

CHAPTER 9:08
EXTRADITION ACT

Acts 6/1982, 4/1990, 23/1990; 9/1997 (s. 10).

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AN ACT to provide for the extradition of persons between Zimbabwe and other countries and for matters incidental to or connected with the foregoing.

[Date of commencement: 9th April, 1982.]

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Extradition Act [*Chapter 9:08*].

2 Interpretation

In this Act—

“designated country” means a foreign country which is declared to be a designated country in terms of section *thirteen*;

“extradition agreement” means an extradition agreement entered into in terms of section *three*;

“Minister” means the Minister of Home Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act.

“offence” includes an offence against a law relating to taxation, customs and excise or other revenue matters or relating to the control of transactions in foreign currency.

PART II

EXTRADITION IN TERMS OF EXTRADITION AGREEMENTS

3 Extradition agreements

(1) The Minister may enter into an agreement with the government of any foreign country providing, whether on a basis of reciprocity or otherwise, but subject to this Act and to the obligations of Zimbabwe in terms of any international convention, treaty or agreement for—

- (a) the extradition of persons accused or convicted of any offence within Zimbabwe or that foreign country; and
- (b) the transit through Zimbabwe of persons who are being extradited to or from any foreign country; and
- (c) any matter which, in the opinion of the Minister, is incidental to the matters referred to in paragraph (a) or (b).

(2) An extradition agreement may relate to—

- (a) any offences whatsoever, whether or not they are offences in both Zimbabwe and the foreign country concerned and whether they were committed before, on or after the date of commencement of the extradition agreement; and
- (b) any persons whomsoever, whether or not they are nationals of both Zimbabwe and the foreign country concerned.

(3) Where the Minister has entered into an extradition agreement, he shall cause the extradition agreement to be published in a statutory instrument, and such agreement shall thereupon, subject to subsection (4), have the force of law within Zimbabwe.

(4) Where any extradition agreement is amended or revoked, such revocation or amendment shall be published in a statutory instrument and shall thereupon have the force of law in Zimbabwe.

4 Requests for extradition

(1) A request for extradition in terms of an extradition agreement shall be submitted to the appropriate authority in Zimbabwe in the manner provided for in the extradition agreement.

(2) A request for extradition in terms of an extradition agreement shall be accompanied by—

- (a) a warrant for the arrest of the person concerned specifying and giving particulars of the offence in respect of which his extradition is sought; and
- (b) a description of the person concerned together with such information as would help to establish his identity and nationality; and
- (c) in the case of a person who is a national of Zimbabwe, such evidence as would establish a *prima facie* case in a court of law in Zimbabwe that the person concerned has committed or has been convicted of the offence concerned in the foreign country; and
- (d) a statement of the maximum punishment for which the person concerned would on conviction be liable or, if he has already been convicted but not sentenced, the maximum punishment for which he is liable or, if he has already been convicted and sentenced, the sentence that was imposed on him and the portion of the sentence, if any, that has been served, as the case may be; and
- (e) any other matter or thing which may be provided for in the extradition agreement concerned.

5 Arrest of persons on receipt of requests for extradition

(1) On receipt by the appropriate authority in Zimbabwe of a request for the extradition of a person in terms of an extradition agreement such appropriate authority shall, subject to the extradition agreement, submit to a magistrate an authority to proceed together with the warrant of arrest which accompanied the request.

(2) On receipt of the documents referred to in subsection (1) a magistrate shall endorse the warrant of arrest and cause it to be executed by a police officer.

(3) A warrant endorsed in terms of subsection (2) shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein for the purposes of this Act.

(4) Sections 34, 35, 36 and 37 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, to a warrant endorsed in terms of subsection (2).

(5) A person arrested on the authority of a warrant endorsed in terms of subsection (2) shall be brought before a magistrates court as soon as possible.

