

EXTRADITION ACT, 1960 (ACT 22).

As amended by

EXTRADITION ACT, 1960 (AMENDMENT) DECREE, 1966 (NLCD 65)1

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THE TWENTY-SECOND

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED

THE EXTRADITION ACT, 1960

AN ACT to consolidate and amend the law relating to extradition of persons accused or convicted of crimes committed within the jurisdiction of other countries.

DATE OF ASSENT: 15th December, 1960

BE IT ENACTED by the President and the National Assembly in this present Parliament assembled as follows:—

PART I—EXTRADITION GENERALLY

Preliminary

Section 1—Application of Part I.

(1) Where an arrangement has been made with any country with respect to the surrender to that country of any fugitive criminals, the President by legislative instrument may order that this Act 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 under subsection (1) shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

(3) Every order under this section shall be laid before the National Assembly.

Section 2—Restrictions on Surrender of Fugitive Criminals.

(1) The restrictions contained in the following provisions of this section shall be observed with respect to the surrender of fugitive criminals.

(2) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is requested is one of a political character, or if it appears to the Court or the National Liberation Council 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.

(3) A fugitive criminal shall not be surrendered to any country unless provision is made by the law of that country or by arrangement:—

(a) that the person claimed shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order, or otherwise restricted in his personal freedom, for any offence committed prior to his surrender other than that for which his surrender is requested except in the following cases—

(i) with the consent of the Government of Ghana; or

(ii) where that person having had an opportunity to leave the territory of that country, has not done so within thirty days of his final discharge in respect of the offence for which he was surrendered or has returned to the territory of that country after leaving it; and

(b) that where the description of the offence charged in the country requesting the surrender of the fugitive criminal is altered in the course of proceedings, he shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow his being surrendered to that country by Ghana under this part of this Act.

(4) A fugitive criminal who has been accused of some offence within the jurisdiction of Ghana, not being the offence for which his surrender is requested, or is undergoing sentence under any conviction in Ghana shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise.

(5) 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.

(6) Notwithstanding anything in subsection (2) of this section, the fact that the law of any country requesting the surrender of a fugitive criminal permits the taking of 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 shall not of itself prevent the surrender of that person.[As substituted by the Extradition Act, 1960 (Amendment) Decree 1966 (NLCD 65), s.1]

Continuance of Existing Provisions.

Section 3—Application to Commonwealth and Other Countries.

(1) A country to which Part I of the Fugitive Offenders Act, 1881 (which provided for the return of fugitive offenders from Commonwealth countries) applied immediately before the commencement of this Act, shall be a country to which this Part applies.

(2) A country with which an arrangement, in force immediately before the commencement of this Act, was made under the Extradition Acts, 1870 to 1932, shall be a country to which this Part applies.

(3) The President may by legislative instrument declare, as respects any country, that it is a country to which, by virtue of subsection (1), this Part applies or that an arrangement to which subsection (2) applies and which is recited or embodied in the declaration is in force and the declaration shall be conclusive as to the matters to which it relates.

(4) The purpose of a declaration under subsection (3) is to facilitate the ascertainment of the matters to which it relates and the fact that a declaration has not been made as respects any country shall not affect the question whether, by virtue of subsection (1) or (2), this Part applies to that country.

Section 4—Discontinuance.

If it appears to the President that the law of a country to which section 3 (1) of this Act applies no longer contains reciprocal provisions or that an arrangement with any country referred to in section 3 (2) is no longer in force, the President by legislative instrument may discontinue the application of this Part to that country.

Surrender of Criminals.

Section 5—Liability of Criminal to Surrender.

Where this Part applies in the case of any country, every fugitive criminal of that country who is in or suspected of being in Ghana shall be liable to be apprehended and surrendered in manner provided by this Part, 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 whether there is or is not any concurrent jurisdiction in a Court of Ghana over that crime.

Section 6—Liability of Accessories to be Surrendered.

Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any 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.

Section 7—Order of Minister for Issue of Warrant if Crime not of a Political Character.

(1) A requisition for the surrender of a fugitive criminal of any country, who is in or suspected of being in Ghana, shall be made to the Minister by a diplomatic representative or consular officer of that country. The Minister may by order signify to a District Magistrate that a requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

(2) If the Minister is of 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.

Section 8—Issue of Warrant by District Magistrate.

(1) A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in Ghana, may be issued by a District Magistrate—

(a) on the receipt of the order of 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 Ghana, 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 in which he exercises jurisdiction.

(2) 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.

(3) A fugitive criminal, when apprehended on a warrant under this section, shall be brought before a District Magistrate within the next twenty-four hours.

