

THE FUGITIVE OFFENDERS (COMMONWEALTH) ACT

Date of commencement: 16th May, 1969.

Date of Assent: 7th May, 1969.

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Schedule.

An Act to make provision for the return from Swaziland to Commonwealth countries of persons convicted of offences in such countries; to regulate the treatment of persons accused or convicted of offences in Swaziland who are returned from such countries and for related and connected matters.

PART I PRELIMINARY

Short title.

1. This Act may be cited as the Fugitive Offenders (Commonwealth) Act, 1969.

Interpretation.

2. In this Act, unless the context otherwise requires - "application for habeas corpus" includes an application for a writ of

habeas corpus ad subjiciendum or of de homine libero exhibendo; "authority to proceed" means an order made under section 7(1); "country" means any Commonwealth country and all dependencies of

a Commonwealth country; "court of committal" means a court established under the Subordinate Courts Proclamation (Cap. 20) and presided over by a magistrate specially designated for the purposes of this Act by the Chief Justice by notice in the Gazette; "dealt with" means tried or returned or surrendered to any country or detained with a view to trial or with a view to such return or

surrender; "designated country" has the meaning assigned to it by section 4; "imprisonment" includes detention of any description; "magistrate" means a person entitled by section 4(2)(a) of the

Magistrates Courts Act, No. 66 of 1938 to hold a court; "Minister" means the Prime Minister; "provisional warrant" means a warrant issued under section 8(1)(b).

PART II RETURN OF OFFENDERS

Persons liable to be returned.

3. (1) Subject to this Act, any person found in Swaziland who is accused of a relevant offence in any other country to which this section applies, or who is alleged to be unlawfully at large after conviction of such offence in such country, may be arrested and returned to such country under this Act.

(2) The countries to which this section applies are countries which have been designated under section 4(1).

Designated countries.

4. (1) The Prime Minister may designate any country for the purposes of section 3, and may revoke such designation.

(2) The Prime Minister may direct that this Act shall have effect in relation to the return of persons to, or in relation to persons returned from, a designated country subject to such exceptions, adaptations or modifications as may be specified in such direction and may revoke such direction.

(3) A designation under subsection (1), and a direction under subsection (2), shall be laid before Parliament within fourteen days after it is made if Parliament is then sitting or, if Parliament is not then sitting, within fourteen days after the commencement of the next meeting.

(4) Such designation or direction shall remain in force subject to subsection (5) until it is revoked, unless before then a resolution is passed by both Houses of Parliament disapproving such designation or direction, which shall thereupon cease to have effect to the extent of the disapproval expressed in such resolution.

(5) A designation and a direction made under this section shall be published in the Gazette.

(6) For so long as a designation remains in force under this section -

(a) this Act shall apply in relation to the country to which such designation refers; and

(b) such country shall be designated country for the purposes of this

Act; subject to the provisions of any direction that may have been given under subsection (2) in respect of such country.

Relevant offences.

5. (1) For the purposes of this Act any offence of which a person is accused or has been convicted in a designated country shall be a relevant offence if -

(a) it is an offence against the law of a designated country, and however it is described in such law, it falls within any of the descriptions set out in the Schedule, and is punishable under such law with imprisonment for twelve months or any greater punishment; and

(b) the act or omission constituting such offence, or the equivalent act or omission, would constitute an offence against the law of Swaziland if it took place within Swaziland or, in the case of an extra-territorial offence, in corresponding circumstances outside Swaziland.

(2) In determining for the purposes of this section whether an offence against the law of a designated country falls within a description set out in the Schedule, any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute such offence under the law shall be disregarded.

(3) The descriptions set out in the Schedule shall in each case include the offences of attempting or conspiring to commit, of assisting, counselling or procuring the commission of or being accessory before or after the fact to the offences therein described, and of impeding the apprehension or prosecution of persons guilty of such offences.

(4) References in this section to the law of any country shall include references to the law of a part of such country.

General restrictions on return.

