

Statutory Instrument No. 56 of 1969.

THE EXTRADITION ACT, 1968

THE EXTRADITION (REPUBLIC OF SOUTH AFRICA) ORDER, 1969

(Published on 2nd May, 1969)

In the exercise of the powers vested in him by section 4 of the Extradition Act, 1968 (No. 53 of 1968), the Minister of State makes the following Order —

Citation

1. This Order may be cited as the Extradition (Republic of South Africa) Order, 1969, and shall come into operation on the 8th May, 1969.

Application of Part II of the Act in the case of the Republic of South Africa

2. So long as the Extradition Treaty between the Republic of Botswana and the Republic of South Africa, in respect of which instruments of ratification were exchanged on the 8th April, 1969, and the terms of which are recited in the Schedule hereto, remains in force, Part II of the Extradition Act, 1968, shall apply in the case of the Republic of South Africa, subject to the undermentioned conditions, exceptions or qualifications —

- (a) the crimes which shall be deemed to be extradition crimes for the purposes of this Order and the Act shall be such as are specified in Article 2 of the Treaty;
- (b) Articles 4, 5 and 9 of the Treaty shall have effect notwithstanding anything contained in or omitted from Part II of the Act.

SCHEDULE

**EXTRADITION TREATY BETWEEN THE REPUBLIC OF SOUTH AFRICA
AND THE REPUBLIC OF BOTSWANA**

The State President of the Republic of South Africa and the President of the Republic of Botswana —

desiring to regulate by mutual agreement the relations between their two countries in the sphere of extradition of criminals;

have agreed to conclude a treaty to that effect and have for this purpose appointed as their Plenipotentiaries:

The State President of the Republic of South Africa:

Dr. The Honourable Hilgard Muller

The President of the Republic of Botswana:

The Honourable Moutlakgola Palgrave Kediretse Nwako

The Plenipotentiaries, after having exchanged their respective full powers, found to be in good and due form, have agreed as follows :-

ARTICLE 1
OBLIGATION TO EXTRADITE

The Contracting Parties undertake to surrender to each other, subject to their respective laws on extradition and in accordance with the provisions and conditions laid down in this Treaty, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence.

ARTICLE 2
EXTRADITABLE OFFENCES

Extradition shall be granted in respect of offences which are in terms of the laws of the requesting Party subject to the jurisdiction of that Party's highest court of appeal in criminal matters, provided that they are punishable, both under the laws of the requesting Party and of the requested Party, by imprisonment for a maximum period of at least twelve months or by some more severe penalty. Where a sentence has been imposed after conviction in respect of any such offence, extradition shall be granted irrespective of the nature or period of the punishment imposed.

ARTICLE 3
POLITICAL OFFENCES

Extradition may be refused if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

ARTICLE 4
MILITARY OFFENCES

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Treaty.

ARTICLE 5
FISCAL OFFENCES

Extradition shall be granted in accordance with the provisions of this Treaty for offences in connection with taxes, duties, customs and exchange, only if the Contracting Parties have so decided by exchange of notes in respect of any such offence or category of offences.

ARTICLE 6
CAPITAL PUNISHMENT

Extradition may be refused if under the law of the requesting Party the offence for which extradition is requested is punishable by death and if the death penalty is not provided for such offence by the law of the requested Party.

ARTICLE 7

PENDING PROCEEDINGS FOR THE SAME OFFENCE

The requested Party may refuse to extradite the person claimed if the competent authorities of such Party are proceeding against him in respect of the offence or offences for which extradition is requested.

ARTICLE 8

NON BIS IN IDEM

Extradition shall not be granted if final judgement has been passed by the competent authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

ARTICLE 9

LAPSE OF TIME

Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment for the offence for which extradition is requested.

ARTICLE 10

THE REQUEST AND SUPPORTING DOCUMENTS

1. The request shall be in writing and shall be communicated through the diplomatic channel or such other channel as may from time to time be agreed upon by the Contracting Parties.

2. The request shall be supported by —

- (a) if the person claimed is a person accused, the original warrant of arrest issued in accordance with the law of the requesting Party and *prima facie* evidence of the commission of the offence by such person ;
- (b) if the person claimed is a person convicted, the original or a certified copy of the record of the conviction and enforceable sentence and a statement showing how much of the sentence has not been carried out ;
- (c) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible ;
- (d) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law ; and
- (e) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity.

ARTICLE 11

DOCUMENTS RELATING TO EVIDENCE

The authorities of the requested Party shall admit as evidence in any proceedings for extradition any deposition, statement on oath or affirmation, any record of a conviction, any warrant, and a copy or translation of the aforesaid documents, if it is authenticated —

- (a) in the case of a warrant, by being signed, or in the case of any other original document by being certified, by a judge, magistrate or other competent officer of the requesting Party or, in the case of a copy or translation, by being certified to be a true copy or translation of the original and
 - (b) either by the oath of some witness or by being sealed with the official seal of the Minister of Justice or other competent authority of the requesting Party,
- or in such other manner as may be permitted by the law of the requested Party.

ARTICLE 12

SUPPLEMENTARY INFORMATION

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Treaty, the latter Party shall request the necessary supplementary information and may fix a time limit for the receipt thereof.

