

CHAPTER 59

EXTRADITION

ARRANGEMENT OF SECTIONS

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CHAPTER 59

EXTRADITION

AN ACT TO MAKE PROVISION FOR THE EXTRADITION OF FUGITIVE PERSONS TO AND FROM COMMONWEALTH COUNTRIES AND FOREIGN STATES, TO REGULATE THE TREATMENT OF PERSONS ACCUSED OR CONVICTED OF OFFENCES IN SOLOMON ISLANDS WHO ARE EXTRADITED FROM COMMONWEALTH COUNTRIES OR FOREIGN STATES, TO REPEAL THE FUGITIVE OFFENDERS (BSIP) ORDER 1967 AND OTHER ORDERS DEALING WITH THE SURRENDER OF FUGITIVE OFFENDERS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

24 of 1987
2 of 1990

[1st June 1988]

PART I

PRELIMINARY

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

2. In this Act, unless the context otherwise requires- Interpretation

"designated Commonwealth country" includes-

- (a) a colony, territory, protectorate or other dependency of such country;
- (b) a territory for the international relations of which such country is responsible; and

(c) a ship or aircraft of, or registered in, such country;

"extradition arrangement" includes any treaty or agreement relating to the extradition of fugitive offenders made prior to 7th July, 1978, which extends to, and is binding on the Government of Solomon Islands;

"extradition offence" has the meaning assigned to such expression by section 5;

"foreign State" means any state outside Solomon Islands other than a Commonwealth country and includes every constituent part of such State and any dependency thereof;

"treaty State" includes-

(a) a colony, territory, protectorate or other dependency of such State;

(b) a territory for the international relations of which such State is responsible; and

(c) a ship or aircraft of, or registered in, such State.

3.-(1) The Minister may, by Order published in the Gazette, declare that the provisions of this Act shall apply in respect of any Commonwealth country specified therein. Application of Act to designated Commonwealth countries

(2) An Order made under subsection (1) shall have effect for the return of persons to, or in relation to persons returned from any designated Commonwealth country, subject to such exceptions, adaptations or modifications as may be specified in the Order.

(3) Every country within the Commonwealth in relation to which an Order made under this section is for the time being in force is (hereinafter referred to as a "designated Commonwealth country").

4.-(1) Where any extradition arrangement has been made by the Government of Solomon Islands with any foreign State, whether before or after the commencement of this Act, the Minister may by Order published in the Gazette, declare that the provisions of this Act shall apply in respect of such foreign State. Application of Act to foreign States

(2) An order made under subsection (1) shall have effect for the return of persons to, or in relation to persons returned from any treaty State subject to such exceptions, adaptations or modifications as may be specified in the Order.

(3) Every foreign State in relation to which an Order made under this section is for the time being in force is (hereinafter referred to as "treaty State").

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

Extraditable offences

(a) in the case of an offence against the law of a treaty State, it is an offence which is provided for in the extradition arrangement;

Schedule

(b) in the case of an offence against the law of a designated Commonwealth country, it is an offence which, however, described in that law, falls within any description set out in the Schedule hereto and is punishable under that law with imprisonment for a term of not less than twelve months; and

(c) in the case, the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Solomon Islands if it took place within Solomon Islands, or, outside Solomon Islands.

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

(3) Each offence described in the Schedule hereto shall be deemed to include the offence of attempting or conspiring to commit, of assisting, counselling or procuring the commission of, or being accessory before or after the act to, such offence, and of impeding the apprehension or prosecution of persons guilty of such offence.

(4) Reference in this section to the law of any designated Commonwealth country or of any treaty State shall be deemed to include reference to the law of any part of such country or State, as the case may be.

6.-(1) A person shall not be extradited under this Act to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the court of committal, or to the High Court upon an application made to it for a mandate in the nature of a writ of *habeas corpus*-

General restrictions on
extradition

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

(b) that the request for extradition, (though purporting to be made on account of the extraditable 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) 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, nationality, or political opinions.

(2) A person accused of an offence shall not be extradited under this Act to any designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purpose of his extradition, if it appears, as provided in subsection (1), that if charged with that offence in Solomon Islands 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 designated Commonwealth country or to any treaty State, or be committed to or kept in custody for the purposes of such extradition, unless provision is made by the law of that Commonwealth country, or, in the case of a treaty State, by the extradition arrangement with that State, for securing that he will not, unless he has first been restored, or had an opportunity of returning to Solomon Islands, be arrested, detained, remanded or otherwise dealt with in that country or State, 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 established before the court of committal; or

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

(4) The reference in this section to an offence of a political character does not include an offence against the life or person of the head of any designated Commonwealth country or treaty State or any related offence described in subsection (3) of section 5.

