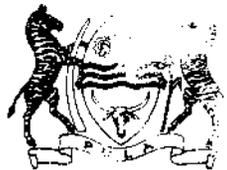


THE EXTRADITION ACT, 1968

Cap 09:03

No. 53



*21.54/19
S.A. 5122
1968
of 1968*

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE EXTRADITION OF PERSONS ACCUSED OR CONVICTED OF CRIMES COMMITTED WITHIN THE JURISDICTION OF OTHER COUNTRIES

Date of Assent: 6.9.68

Date of Commencement: 13.9.68

ENACTED by the Parliament of Botswana.

PART I

PRELIMINARY

Short Title

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

Interpretation

2. (1) In this Act, unless the context otherwise requires –

“fugitive criminal” means any person accused or convicted of an extradition crime committed within the jurisdiction of any other country who is in or is suspected of being in Botswana;

“magistrate” means any person empowered to preside over a subordinate court of the First Class;

“warrant”, in the case of any country, includes any judicial document authorizing the arrest of a person accused or convicted of a crime.

(2) Subject to the provisions of section 4, for the purposes of this Act “extradition crime” means a crime which, if committed within the jurisdiction of Botswana would be an offence described in the First Schedule.

(3) The Minister may, by order, amend the First Schedule to this Act by the insertion of further offences, the deletion of any offence, or the alteration of any description of any offence.

PART II

GENERAL PROVISIONS RELATING TO EXTRADITION

Application of Part to Specified Countries

3. This Part shall apply to any country –
- (a) in respect of which the Minister, having regard to any reciprocal provisions under the law of that country, by order so directs and subject to such conditions, exceptions and qualifications as may be specified in the order;
 - (b) to which the provisions of section 28 of the Constitution apply, subject to such conditions, exceptions and qualifications as the Minister may by order direct.

Application of Part Pursuant to Arrangements

4. (1) Where an arrangement has been made with any country with respect to the surrender to that country of any fugitive criminal, the Minister may, by order in the *Gazette*, direct that this Part shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and this Part shall apply accordingly.

(2) An order made under the preceding subsection shall recite or embody the terms of the arrangement and shall not remain in force for any longer period than the arrangement.

(3) An order under subsection (1) may prescribe what crimes shall be deemed to be extradition crimes for the purposes of the order and this Act.

Liability of Criminal to Surrender

5. Where this Part of this Act applies in the case of any country, every fugitive criminal of that country who is in or suspected of being in Botswana shall be liable to be apprehended and surrendered in the manner provided by this Part –

- (a) whether the crime in respect of which the surrender is sought was committed before or after the commencement of this Act or the application of this Part to that country; and
- (b) whether there is or is not any concurrent jurisdiction in a court of Botswana over that crime.

Liability of Accessories to be Surrendered

6. Every person who is accused or convicted of having counselled, procured, commanded, aided or abetted the commission of an extradition crime or of being accessory before or after the fact to any extradition crime, shall be deemed, for the purposes of this Part, to be accused or convicted of having committed that crime, and shall be liable to be apprehended and surrendered accordingly.

Restrictions on Surrender of Criminals

7. The following provisions shall be observed with respect to the surrender of fugitive criminals, that is to say -

- (a) a fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if it appears to a court or the Minister that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character;
- (b) a fugitive criminal shall not be surrendered to any country unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Botswana, be dealt with in that country for or in respect of any offence committed before his surrender under this Act, other than -
 - (i) the offence in respect of which the surrender is grounded;
 - (ii) any lesser offence proved by the facts before the court which committed the criminal under the provisions of section 11;
 - (iii) any other offence in respect of which the President may consent to his being so dealt with;
- (c) a fugitive criminal shall not be surrendered to any country if the offence in respect of which his surrender is demanded is punishable by death in that country and if under the laws of Botswana the death penalty is not impossible for such an offence committed in Botswana unless provision is made by an arrangement with that country for securing that he will not be punished by death in respect of that offence;
- (d) a fugitive criminal who has been accused of some offence within the jurisdiction of Botswana, not being the offence for which his surrender is asked, or who is undergoing sentence under any conviction in Botswana, shall not, unless the President otherwise directs, be surrendered until after he has been discharged, whether by acquittal or on the expiration of his sentence or otherwise;
- (e) a fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender;
- (f) a fugitive criminal shall not be surrendered if such surrender would be contrary to the terms of any arrangement as recited or embodied in any order made under the provisions of section 4;
- (g) a fugitive criminal shall not be surrendered if final judgment has been passed by any court in Botswana upon him in respect of the offence for which his surrender is sought.

