginning with the first day on which, having regard to subsection (2) of section 10 of this Act, he could have been extradited;

(b) Where a warrant for his extradition has been issued under section 11 of this Act, the period of one month beginning with the day on which that warrant was issued, -

he may apply to the Supreme Court for his discharge.

(2) If upon any such application the Supreme Court is satisfied that reasonable notice of the proposed application has been given to the Minister, the Court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and, if a warrant for his extradition has been issued under the said section 11 of this Act, cancel that warrant.

13. Evidence - (1) In any proceedings under this Act, including proceedings on an application for the review of the order in respect of a person in custody under this Act:

(a) A document, duly authenticated, which purports to set out evidence given on oath in an extradition country shall be admissible as evidence of the matters stated therein;

(b) A document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceedings in an extradition country shall be admissible in evidence;

(c) A document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, an extradition country shall be admissible as evidence of the fact and date of the conviction.

(2) A document shall be deemed to be duly authenticated for the purposes of this section:

(a) In the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge or magistrate or officer in the extradition

country in question to be the original document containing or recording that evidence or a true copy of such a document;

(b) In the case of a document which purports to have been received in evidence as aforesaid or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been, so received;

(c) In the case of a document which certifies that a person was convicted as aforesaid if the document purports to be certified as aforesaid, -

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the extradition country.

(3) In this section "oath" includes affirmation or declaration; and nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

14. Custody - (1) Any person remanded or committed to custody under section 9 of this Act shall be committed to the like institution as a person charged with an offence before the Court of committal.

(2) If any person who is in custody by virtue of a warrant under this Act escapes out of custody, he may be taken in any part of Western Samoa in like manner as a person escaping from custody under a warrant for his arrest in Western Samoa in respect of an offence committed therein.

(3) Where a person, being in custody in any part of Western Samoa whether under this Act or otherwise, is required to be removed in custody under this Act to another part of Western Samoa and is so removed, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.

(4) A warrant under section 11 of this Act for the extradition of any person to an extradition country shall be sufficient authority for all persons to whom it is directed and all police officers to receive that person, keep him in custody and convey him into the jurisdiction of that country.

15. Form of warrants and orders - Any warrant or order to be issued or made by the Minister under any of the provisions of this Act shall be given under the hand of the Minister and shall be in the prescribed form.

TREATMENT OF PERSONS EXTRADITED FROM EXTRADITION COUNTRIES

16. Restriction upon proceedings for other offences - (1) This section applies to any person accused or convicted of an offence under the laws of Western Samoa who is returned to Western Samoa from an extradition country, under any law of that country corresponding with this Act.

(2) A person to whom this section applies shall not, during the period described in subsection (3) of this section be dealt with in Western Samoa for or in respect of any offence committed before he was extradited to Western Samoa other than:

- (a) The offence in respect of which he was extradited;
- (b) Any lesser offence proved by the facts proved for the purposes of securing his extradition; or
- (c) Any other offence in respect of which the Government of the extradition country from which he was extradited may consent to his being dealt with.

(3) The period referred to in subsection (2) of this section in relation to a person to whom this section applies shall be the period beginning with the day of his arrival in Western Samoa on his extradition as mentioned in subsection (1) of this section and ending 45 days after the first subsequent day on which he has the opportunity to leave Western Samoa.

17. Restoration of persons not tried or acquitted - (1) This section applies to any person accused of an offence under the law of Western Samoa who is extradited to Western Samoa as mentioned in subsection (1) of section 16 of this Act.

(2) If in the case of a person to whom this section applies either:

- (a) Proceedings against him for the offence for which he was extradited are not begun within the period of 6 months beginning with the day of his arrival in Western Samoa on being extradited; or
- (b) On his trial for that offence, he is acquitted or discharged, -

the Minister may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the country from which he was extradited.

MISCELLANEOUS

18. Liability for arrest, etc., of fugitive offenders in respect of extradition offences - A person for whose extradition a request is made under this Act shall, subject to the provisions of this Act, be liable to be arrested and dealt with whether the offence in respect of which he is to be dealt with was committed before or after the commencement of this Act.

19. Property found on fugitive offenders - Everything found in the possession of a person at the time of his arrest, under this Act which may be material as evidence in proving the extradition offence may be delivered up with the person when he is dealt with subject to the rights, if any, of third persons in respect thereto.

20. Bilateral agreements - The provisions of this Act shall apply *mutatis mutandis* in a case where a bilateral agreement or bilateral arrangements exist between Western Samoa and another country.

21. Regulations - The Head of State, acting on the advice of Cabinet, may from time to time make regulations for all or any of the following purposes:

- (a) Prescribing forms for any of the purposes of this Act;
- (b) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

22. Repeal - The Extradition Act 1971 is hereby repealed.

SCHEDULE

Repealed by section 6 of the Extradition Amendment Act 1994.

NOTES

The Extradition Act 1974 appearing in this reprint comprises that Act as it appears in the 1977 reprint together with the amendments contained in the Extradition Amendment Act 1994, No. 4 as set out below:

- Section 2:** Repealed and replaced by the present section by section 2.
- Section 3:** The heading preceding this section was repealed and replaced by the present heading by section 3.
- Section 3(3):** A new subsection added by section 4.
- Section 4:** Words "or convicted" were deleted by section 5.
- Section 5:** Was repealed by section 6(1) and the Schedule to the Act repealed by section 6(2).
- Section 6(1)(aa):** A new paragraph inserted by section 7(1).
- Section 6(1)(b) and (c):** The words "ethnic identity" were added by section 7(2).
- Section 7(2):** This was repealed and replaced by subsections (2), (2A), (2B), 2(C) by section 8.
- Section 9(4) and (5):** Repealed and replaced by the present (4) and (5) added by section 9.
- Section 18 and 19:** Consequential amendments were made by sections 10 and 11.

Consequential amendments were also made to sections 3(2), 4, 6(1), 6(2) and (3) and (4), 7(1), 11(1), (4) and (5), 13(1)(a), (b), and (c) and 13(2) and (2)(a), section 14, section 16(1), (2)(c) and to section 20 and to the heading to section 16 by the Schedule to the Amendment Act.

The Extradition Act 1974 is administered in the Department of Justice.