ARTICLE 13

RULE OF SPECIALITY

1. A person who has been extradited shall not be proceeded against, or sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to his surrender other than that for which he was extradited, nor shall he for any other reason be restricted in his personal freedom, except in the following cases :-

- (a) When the Party which surrendered him, consents thereto. A request for consent shall be submitted, accompanied by the documents mentioned in Article 10, paragraph 2, and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall not be withheld when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Treaty.
- (b) When the person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

2. The requesting Party may however take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

ARTICLE 14

RE-EXTRADITION TO THIRD STATE

Except as provided for in Article 13, paragraph 1(b), the requesting Party shall not, without the consent of the requested Party, surrender to a third state a person surrendered to the requesting Party and sought by the said third state in respect of offences committed before his surrender. The requested Party may request the production of the documents mentioned in Article 10, paragraph 2.

ARTICLE 15

PROVISIONAL ARREST

1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 10, paragraph 2 (a) or (b), exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.

3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if within a period of 18 days after arrest the requested Party has not received the request for extradition and the documents mentioned in Article 10, paragraph 2. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

ARTICLE 16

CONFLICTING REQUESTS

If extradition is requested concurrently by more than one state, either for the same offence or for different offences, the requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another state.

ARTICLE 17

SURRENDER OF THE PERSON TO BE EXTRADITED

1. The requested Party shall inform the requesting Party by the means mentioned in Article 10, paragraph 1, of its decision with regard to the extradition.

2. Reasons shall be given for any complete or partial rejection.

3. If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.

4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to extradite him thereafter for the same offence.

5. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall agree on a new date for surrender and the provisions of paragraph 4 of this Article shall thereupon apply.

ARTICLE 18

POSTPONED OR CONDITIONAL SURRENDER

1. The requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party for an offence other than that for which extradition is requested or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party.

2. The requested Party may, instead of postponing surrender, surrender the person claimed to the requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

ARTICLE 19

HANDING OVER OF PROPERTY

1. The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over to the latter property —

(a) which may be required as evidence; or

(b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

2. The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been granted, cannot be carried out owing to the death or escape of the person claimed.

3. When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over to the requesting Party on condition that it be returned.

4. Any rights which the requested Party or third parties may have acquired in the said property shall remain unaffected. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial, unless such rights have been waived.

ARTICLE 20

TRANSIT

1. Transit through the territory of either Contracting Party shall be granted to the other Contracting Party in respect of the extradition of any person from a third state in accordance with the following provisions :-

- (a) A request for transit shall be submitted in the manner prescribed in Article 10, paragraph 1.
- (b) The provisions and conditions laid down in this Treaty shall *mutatis mutandis* apply to such a request as if it were a request for the extradition of the person concerned.
- (c) The Party requested to grant transit may require the production of the documents mentioned in Article 10, paragraph 2.
- (d) If the person claimed is to be transported by aircraft through the territory of either Contracting Party, the following provisions shall apply :-
 - (i) If no intermediate landing is to be made, the requesting Party shall notify the Contracting Party over whose territory the flight is to be made and shall confirm that a warrant of arrest or a conviction and enforceable sentence exists and shall give an assurance that in view of the facts known to it and considering the documents in its possession there is no reason why transit in accordance with this treaty should be refused. In the case of an unscheduled intermediate landing the notification concerning the use of air transport shall have the effect of a request for provisional arrest as provided for in Article 15, and the requesting Party shall submit a formal request for extradition.
 - (ii) If an intermediate landing is to be made the provisions of paragraphs (a), (b) and (c) shall apply.

2. Any right of transit arising from the operation of paragraph 1, shall be exercised in accordance with such conditions as the requested Party may prescribe.

ARTICLE 21

LANGUAGES TO BE USED

Where the Republic of South Africa is the requested Party, the documents to be produced shall be accompanied by certified translations into Afrikaans or English if the originals are not in one of these languages. Where the Republic of Botswana is the requested Party, the documents to be produced shall be accompanied by certified translations into English if the originals are not in this language.

ARTICLE 22

EXPENSES

1. Expenses incurred in the territory of the requested Party by reason of the arrest, detention and maintenance of the person claimed and any court proceedings arising from the request for extradition shall be borne by that Party.

2. The requested Party shall bear the expenses occasioned by the conveyance of the person claimed to its frontier or port of embarkation while expenses occasioned by the transportation of such person from that frontier or port to the territory of the requesting Party shall be borne by the latter Party.

3. Expenses incurred by reason of transit through the territory of a Party requested to grant transit shall be borne by the requesting Party.

ARTICLE 23

APPLICATION OF THE TREATY

This Treaty shall apply to offences committed and sentences imposed before or after the date on which it comes into force.

ARTICLE 24

RATIFICATION AND ENTRY INTO FORCE

1. This Treaty shall be ratified. The instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force thirty days after the date of the exchange of the instruments of ratification.

ARTICLE 25

TERMINATION

This Treaty shall be terminated six months after written notice of denunciation has been given by either of the Contracting Parties.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Treaty.

DONE in duplicate in the Afrikaans and English languages, both texts being of equal force and effect: Provided that if there is any uncertainty concerning the interpretation of the Treaty, the English text shall prevail.

For the Republic of South Africa:
Cape Town, this twenty-seventh day
of February, 1969.

H. MULLER

For the Republic of Botswana:
Gaberones, this 4th day
of March, 1969

M.P.K. NWAKO

A.M. MOGWE,
Permanent Secretary.

Office of the President,
GABERONES.
24th April, 1969.