PART II

PROCEEDINGS FOR EXTRADITION

7.-(1) Subject to the provisions of this Act relating to provisional warrants, no person shall 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 the Minister by or on behalf of the Government of the designated Commonwealth

Authority to proceed

country or treaty State in which the person to be extradited is accused or was convicted.

(2) There shall be furnished with any request made for the purposes of this section by or on behalf of any designated Commonwealth country or treaty State-

(a) in the case of a person accused of an offence, a warrant for his arrest issued in that country or State;

(b) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country or State, and a statement of the amount if any of that sentence which has been served,

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

(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.-(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- Arrest for purposes of committal

(a) on receipt of an authority to proceed by a magistrate within the jurisdiction of whom such person is or is believed to be;

(b) without such an authority by a magistrate upon information that the said person is or is believed to be on his way to Solomon Islands,

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

(2) A warrant 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, within the jurisdiction of the magistrate.

(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.

(5) Where a warrant is issued under this section for the arrest of a person accused of an offence of larceny or receiving stolen property or any other offence in respect of property, any magistrate shall have the like power to issue a warrant to search for the property as if the offence had been committed within the jurisdiction of such magistrate.

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

(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 a magistrate conducting a preliminary inquiry.

(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 shall be discharged from custody unless such an authority has been received.

(4) Where 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 extradition of that person or on behalf of that person, that the offence to which the authority relates is an extraditable offence and is further satisfied-

(a) 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;

(b) 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,

the court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his extradition thereunder; 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.

10.-(1) Where a person is committed to custody under section 9, the court shall Application for *habeas
corpus*

inform him in ordinary language of his right to make an application to the High Court for a mandate in the nature of a writ of *habeas corpus* and shall forthwith give notice of the committal to the Minister.

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

(a) in any case, until the expiration of a period of fifteen days commencing on the day on which the order for his committal is made; and

(b) if an application for *habeas corpus* is made to the High Court, so long as proceedings on that application 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 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 High Court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 or under subsection (3).

(5) For the purposes of this section proceedings in an application for *habeas corpus* 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.-(1) Where a person is committed to await his extradition and is not discharged by order of the High Court, the Minister may by warrant order him to be extradited to the country or State 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, or

Order for extradition

the Minister decides under this section to make no such order in his case.

(2) The Minister shall not make an order under this section in the case of a person who is serving a sentence of imprisonment, or is charged with an offence, in Solomon Islands until after the expiration of the following period, that is to say,-

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

(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 may make no order under this section in the case of any person if it appears to the Minister, on any ground set out in subsection (3) of section 10, that it would be unjust or oppressive to extradite that person.

(4) The Minister shall make no order under this section in respect of a person who is accused or convicted of an extraditable offence, if that person could be, or has been, sentenced to death for that offence in the country or State by which the request for his extradition is made.

(5) The Minister may make no order under this section for the extradition of a person committed in consequence of a request made by or on behalf of a designated Commonwealth country or treaty State if another request for his extradition under this Act has been made by or on behalf of another designated Commonwealth country or treaty State 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 of which each such request was made;
and

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

that preference be given to such other request.

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

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

(a) in any case, the period of two months commencing on the first day on which, having regard to subsection (2) of section 10, he could have been extradited; or

(b) where a warrant for his extradition has been issued under section 11, a period of one month commencing on the day on which that warrant was issued,

he may apply to the High Court for his discharge.

(2) If upon any such application being made, the High 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 section 11, quash that warrant.

13.-(1) In any proceedings under this Act, including proceedings on an application for a mandate in the nature of a writ of *habeas corpus* in respect of a person in custody thereunder- Evidence

(a) a document, duly authenticated, which purports to set out evidence given on oath in a designated Commonwealth country or treaty State 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 any such country or State shall be admissible in evidence; and

(c) a document, duly authenticated, which certifies that such person was convicted on a date specified in the document of an offence against the law of, or of a part of, any such country or State 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 purpose 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 other officer in or of the country or State in question to be the original document containing or recording that evidence or a true copy of such 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 case the document is authenticated either by the oath of a witness, or by the official seal of a Minister, of the designated Commonwealth country or treaty State in question.