Minister's Order for Surrender

8. (1) A requisition for the surrender of a fugitive criminal of any country who is in or suspected of being in Botswana shall be made to the Minister by a diplomatic representative or consular officer of that country.

(2) The Minister may, upon a requisition being made under the provisions of the preceding subsection, signify in writing to a magistrate that a requisition has been made and require the magistrate to issue his warrant for the apprehension of the fugitive criminal.

(3) Where the Minister is of the opinion that the offence is one of a political character, he may refuse to make an order and may also at any time order a fugitive criminal accused or convicted of the offence to be discharged from custody.

Issue of Warrant

9. (1) The warrant for the apprehension of a fugitive criminal whether accused or convicted of a crime, who is in or suspected of being in Botswana may be issued by a magistrate –

- (a) on the receipt of the order by the Minister and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in Botswana; or
- (b) on such information or complaint and such evidence or after such proceedings as would, in the opinion of the magistrate issuing the warrant, justify the issue of a warrant if the crime had been committed or the criminal convicted in the district or area in which he exercises his jurisdiction.

(2) Where a warrant for arrest has been issued in terms of subsection (1), any magistrate may issue a warrant, empowering a police officer to search for and seize property –

- (a) which may be required as evidence at the trial of the fugitive criminal; or
- (b) which has been acquired as a result of the extradition crime.

(3) A magistrate issuing a warrant under this section without an order from the Minister shall forthwith send a report of the fact of the issue, together with the evidence and information or complaint or certified copies thereof, to the Minister who may order the warrant to be cancelled and the person who has been apprehended on the warrant to be discharged.

(4) A fugitive criminal when apprehended on a warrant under this section shall be brought before a magistrate within the next twenty-four hours, who may issue a warrant for his further detention.

(5) A fugitive criminal apprehended on a warrant issued without the order of the Minister shall be released by the magistrate unless the magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from the Minister notice that a requisition has been made for the surrender of the criminal.

Hearing of Case and Evidence

10. (1) When a fugitive criminal is brought before a magistrate, the magistrate shall hold an inquiry with a view to the surrender of such person to the foreign country.

(2) Subject to the provisions of this Act, the magistrate 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 Botswana 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 he 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 fugitive criminal, 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 inquiry if authenticated to enable them to be produced in any court in Botswana or in the manner provided for in the extradition agreement concerned.

(4) The magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is not an extradition crime or is an offence for which the prisoner may not be surrendered.

Committal or Discharge of Prisoner

11. (1) Subject to the provisions of section 7, in the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of the criminal is duly authenticated, and such evidence is produced as, subject to the provisions of this Act, would according to the law of Botswana justify the committal for trial of the prisoner if the crime of which he is accused was committed in Botswana, the magistrate shall commit him to prison.

(2) Subject to the provisions of section 7, in the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as, subject to the provisions of this Act, would according to the law of Botswana prove that the prisoner was convicted of such crime, the magistrate shall commit him to prison.

(3) The order of the magistrate under the preceding subsections of this section shall be to commit the fugitive criminal to prison to await the warrant of the Minister for his surrender; and the magistrate shall forthwith send to the Minister a certificate of the committal and such report on the case as he may think fit.

(4) When the fugitive criminal is committed to prison to await his surrender, the committing magistrate, if of the opinion that it will be dangerous to the life or prejudicial to the health of the prisoner to remove him to prison, may order him to

be held in custody at the place in which he for the time being is or any other place named in the order to which the magistrate thinks he can be moved without danger to his life or prejudice to his health.

(5) A fugitive criminal held in custody under the provisions of the preceding subsection shall be deemed to be in legal custody and this Act shall apply to him as if he were in the prison to which he was committed.

(6) Where the magistrate is not satisfied with the evidence mentioned in subsection (1) or subsection (2) of this section, he shall order the prisoner to be discharged.