6. (1) A person shall not be returned under this Act to a designated country, nor committed to or kept in custody for the purposes of such return, if it appears to the Minister, to the court of committal, or to the High Court in an action for the redress of a contravention of such person's right to personal liberty or for the review of the order of committal that -

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

Provided that the following offences shall not be held to be offences of a political character:

(i) an offence against the life or person of His Majesty, the King or a member of His Majesty's immediate family;

(ii) an offence against the life or person of the Head of Government or a member of his immediate family; or

(iii) an offence against the life or person of a Minister of the Government;

(iv) an offence established under any multinational convention to which both Swaziland and the designated country are parties and which is declared by such convention not to be regarded as political offence for the purposes of the return of an accused person;

(Amended A.10/1992.)

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

(c) he might, if returned, 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) he has been convicted (and is neither unlawfully at large nor at large in breach of a condition of a licence to be at large) or has been acquitted, whether within or outside the designated country of the offence of which he is accused. (Added A.10/1992.)

(2) A person accused of an offence shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if it appears as aforesaid that if charged with such offence in Swaziland he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

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

(a) the offence in respect of which his return under this Act is requested;

(b) any lesser offence established by the facts proved before the court of committal; or

(c) any other relevant offence in respect of which the Minister may consent to his being so dealt with.

(4) Any arrangement mentioned in subsection (3) may be an arrangement made for the particular case or an arrangement of a more general nature, and for the purpose of such subsection a certificate issued by or under the authority of the Minister confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in such certificate.

(5) When considering a request under subsection (3)(c) the Minister may request for such particulars as it may require in order to be satisfied that such request is otherwise consistent with the purposes of

this Act, and shall not unreasonably withhold such consent but if in the opinion of the Minister it appears that on the facts known to the designated country at the time of the original application for the return of the accused person, an application should have been in respect of such offence at that time, the Minister may refuse his consent. (Added A.10/1992.)

(6) A designated country shall not without the consent of the Minister return or surrender to another country an accused person returned to that designated country who is being sought by such other country in respect of an offence committed by that person prior to the request for his return by the designated country, and the Minister may in considering a request under this subsection, ask for the particulars referred to in subsection (5). (Added A.10/1992.)

PART III PROCEEDINGS FOR RETURN

Authority to proceed.

7. (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 by the Minister, issued in pursuance of a request made to the Minister by or on behalf of the Government of the designated country in which the person to be returned is accused or was convicted.

(2) With any request made for the purposes of this section on behalf of any country there shall be furnished, in the case of any person -

(a) accused of an offence, a warrant for his arrest issued in such country; or,

(b) unlawfully at large after conviction of an offence, a certificate of such conviction and sentence in such country, and a statement of the amount of such sentence, if any, which has been served;

together with particulars of the person whose return is requested and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under section 8.

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

Arrest for purposes of committal.

8. (1) When a person is accused of a relevant offence or is alleged to be unlawfully at large after conviction of such offence, a Magistrate may -

(a) upon the receipt of an authority to proceed issue a warrant for the arrest of that person; or

(b) without such authority and upon information that the accused person is or is believed to be in or on his way to Swaziland, issue a provisional warrant for the arrest of that person, and for the purposes of this paragraph any information contained in an international notice issued by the International Criminal Police Organisation (INTERPOL) in respect of the accused person may be considered by the Magistrate either alone or with other information in deciding whether a provisional warrant should be issued for the arrest of the accused person.

(Amended A.10/1992.)

(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the magistrate, authorize 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, within the jurisdiction of such magistrate.

(3) If 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 copies 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 such warrant relates, by order cancel such warrant and, if such person has been arrested thereunder, discharge him from custody.

(4) A warrant of arrest issued under this section may, without being backed, be executed in any part of Swaziland, and may be so executed by any person to whom it is directed or by any police officer.

(5) If a warrant is issued under this section for the arrest of a person accused of the offence of stealing or receiving stolen property or any other offence in respect of property, a judicial officer shall have the same power to issue a warrant to search for such property as if such offence had been committed within Swaziland.

Proceedings for committal.

9. (1) A person arrested in pursuance of a warrant under section 8 shall (unless previously discharged under section 8(3)) be brought as soon as practicable before a court of committal.

(2) For the purposes of proceedings under this section a court of committal shall have like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrate conducting a preparatory examination.