(3) In the section "oath" includes affirmation or declaration; and nothing in this section shall be deemed or construed to affect or prejudice the admission in evidence of any document which is admissible in evidence otherwise than under this section.

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

Custody

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

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

(4) A warrant under section 11 for the extradition of any person to a designated Commonwealth country or treaty State shall be sufficient authority for all persons to whom it is directed and all police, prisons and other officers to receive that person, keep him in custody and convey him into the jurisdiction of that country or State.

15. Any warrant or order required to be issued or made by the Minister under the foregoing provisions of this Act shall be in the prescribed form and shall be given under the hand of the Minister.

Form of warrant and
Orders

PART III

EXTRADITION FROM DESIGNATED COMMONWEALTH COUNTRIES AND TREATY STATES

16.-(1) Where a person accused or convicted of an offence in Solomon Islands, whether committed before or after the commencement of this Act, is, or is suspected of being, in any designated Commonwealth country or treaty State or within the jurisdiction of, or of a part of, such country or State, the Minister may make a request to that country or State for the extradition of that person.

(2) Where any person has been extradited to Solomon Islands upon a request for his extradition being made, such person shall not, during the period described in subsection (3), be arrested, detained, remanded or otherwise dealt with in Solomon Islands for or in respect of any offence committed before his extradition, other than-

(a) the offence in respect of which he was extradited;

(b) any lesser offence proved by the facts established for the purpose of securing his extradition; or

(c) any other offence in respect of which the Government of the designated Commonwealth country or the treaty State from which he was extradited has consented to his being dealt with.

(3) The period referred to in subsection (2) in relation to a person to whom this section applies is the period commencing on the day of his arrival in Solomon Islands on his extradition and ending forty-five days after the first subsequent day on which he has the opportunity to leave Solomon Islands.

17.-(1) Where a person accused of an offence is extradited to Solomon Islands and-

Restoration of persons not tried or acquitted

(a) proceedings against him for the offence for which he was extradited are not begun within the period of six months commencing on the day of his arrival in Solomon Islands on being extradited; or

(b) on his trial for that offence, he is acquitted or discharged by any court in Solomon Islands,

the Minister may, if he thinks fit, arrange for him to be sent back free of charge and with as little delay as possible to the designated Commonwealth country or treaty State from which he was extradited.

PART IV

MISCELLANEOUS

18. The Minister may make regulations under this Act in respect of all such matters as are necessary for giving full force and effect to the principles and provisions of this Act, and in particular, in respect of any matter required by this Act to be prescribed.

Regulations

19. A person whose extradition is sought by a designated Commonwealth country or treaty State shall, subject to the provisions of this Act, be liable to be arrested and extradited whether the offence in respect of which he has been accused or convicted was committed before or after the commencement of this Act.

Extradition from Solomon Islands applicable to offences committed before and after the commencement of this Act

20. Everything found in the possession of a person at the time of his arrest which may be material as evidence in proving the extraditable offence may be delivered up with such person when he is dealt with subject to the rights, if any, of third persons in respect thereto.

21.-1 Subject to the provisions of subsection (2), the Fugitive Offenders (British Solomon Islands Protectorate) Order 1967, the Pacific (Fugitive Criminal Surrender) Order 1914 and the Fugitive Offenders (United Kingdom Dependencies) Order 1968 are hereby repealed.

Repeals and savings
1967 No. 1907
1914 No. 152
1968 No. 2033

(2) Notwithstanding the repeal of the aforesaid Orders the countries designated under these Orders shall be deemed to have been designated under this Act until such time as the Minister by Order revokes or replaces the same.

SCHEDULE

(Section 5)

DESCRIPTION OF EXTRADITABLE OFFENCES

- A. 1. Murder of any degree.
- 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.

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.
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 on 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. Blackmail or extortion by means of threats or by abuse of authority.
22. An offence against bankruptcy law or company law.
23. Malicious or wilful damage 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.
29. Any offence or attempt to commit an offence under the Aircraft (Tokyo, Hague and Montreal Conventions) Act. 2 of 1990, s. 22
Cap. 46

B. Extradition offences established under multilateral international conventions to which both the requesting and the requested parts of the Commonwealth are parties.

(No Subsidiary Legislation)