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

Section 9—Hearing of Case and Evidence of Political Character of Crime.

(1) When a fugitive criminal is brought before the District Magistrate, the Magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as nearly as may be, as he has in the exercise of criminal jurisdiction.

(2) 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 an offence of a political character or is not an extradition crime.

Section 10—Committal or Discharge of Prisoner.

(1) In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising 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 Ghana, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in Ghana the District Magistrate shall commit him to prison.

(2) 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 Ghana, prove that the prisoner was convicted of the crime, the District Magistrate shall commit him to prison.

(3) The order of the District Magistrate under subsection (1) or (2) 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 upon 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 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 removed without danger to his life or prejudice to his health, and while so held he 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.

(5) Where the District Magistrate is not satisfied with the evidence mentioned in subsection (1) or (2), he shall order the prisoner to be discharged.

Section 11—Surrender of Fugitive by Warrant of Minister.

(1) If the District Magistrate commits a fugitive criminal to prison, he shall inform the criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for an order of habeas corpus.

(2) Upon the expiration of fifteen days, or, if an order of habeas corpus is issued, after the decision of the Court upon the return to the order, 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 delivered on the decision of the Court) to be surrendered to such person as is in his opinion duly authorised to receive the fugitive criminal by the country from which the requisition for the surrender proceeded, and the fugitive criminal shall be surrendered accordingly.

(3) A person to whom the warrant is directed, and the person so authorised, may receive, hold in custody and convey into the jurisdiction of that country the criminal mentioned in the warrant; and if the criminal 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 Ghana may be retaken upon an escape.

Section 12—Discharge of Persons Apprehended if not Conveyed Out of Ghana Within Two Months.

If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of Ghana within two months after the committal, or, if an order of habeas corpus is issued, after the decision of the Court upon the return to the order, any Judge of the High Court may, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make the application has been given to the Minister, order the criminal to be discharged out of custody, unless sufficient cause is shown to the contrary.

Section 13—Execution of Warrant of District Magistrate.

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

Section 13A—Seizure and Handing Over of Property.

(1) Any police officer executing a warrant under section 8 of this Act may seize and retain any property—

(a) which appears to him to be reasonably required as evidence for the purpose of proving the offence alleged, or

(b) which appears to him to have been acquired as a result of the alleged offence and which—
(i) is found at the time of arrest in the possession of the person arrested under the warrant, or
(ii) is discovered subsequently.

(2) Subject to the provisions of this section, any property seized under subsection (1) of this section shall, if a warrant is issued by the National Liberation Council under section 11 of this Act for the surrender of the person claimed, be handed over to any person who appears to the National Liberation Council to be duly authorised by the country by whom the surrender is requested to receive it as soon as may be after the issue of the warrant and the said property shall be so handed over notwithstanding that the surrender in question cannot be carried out by reason of the death or escape of the person claimed.

(3) Any property so seized may, if any criminal proceedings to which the property relates are pending in Ghana, be retained in Ghana in accordance with law until the conclusion of the said proceedings or may, if the National Liberation Council so directs, be handed over on condition that the country requesting the surrender shall return the property.

(4) Nothing in this section shall prejudice or derogate from any rights that may lawfully have been acquired by the Republic or any person in Ghana in any property to be handed over under this section and where any such rights exist the property shall not be handed over except upon condition that the requesting country shall return it as soon as may be after the trial of the person surrendered and without charge to the Republic or person having such rights.[As inserted by the Extradition Act, 1960 (Amendment) Decree, 1966 (NLCD 65), s.2]

Crimes Committed at Sea

Section 14—Jurisdiction as to Crimes Committed at Sea.

Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of Ghana,—

(a) the criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime;

(b) if the fugitive criminal is apprehended on a warrant issued without the order of the Minister he shall be brought within the next twenty-four hours before the District Magistrate who issued the warrant or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

General

Section 15—Criminal Surrendered by Another Country not Triable for Previous Crimes, Etc.

(1) This section applies to a person who has been surrendered to Ghana by another country upon a request made by Ghana to that country to surrender that person for prosecution or punishment for an offence.

(2) No person so surrendered shall be proceeded against, sentenced or imprisoned or otherwise restricted in his personal freedom for any offence committed prior to his surrender other than that for which he was surrendered, except in the following cases—

(a) with the consent of the Government of the country surrendering him; or
(b) where that person having had an opportunity to leave Ghana has not done so within thirty days of his final discharge in respect of the offence for which he was surrendered or has returned to Ghana after leaving it.

(3) Where the description of the offence is altered in the course of proceedings, the person surrendered shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence for which he would be liable to be surrendered to Ghana.[As substituted by the Extradition Act, 1960 (Amendment) Decree, 1966 (NLCD 65), s.3]

PART II—RECIPROCAL BACKING OF WARRANTS

Section 16—Application of Part II.