6 Orders authorizing extradition

(1) Where a person has been brought before a magistrates court in terms of subsection (5) of section *five*, the court, if satisfied—

(a) that the person concerned is the person named in the warrant under which he was arrested and that he is of the nationality specified in the request for extradition; and

(b) that the extradition is not prohibited in terms of this Act or the extradition agreement concerned; and

(c) in the case of a request for the extradition of a person who is a national of Zimbabwe, that a *prima facie* case is established that the person concerned has committed the offence to which the extradition relates or that he has been convicted of the offence concerned and is required to be sentenced or to undergo any sentence therefor in the foreign country concerned, as the case may be; and

(d) that any other requirement provided for in the extradition agreement has been complied with;

shall, subject to section *eight*, order that such person be extradited to the foreign country concerned and, pending such extradition, that he be committed to custody or admitted to bail as the court thinks fit.

(2) Where a court is not satisfied as specified in subsection (1), it shall order the discharge of the person concerned.

(3) Notwithstanding subsections (1) and (2), if a person who has been brought before a magistrates court in terms of section *five* consents to his extradition to the foreign country concerned, the court shall thereupon, without any further inquiry, order that he be extradited to the foreign country concerned and, pending such extradition, that he be committed to custody or admitted to bail as the court thinks fit.

(4) Subject to this Act, in any proceedings in terms of this section, a magistrates court shall receive evidence in the same manner and shall have the same powers, including the power to remand and to admit a person to bail, as if the proceedings were a preparatory examination held in terms of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

7 Appeals against orders authorizing extradition

(1) For the purposes of this section, the reference to any person shall include a reference to the government of the foreign country which made the request for extradition.

(2) Any person who is aggrieved by an order made in terms of section *six* may, within seven days thereafter, appeal against the order to the High Court which may, upon such appeal, make such order in the matter as it thinks the magistrate ought to have made or such other order as may be provided for in the extradition agreement concerned.

(Subsection as amended by s. 10 of Act No. 9 of 1997)

(3) Subsection (2) shall not derogate from the right of any person to make such other appeal or application against or in respect of an extradition as may be provided for in the extradition agreement concerned.

(4) An appeal or application referred to in this section against or in respect of an extradition shall be dealt with as a matter of urgency and shall be afforded as much priority as is possible.

8 When extradition may be effected

(1) A person shall not be extradited in compliance with an order made in terms of section *six* except where—

(a) he has consented to his extradition; or

(b) he has, in writing, waived his right of appeal in terms of section *seven* and his right of appeal, if any, in terms of the extradition agreement concerned; or

(c) if he has noted an appeal in terms of section *seven* or in terms of the extradition agreement concerned, such appeal is dismissed or abandoned; or

(d) if he has not noted an appeal in terms of section *seven* or in terms of the extradition agreement concerned, the time for making such appeal has lapsed.

(2) For the purposes of subsection (1), a right of appeal in relation to an extradition agreement shall include a right to make any application against or in respect of an extradition as may be provided for in the extradition agreement.

9 Effecting of extradition

(1) As soon as a person may be extradited in terms of section *eight* the appropriate authority in Zimbabwe shall notify the appropriate authority of the foreign country concerned of the date on which and the place at which the person concerned will be handed over.

(2) If the officials of the foreign country concerned have not attended at the place and on the date notified in terms of subsection (1) for the purpose of receiving the person concerned and have not, within fifteen days thereafter, made arrangements to the satisfaction of the appropriate authority in Zimbabwe for receiving him, the Minister shall forthwith, by warrant, order the release from custody of the person concerned.

10 Transit of persons through Zimbabwe

(1) A request for permission, in terms of an extradition agreement, to effect the transit through Zimbabwe of a person who is being extradited from one foreign country to another shall be made to the appropriate authority in Zimbabwe in terms of the extradition agreement concerned.

(2) Upon receipt of a request in terms of subsection (1), the appropriate authority in Zimbabwe shall issue or endorse a warrant authorizing the transit through Zimbabwe of the person concerned as may be provided for in the extradition agreement concerned, and such warrant shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein for the purposes of his transit through Zimbabwe.