(3) If 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 such court shall give notice to the Minister) after which he will be discharged from custody unless such authority has been received.

(4) If an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the return of such person or on his behalf that the offence to which such authority relates is a relevant offence, and is further satisfied that, if he is -

(a) accused of such offence, the evidence would be sufficient to warrant his trial therefor if it had been committed within the jurisdiction of such court; or,

(b) alleged to be unlawfully at large after conviction of such offence, he has been so convicted and appears to be so at large;

such court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his return thereunder; but if it is not satisfied or if the committal of such person is so prohibited, it shall discharge him from custody.

(5) A person against whom an order has been issued under this section may, within fifteen days after such issue, appeal against such order to the High Court, and on appeal the High Court make such order in the matter as it may deem fit.

Review and habeas corpus.

10. (1) If a person is committed to custody under section 9, the court shall inform him in ordinary language of his right to make application to the High Court for habeas corpus or for review of the order of committal, and shall forthwith give notice of such committal to the Minister.

(2) A person committed to custody under section 9 shall not be returned under this Act -

(a) in any case, until the expiry of fifteen days beginning with the day on which the order for his committal was made;

(b) if an application for habeas corpus or for review of the order of committal has been instituted in the High Court, so long as the proceedings in such action are pending.

(3) On any such application the High Court may, without prejudice to any other jurisdiction of the court, order the person committed to be discharged from custody if it appears to it that -

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

(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 return him.

(4) In any such action the High Court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 or subsection (3) of this section.

(5) For the purposes of this section an application for habeas corpus or for review of an order shall be treated as pending until any appeal in such proceedings is disposed of; and an appeal shall be treated as disposed of at the expiry of the time within which such appeal may be brought or, where leave to appeal is required, within which the application for leave is made, if such appeal is not brought or application made within such time.

Order for return to requesting country.

11. (1) If a person is committed to await his return and is not discharged by order of the High Court, the Minister may by warrant order him to be returned to the country by which the request for his return was made unless his return is prohibited, or prohibited for the time being, by section 6 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 any person who is serving a sentence of imprisonment or detention, or is charged with an offence, in Swaziland until, if he is -

(a) serving such a sentence, the sentence has been served;

(b) charged with an offence, the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment (other than a suspended sentence) until such 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 grounds mentioned in section 10(3) that it would be unjust or oppressive to return such person.

(4) The Minister may decide to make no order under this section in the case of any person accused or convicted of a relevant offence not punishable with death in Swaziland if such person could be or has been sentenced to death for such offence in the country making the request for his return.

(5) The Minister may decide to make no order under this section for the return of any person committed in consequence of a request made on behalf of any country if another request for his return under this Act, or a requisition for his surrender under any other law relating to extradition or the return of fugitive offenders, 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 the -

(a) relative seriousness of the offences in question;

(b) date on which each such request or requisition was made; or

(c) nationality or citizenship of the person concerned and his ordinary residence;

that preference should be given to the other request or requisition.

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

Discharge in case of delay in returning.

12. (1) If any person committed to await his return is in custody in Swaziland under this Act after the expiry of -

(a) a period of two months beginning with the first day on which, having regard to section 10(2), he could have been returned; or,

(b) if a warrant for his return has been issued under section 11, a period of one month beginning with the day on which such warrant was issued;

he may apply to the High Court for his discharge.

(2) If upon any such application the court is satisfied that reasonable notice of the proposed application has been given to the Minister, such 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 return has been issued under section 11, quash such warrant.

Return of escaped prisoners.

12bis. If a person who has been convicted of a relevant offence in a designated country is unlawfully at large before the expiry of his sentence for that offence or in breach of a condition of a licence to be at large is found in Swaziland, the provisions of this Act relating to the arrest and return of a person accused of a relevant offence shall apply with such modifications and adaptations as are necessary for the purpose of returning such person to the country in which he was convicted.

(Added A.10/1992.)

Evidence.