This Part shall apply to any country in respect of which the President, having regard to reciprocal provisions under the law of that country, by legislative instrument so orders and subject to such conditions, exceptions and qualifications as may be specified in the order.

Section 17—Backing of Warrant Issued in Another Country.

(1) Where in a country to which this Part applies a warrant has been issued for the apprehension of a person accused of an offence punishable by law in that country and he is or is suspected of being in or on the way to Ghana, a District Magistrate, if satisfied that the warrant was issued by a person having lawful authority to issue it, may, subject to sections 22 and 23 of this Act, endorse the warrant in accordance with subsection (3), and the warrant so endorsed shall be a sufficient authority to apprehend, within the jurisdiction of the endorsing Magistrate, the person named in the warrant, and bring him before the endorsing Magistrate or some other District Magistrate.

(2) This Part applies whatever the date of the warrant and whether the offence is alleged to have been committed before or after the commencement of this Act or the application of this Part to that country.

(3) An endorsement of a warrant shall be signed by the District Magistrate and shall authorise all or any of the persons named in the endorsement, and of the persons to whom the warrant was originally directed, and every police officer, to execute the warrant by apprehending the person named in it and bringing him before that Magistrate or any other District Magistrate.

Section 18—Return of Prisoner Apprehended Under Backed Warrant.

(1) The District Magistrate before whom a person so apprehended is brought, if he is satisfied that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue it, and is satisfied on oath that the prisoner is the person named or otherwise described in the warrant, may, subject to section 23 of this Act, order the prisoner to be returned to the country in which the warrant was issued, and for that purpose to be delivered into the custody of the persons to whom the warrant is directed, or any one or more of them, and to be held in custody and conveyed into that country.

(2) A person to whom the warrant is directed, and the person so authorised, may receive, hold in custody and convey into the jurisdiction of that country the prisoner mentioned in the warrant; and if he 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 Ghana may be retaken upon an escape.

(3) A District Magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail a prisoner, as he has in the case of a person apprehended under a warrant issued by him.

Section 19—Provisional Warrant.

(1) A District Magistrate, before the endorsement in pursuance of this Part of a warrant for the apprehension of any person, may issue a provisional warrant for his apprehension, on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence of which that person is accused were an offence punishable by the law of Ghana, and had been committed within his jurisdiction, and the warrant may be backed and executed accordingly.

(2) A person arrested under a provisional warrant shall be discharged unless the original warrant is produced and endorsed within such time as the District Magistrate thinks reasonable in the circumstances.

Section 20—Discharge of Prisoner not Returned Within One Month.

(1) If a prisoner whose return is authorised in pursuance of this Part is not conveyed out of Ghana within one month after the date of the warrant ordering his return, a District Magistrate, upon application by or on behalf of the prisoner, and upon proof that reasonable notice of the intention to make the application has been given to the person holding the warrant and to the Commissioner of Police or chief officer of the police of the Region or town where the prisoner is in custody, may, unless sufficient cause is shown to the contrary, order the prisoner to be discharged out of custody.

(2) Any order or refusal to make an order of discharge under this section shall be subject to appeal.

Section 21—Refusal to Return Prisoner Where Offence too Trivial.

(1) Where the return of a prisoner is sought or ordered under this Part, and it appears to a District Magistrate that by reason of the trivial nature of the case, or by reason of the application for the return of the prisoner not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities of communication, and to all the circumstances of the case, be unjust or oppressive, or too severe a punishment, to return the prisoner either at all or until the expiration of a certain period, the Magistrate may discharge the prisoner either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the matter as the Magistrate thinks proper.

(2) Any order or refusal to make an order of discharge under this section shall be subject to appeal.

Section 22—Procedure.

A requisition for the endorsement of a warrant under this Part shall be made in the first instance by a diplomatic representative, consular officer or other appropriate authority of the country concerned to the Minister who may transmit it to a District Magistrate to proceed in accordance with this Part.

Section 23—Exclusion of Political Offences.

The Minister shall not transmit a requisition under section 22 of this Act and a warrant shall not be endorsed under this Part for the apprehension of any person if the offence is one of a political character or it appears to the Minister or a Court that the requisition has in fact been made with a view to try or punish him for an offence of a political character.

PART III—MISCELLANEOUS PROVISIONS

Proof of Warrants, Depositions, Etc.

Section 24—Depositions to be Evidence.

Depositions or statements on oath or affirmations taken in the country concerned and copies of the original depositions or statements or affirmations and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.