11 Backing of warrants

(1) Notwithstanding sections *four* and *five*, an extradition agreement may provide for the arrest of a person upon the endorsement by a magistrate in Zimbabwe of a warrant which has been issued in the foreign country concerned, which specifies particulars of the offence concerned and which is accompanied by the matters referred to in paragraphs (b), (c), (d) and (e) of subsection (2) of section *four*.

(2) A warrant referred to in subsection (1) shall, when endorsed by a magistrate in Zimbabwe, be executed by a police officer and shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein for the purposes of this Act.

(3) A person arrested in terms of a warrant referred to in subsection (1) which has been endorsed by a magistrate shall be brought before the magistrate's court as soon as possible and the provisions of this Act shall apply, *mutatis mutandis*, in respect of that person as if he had been arrested following a request for extradition made to an appropriate authority in Zimbabwe in terms of section *four*.

12 Provisional arrest

(1) In this section—

“provisional warrant” means a provisional warrant issued in terms of subsection (4).

(2) Notwithstanding sections *four* and *five*, an extradition agreement may, subject to this section, provide for the provisional arrest of a person in respect of whom it is intended to make a request for extradition.

(3) On receipt by the appropriate authority in Zimbabwe of a request in terms of an extradition agreement for the provisional arrest of a person, the appropriate authority may, if satisfied that such course is warranted in the circumstances, grant an authority to a magistrate to issue a provisional warrant for the arrest of the person concerned.

(4) On receipt of an authority referred to in subsection (2) a magistrate shall issue a provisional warrant for the arrest of the person concerned.

(5) A provisional warrant shall be executed by a police officer and shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein for the purposes of this section.

(6) A person arrested in terms of a provisional warrant shall be brought before a magistrate as soon as possible and may be remanded by the magistrate, either in custody or on bail, for such period not exceeding fourteen days at any one time as the magistrate may direct.

(7) If a person who has been arrested in terms of a provisional warrant is not arrested in terms of a warrant issued in terms of section *five* or *eleven*, as the case may be, within twenty-eight days of his arrest under the provisional warrant he shall be released from custody.

(8) The provisions of sections 34, 35, 36 and 37 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, to a provisional warrant.

PART III

EXTRADITION TO AND FROM DESIGNATED COUNTRIES

13 Declaration of designated countries

(1) Where the Minister, after consultation with the Minister responsible for foreign affairs, considers it desirable to do so, he may, by order in a statutory instrument, declare any foreign country to be a designated country for the purposes of this Part and thereupon this Part shall, subject to such modifications and adaptations as may be specified in the order, apply in relation to such foreign country.

(2) An order may be made in terms of subsection (1) whether or not the foreign country concerned has made any provision for the extradition of persons to Zimbabwe from that foreign country.

14 Offences to which Part III applies

(1) Subject to this Act, a person may be arrested, detained and extradited from Zimbabwe to a designated country in the manner provided for in this Part, for an offence in respect of which in the designated country he is accused or has been convicted and is required to be sentenced or to undergo punishment, whether the offence was committed before or after the declaration of the country concerned as a designated country.

(2) This Part shall apply to any offence which—

- (a) is punishable in the law of the designated country concerned by imprisonment for a period of twelve months or by any more severe punishment; and
- (b) would constitute an offence punishable in Zimbabwe if the act or omission constituting the offence took place in Zimbabwe or, in the case of an extra-territorial offence, in corresponding circumstances outside Zimbabwe.