13. (1) In any proceedings under this Act, including proceedings on an application for habeas corpus or for the review of an order in respect of any person in custody under this Act, a document, duly authenticated, which -

(a) purports to set out evidence given on oath in a designated country shall be admissible as evidence of the matters stated therein;

(b) purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in any such country shall be admissible in evidence;

(c) certifies that a person was convicted on a date specified in such document of an offence against the law of, or of a part of, any such 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 if it -

(a) purports to set out evidence given as aforesaid, and to be certified by a judge, or magistrate, or officer in or of the country in question

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

to be the original document containing or recording such evidence or a true copy thereof;

(c) certifies that a person was convicted as aforesaid, and purports to

be certified as aforesaid; and such document is authenticated either by the oath of a witness or by the official seal of a Minister of the designated country.

(3) In this section "oath" includes affirmation or declaration.

(4) This section shall not prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Custody.

14. (1) Any person remanded or committed to custody under section 9 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 retaken in any part of Swaziland in like manner as a person escaping from custody under a warrant for his arrest issued in such part in respect of an offence committed therein.

(3) If any person, in custody in any part of Swaziland whether under this Act or otherwise, is required to be removed in custody under this Act to another part of Swaziland and is so removed by any means, including conveyance by air, 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 for the return of any person to any country shall be sufficient authority for all persons to whom it is directed and all police officers to receive such person, keep him in custody and convey him into the jurisdiction of such country.

Form of warrants and orders.

15. Any warrant or order to be issued or made by the Minister under any of the foregoing provisions of this Act shall be given under the hand of the Minister.

PART IV TREATMENT OF PERSONS RETURNED FROM DESIGNATED COUNTRIES

Restriction upon proceedings for other offences.

16. (1) This section applies to any person accused or convicted of an offence under the law of, or of any part of, Swaziland who is returned to Swaziland from any designated country under any law of such country corresponding with this Act.

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

- (a) the offence in respect of which he was returned;
- (b) any lesser offence proved by the facts for the purposes of securing his return; or
- (c) any other offence in respect of which the government of the country from which he was returned may consent to his being dealt with.

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

Restoration of persons not tried, or acquitted.

17. (1) This section applies to any person accused of an offence under the law of Swaziland who is returned to Swaziland as mentioned in section 16(1).

(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 returned are not begun within a period of six months beginning with the day of his arrival in Swaziland on being returned; or
- (b) on his trial for such offence, he is acquitted or discharged;

the Minister may, if he thinks fit, on the request of such 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 returned.

PART V SUPPLEMENTARY

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

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

Rules of Court.

19. (1) The Chief Justice may make such rules of court as are, in his opinion, necessary with respect to inquiries or any applications or appeals made under this Act.

(2) The Chief Justice shall, by notice in the Gazette, designate a magistrate to preside over a court of committal for purposes of this Act.

Amendment of Schedule.

19bis. The Minister may by Legal Notice published in the Gazette amend the Schedule to this Act.

(Added A.10/1992.)

Regulations.

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

SCHEDULE (Section 5)

Description of relevant offences in designated countries.

1 Murder (of any degree).

2 Culpable homicide.

3 An offence against the law relating to abortion.

4 Maliciously or wilfully inflicting grievous bodily harm, or wounding.

5 Assault occasioning actual bodily harm.

6 Rape.

7 Unlawful sexual intercourse with a female.

8 Indecent assault.

9 Procuring, or trafficking in, women or young persons for immoral purposes.

10 Bigamy.

11 Kidnapping, abduction or false imprisonment, or dealing in slaves.

12 Stealing, abandoning, exposing or unlawfully detaining a child.

13 Bribery.

14 Perjury or subornation of perjury or conspiring or attempting to defeat the course of justice.

15 Arson.

16 An offence concerning counterfeit currency.

17 An offence against the law relating to forgery.

18 Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving falsities or fraud.

19 Housebreaking with intent to commit a crime or similar offence.

20 Robbery.

21 Extortion by means of threats or by abuse of authority.

22 An offence against insolvency law or company law.

23 Malicious injury to property.

24 Acts done with the intention of endangering vehicles, vessels or aircraft.

25 An offence against the law relating to dangerous drugs or narcotics.

26 Piracy.

27 Revolt against the authority of the master of a ship or the commander of an aircraft.

28 Contravention of import or export prohibitions relating to precious stones, gold and other precious metals.