Surrender of Fugitive by Warrant of Minister

12. (1) Whenever a magistrate commits a fugitive criminal to prison, he shall inform the criminal that he may, within fifteen days of such committal, appeal against the committal to the High Court.

(2) Upon the expiration of the period of fifteen days or, if an appeal is lodged, after the dismissal or lapsing of the appeal, as the case may be, or after such further period as may be allowed in either case by the Minister, the Minister may by warrant order the fugitive criminal, if not released on the decision of the court, to be surrendered to such person as is in his opinion duly authorized to receive the fugitive criminal by the country from which the requisition for the surrender proceeded, together with any property seized under the provisions of section 9(2), and the fugitive criminal and such property shall be surrendered accordingly.

(3) A person to whom the warrant is directed, and the person so authorized, may receive, hold in custody and convey into the jurisdiction of that country the criminal mentioned in the warrant.

(4) Where a criminal mentioned in a warrant issued under the provisions of this section escapes out of any custody to which he may be delivered on or in pursuance of the warrant, he may be retaken in the same manner as any person accused of any crime against the laws of Botswana may be retaken upon an escape.

Discharge of Persons Apprehended

13. Whenever a fugitive criminal who has been committed to prison is not surrendered and conveyed out of Botswana within two months after the committal, or if appeal against such committal has been lodged after the decision of the court upon the matter, the High Court may –

- (a) upon application made to it by or on behalf of the criminal; and
- (b) upon proof that reasonable notice of the intention to make the application has been given to the Minister,

order the criminal to be released unless sufficient cause is shown to the contrary.

Execution of Warrant

14. The warrant of a magistrate issued in pursuance of this Part may be executed in any part of Botswana in the same manner as if it had been originally issued or subsequently endorsed by a magistrate having jurisdiction in the place where it is executed.

Trial of Criminal Surrendered by Another Country

15. Where in pursuance of an arrangement with another country any person accused or convicted of any crime is surrendered by that country, that person shall not, unless such arrangement provides to the contrary, until he has been restored or had an opportunity of returning to that country, be triable or tried for any offence committed prior to the surrender in Botswana other than an offence proved by the facts on which the surrender is grounded.

PART III

MISCELLANEOUS PROVISIONS

Attorney-General may Appear at Extradition Proceedings

16. The Attorney-General or any person delegated by him may appear at any enquiry held under this Act.

Entry and Passage through Botswana of Persons in Custody

17. (1) Any person entering or passing through Botswana in custody by virtue of any warrant or order lawfully issued in any foreign country, shall during his passage through Botswana be deemed to be in lawful custody if the Minister has, at the request of the foreign country 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 conclusive proof of the fact.

Regulations

18. The Minister may make regulations --

- (a) prescribing the form of any warrant or other document which is required to be or which may be issued under this Act;
- (b) generally for the better carrying out of the objects and purposes of this Act.

Repeals

19. The laws specified in the Second Schedule are repealed to the extent set out therein.

FIRST SCHEDULE

(Section 2)

EXTRADITION CRIMES

1. Murder
2. Manslaughter
3. An offence against the law relating to abortion
4. Maliciously or wilfully wounding or inflicting grievous bodily harm
5. Assault occasioning actual bodily harm
6. Rape
7. Unlawful sexual intercourse with a female of immature age or suffering from mental incapacity
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 to defeat the course of justice
15. Arson or fire-raising
16. An offence concerning counterfeit currency
17. An offence against the law relating to forgery
18. Stealing, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud
19. Burglary, housebreaking or any 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 or wilful damage to property
24. Acts done with the intention of endangering vehicles, vessels of 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 prohibitions relating to precious stones, gold and other precious metals

SECOND SCHEDULE

(Section 27)

<i>Statute</i>	<i>Extent of Repeal</i>
The Fugitive Offenders Act, 1881 (44 and 45 Vict. c.69)	<i>the</i> Parts I & III, sections 27, 31, 32, 35, 36 and 37
The Fugitive Criminals Surrender Proclamation. (Chapter 21)	The whole <i>See Act 54/72</i>
The Fugitive Criminals Surrender (Amendment) Proclamation, 1960 (No. 66 of 1960).	The whole

Passed by the National Assembly this day, the 9th August, 1968.

G.T. MATENGE,
Clerk of the National Assembly.