15 General restrictions on extradition in terms of Part III

No extradition to a designated country shall take place in terms of this Part—

- (a) if the grant of the request for extradition would conflict with the obligations of Zimbabwe in terms of any international convention, treaty or agreement; or
- (b) if the offence for which the extradition is requested is an offence of a political character:

Provided that notwithstanding that an offence is of a political character extradition may be granted in respect thereof if it—

- (i) is directed against the life or person of the Head of State or Government of any designated country; or
- (ii) involves hi-jacking of a vehicle, vessel or aircraft; or
- (iii) is an offence in terms of the Genocide Act [*Chapter 9:20*] or an attempt, conspiracy or incitement to commit such an offence;

[Subparagraph inserted by section 6 of Act 9 of 2000]

or

- (c) if the request for extradition, though purporting to be made for some other purpose, is in fact made for the purpose of prosecuting or punishing the person concerned on account of his race, colour, religion, nationality or political opinions; or
- (d) if the person concerned would, if charged in Zimbabwe with the offence for which his extradition is sought, be entitled to be discharged on the grounds of a previous acquittal or conviction; or
- (e) unless the law of the designated country concerned makes provision, or it has been arranged with the government of that country, that the person extradited will not be dealt with in respect of any offence other than—
 - (i) an offence for which the extradition is granted, or any lesser offence proved by the facts on which the extradition is granted; or
 - (ii) an offence committed after he has been extradited;

unless he has been given a prior opportunity of returning to Zimbabwe or departing from the designated country to some other country:

Provided that, subject to this Part, the Minister may consent to the government of the designated country concerned surrendering to another country a person extradited from Zimbabwe, where the surrender is in respect of an offence committed by the person prior to his extradition from Zimbabwe; or

- (f) if the act or omission in respect of which the extradition is requested constitutes—
 - (i) an offence against discipline under military law but not under the ordinary criminal law of Zimbabwe; or
 - (ii) an offence against a law relating to the performance of obligations of a military character;

or

- (g) for any other reason which the Minister, having regard to the national interest of Zimbabwe, considers sufficient.

16 Requests for extradition and arrest of persons

(1) Subject to section *twenty-four*, a request for extradition to a designated country in terms of this Part shall be submitted through channels to the Minister and shall be accompanied by—

- (a) a warrant for the arrest of the person concerned specifying and giving particulars of the offence in respect of which his extradition is sought; and
- (b) such evidence as would establish a *prima facie* case in a court of law in Zimbabwe that the person concerned has committed or has been convicted of the offence concerned in the designated country:

Provided that, if the order declaring the country concerned to be a designated country in terms of section *thirteen* so provides, the request may be accompanied by a record of the case in respect of the of-

fence concerned, containing the particulars and documents referred to in subsection (2), and accompanied by—

- (i) an affidavit, sworn statement or affirmation of an officer of the investigating authority of the designated country stating that the record was prepared by him or under his direction and that the evidence referred to therein has been preserved for use in court; and
 - (ii) a certificate of the Attorney-General of the designated country stating that, in his opinion, the record discloses the existence of evidence under the law of the designated country sufficient to justify a prosecution;
- and
- (c) a statement of the maximum punishment for which the person concerned would on conviction be liable or, if he has already been convicted but not sentenced, the maximum punishment for which he is liable or, if he has already been convicted and sentenced, the sentence that was imposed on him and the portion of that sentence, if any, that has already been served, as the case may be.
- (2) A record of the case referred to in the proviso to paragraph (b) of subsection (1) shall contain—
- (a) particulars of the description, identity, nationality and, if available, the whereabouts of the person sought; and
 - (b) particulars of each offence or conduct in respect of which extradition is requested, specifying the date and place of commission, the legal definition of the offence and the relevant provisions in the law of the designated country, including a certified copy of any such definition in the written law of that country; and
 - (c) the original or a certified copy of any warrant or process issued in the designated country against the person whom it seeks to have extradited; and
 - (d) a recital or summary of the evidence acquired to support the request for extradition of the person sought; and
 - (e) a certified copy, reproduction or photograph of exhibits or documentary evidence.

(3) Any certification required by subsection (2) may be done by any person in the designated country concerned who is or holds office as the Attorney-General or a legal practitioner, notary public, commissioner of oaths or commissioned police officer.