Section 25—Authorisation of Depositions and Warrants.

Warrants and depositions or statements on oath or affirmations and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or—

(a) if the warrant purports to be signed by a Judge, Magistrate, or officer of the country where it was issued;

(b) if the depositions or statements or affirmations or the copies thereof purport to be certified under the hand of a Judge, Magistrate, or officer of the country where they were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and

(c) if the certificate of our judicial document stating the fact of conviction purports to be certified by a Judge, Magistrate, or officer of the country where the conviction took place; and

if in every case the warrants, depositions, statements, affirmations, copies, certificates and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the Minister of Justice or some other Minister of state: and all Courts and

Magistrates shall take judicial notice of the official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

Taking of Evidence for Foreign Trials.

Section 26—Power of Country to Obtain Evidence in Ghana.

(1) The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in another country in like manner as it may be obtained in relation to any civil matter under any rules of court or any enactment for the time being in force for the taking of evidence in Ghana in relation to civil and commercial matters pending before foreign tribunals.

(2) Nothing in this section shall apply in the case of any criminal matter of a political character.

Section 27—Power of Taking Evidence in Ghana for Foreign Criminal Matters.

(1) The Minister may by order require a District Magistrate to take evidence for the purposes of any criminal matter pending in any Court or tribunal in any other country; and the Magistrate, upon the receipt of the order, shall take down in writing the evidence of every witness appearing before him for the purpose and shall certify at the foot of the deposition so taken that the evidence was taken before him, and shall transmit it to the Minister.

(2) The evidence may be taken in the presence or absence of the person charged, if any, and the fact of the presence or absence shall be stated in the deposition.

(3) Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents in like manner and subject to the like conditions as he may in the case of a trial for an offence.

Supplementary

Section 28—Repeals.

The enactments referred to in the Second Schedule to this Act are hereby repealed.

Section 29—Extradition Crimes.

(1) In this Act, "extradition crime" means a crime which, if committed within the jurisdiction of Ghana, would be an indictable offence described in the First Schedule to this Act.

(2) The President may by legislative instrument amend the said Schedule by the insertion of further offences, the deletion of any offence or the alteration of the description of any offence.

Section 30—Definitions.

In this Act, except where the contrary intention appears—

"conviction and convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, that is, a judgment given in default of appearance, the accused having the right to have it set aside and the case re-tried in his presence, but the term "accused person" includes a person, so convicted for contumacy;

"detention order" in relation to a country other than Ghana, means any order involving deprivation of liberty which has been made by a criminal court in that country in addition to or instead of a prison sentence.[As Inserted by the Extradition Act,1960 (Amendment) Decree, 1966 (NLCD 65), s.4]

"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 Ghana;

"the Minister" means the Minister to whom functions under this Act are for the time being assigned by the President;

"warrant" in the case of any country, includes any judicial document authorising the arrest of a person accused or convicted of crime.

Section 31—Commencement.

This Act shall come into operation on such day as the President by legislative instrument may order.

SCHEDULES

FIRST SCHEDULE—EXTRADITION CRIMES

Section 15, 29.

Criminal Homicide and Similar Offences.

An offence under sections 46, 48, 49 or 50 of the Criminal Code.

Abduction, Rape and Similar Offences.

An offence under sections 89, 91, 93, 97, 101 to 108, or 273 to 275 of the Criminal Code, or an attempt to commit any such offence.

Misappropriations, Fraud and Similar Offences.

An offence under Chapter 1 of Part III of the Criminal Code.

Forgery and Similar Offences.

An offence under section 158, 159 or 169 of the Criminal Code

Damage to Property and Similar Offences.

An offence under Chapter 3 of Part III of the Criminal Code.

Piracy and Similar Offences.

An offence under section 193 of the Criminal Code.

Perjury and Similar Offences.

An offence under section 210 or 213 of the Criminal Code.

Slave Dealings.

An offence under section 314 of the Criminal Code.

Dangerous Drugs.

An offence under the Drugs Ordinance (Cap. 73).

Falsification of Currency and Similar Offences.

An offence under the Currency Act, 1960 (Act 17).

SECOND SCHEDULE—REPEALS

United Kingdom Statutes.

Extradition Act, 1870. (33 and 34 Vict. c. 52)

Extradition Act, 1873. (36 and 37 Vict. c. 60)

Fugitive Offenders Act, 1881. (44 and 45 Vict. c. 69)

Extradition Act, 1906. (6 Ed. 7, c. 15)

Extradition Act, 1932. (22 and 23 Geo. 5. c. 39)

Statutes of Ghana.

Extradition (Southern Ghana) Ordinance (Cap. 12)

Extradition Act, 1959 (No. 56).