(4) Upon receipt of a request in terms of subsection (1) the Minister may, if satisfied that the extradition is not prohibited in terms of this Part, issue to a magistrate an authority to proceed together with the warrant which accompanied the request for extradition.

(5) On receipt of the documents referred to in subsection (4) the magistrate shall endorse the warrant and cause it to be executed by a police officer.

(6) A warrant endorsed in terms of subsection (5) shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein and to detain him for the purposes of this Act.

(7) Sections 34, 35, 36 and 37 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply, *mutatis mutandis*, to a warrant endorsed in terms of subsection (5).

(8) A person arrested on the authority of a warrant endorsed in terms of subsection (5) shall be brought before a magistrates court as soon as possible.

17 Orders by court authorizing extradition

(1) Where a person has been brought before a magistrates court in terms of subsection (8) of section *sixteen* the court, if satisfied that—

- (a) the person concerned is the person named in the warrant under which he was arrested; and
- (b) the extradition is not prohibited in terms of this Act; and
- (c) either—
 - (i) that a *prima facie* case is established; or
 - (ii) in a case in which a record of the case has been submitted in terms of the proviso to paragraph (b) of subsection (1) of section *sixteen*, that the record of the case indicates, according to the law of the designated country concerned, that the person concerned has committed the offence to which the extradition relates or that he has been convicted of such offence and is required to be sentenced or to undergo any sentence therefor in the designated country concerned, as the case may be;

shall, subject to section *nineteen*, order that such person be extradited to the designated country concerned and, pending such extradition, that he be committed to custody or admitted to bail as the court thinks fit.

(2) Where a court is not satisfied as specified in subsection (1), it shall order the discharge of the person concerned.

(3) Notwithstanding subsections (1) and (2), if a person who has been brought before a magistrates court in terms of subsection (8) of section *sixteen* consents to his extradition to the designated country concerned, the court

shall thereupon, without any further inquiry, order that he be extradited to the designated country concerned and, pending such extradition, that he be committed to custody or admitted to bail as the court thinks fit.

(4) Subject to this Act, in any proceedings in terms of this section, a magistrates court shall receive evidence in the same manner, and shall have the same powers, including the power to remand and to admit a person to bail, as if the proceedings were a preparatory examination held in terms of the Criminal Procedure and Evidence Act [Chapter 9:07].

18 Appeals to High Court

(1) Any person, including the government of the designated country concerned, who is aggrieved by an order made in terms of section *seventeen* may, within seven days thereafter, appeal against the order to the High Court which may, upon such appeal, make such order in the matter as it thinks the magistrate ought to have made

[Subsection as amended by s. 10 of Act No. 9 of 1997].

(2) In addition to the jurisdiction conferred upon it in terms of subsection (1), in any appeal in terms of that subsection the High Court may direct the discharge of the person whose extradition has been ordered if the High Court is of the opinion that, having regard to all the circumstances of the case, it would be unjust or oppressive to extradite such person—

- (a) by reason of the trivial nature of the offence concerned; or
- (b) by reason of the lapse of time since the commission of the offence concerned or since the person concerned became unlawfully at large, as the case may be; or
- (c) because the accusation against the person concerned is not made in good faith in the interests of justice; or
- (d) by reason of the state of health or other personal circumstances of the person concerned.

[Subsection as amended by s. 10 of Act No. 9 of 1997]

(3) An appeal referred to in this section shall be dealt with as a matter of urgency and shall be afforded as much priority as possible.

19 When extradition in terms of Part III may be effected

A person shall not be extradited in compliance with an order made in terms of section *seventeen*—

- (a) except where—
 - (i) he has consented to his extradition; or
 - (ii) he has, in writing, waived his right of appeal in terms of section *eighteen*; or
 - (iii) if he has noted an appeal in terms of section *eighteen*, such appeal is dismissed or abandoned; or
 - (iv) if he has not noted an appeal in terms of section *eighteen*, the time for making such appeal has lapsed; or
- (b) if the Minister has ordered the person concerned to be discharged in terms of section *twenty-one*.

20 Effecting of extradition in terms of Part III

(1) As soon as a person may be extradited in terms of section *nineteen*, the Minister shall notify the appropriate authority of the designated country concerned of the date on which and the place at which the person concerned will be handed over.

(2) If officials of the designated country concerned have not attended at the place and on the date notified in terms of subsection (1) for the purpose of receiving the person concerned and have not, within fifteen days thereafter, made arrangements to the satisfaction of the Minister for receiving him, the Minister shall forthwith by warrant order the release from custody of the person concerned.

21 Reference to Minister

(1) A magistrates court, the High Court or the Supreme Court may refer to the Minister the question as to whether or not a request for the extradition of any person has been made in respect of an offence of a political character or as to whether the request for extradition, although it purports to have been made for another purpose, has been made for the purpose of punishing or prosecuting the person concerned on account of his political opinions.

(2) If, upon a reference to him in terms of subsection (1), the Minister—

- (a) is satisfied that the offence concerned is one of a political character or that the request for extradition has been made for the purpose of punishing or prosecuting the person concerned on account of his political opinions, he shall forthwith by warrant order the release from custody of the person concerned;
- (b) is not satisfied as mentioned in paragraph (a), he shall remit the proceedings to the magistrates court, the High Court or the Supreme Court, as the case may be, to be proceeded with according to law.

(3) A decision of the Minister in terms of subsection (2)—

- (a) to remit the matter to a magistrates court, the High Court or the Supreme Court, shall not be construed as derogating from the right of the court itself to determine the questions referred to in subsection (1);
- (b) to order the release from custody of a person, shall be final and not subject to appeal or review by any court.

[Section as amended by s. 10 of Act No. 9 of 1997]

22 Extradition of persons to Zimbabwe from designated countries

Where a person is extradited to Zimbabwe from a designated country, such person shall not be prosecuted or punished for any offence other than—

- (a) an offence for which he was extradited, or any lesser offence proved by the facts on which the extradition was granted; or
- (b) an offence committed after he has been extradited;

unless he has been given a prior opportunity of returning to the designated country concerned or departing from Zimbabwe to some other country.

23 Transit of persons through Zimbabwe

(1) A request for permission to effect the transit through Zimbabwe of a person who is being extradited from a foreign country to a designated country shall be submitted through diplomatic channels to the Minister.

(2) Upon receipt of a request in terms of subsection (1) the Minister may grant an authority to a magistrate to issue or to endorse a warrant and such warrant shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein for the purposes of his transit through Zimbabwe.

24 Backing of warrants in terms of Part III

(1) Where the Minister is satisfied that reciprocal provision is or will be made in the law of a designated country for the backing of warrants issued in Zimbabwe and the execution of those warrants for the purposes of extradition in the designated country, he may, by order in a statutory instrument, declare that this section shall apply in relation to such designated country.

(2) Where a warrant has been issued in a designated country to which this section applies and such warrant is produced to a magistrate in Zimbabwe, such magistrate may, if satisfied that—

- (a) the warrant was issued by a person having lawful authority to issue it; and
- (b) it specifies particulars of the offence concerned; and
- (c) it is accompanied by the matters referred to in paragraphs (b) and (c) of subsection (1) of section *sixteen*;

endorse such warrant for execution.

(3) A warrant endorsed in terms of subsection (2) shall be executed by a police officer and shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein for the purposes of this Act.

(4) Sections 34, 35, 36 and 37 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, to a warrant endorsed in terms of subsection (2).

(5) A person arrested on the authority of a warrant which has been endorsed in terms of subsection (2) shall be brought before a magistrates court as soon as possible and this Act shall apply, *mutatis mutandis*, in respect of that person as if he had been arrested following upon a request for his extradition being made to the Minister in terms of section *sixteen*.

25 Provisional arrest

(1) In this section—

“provisional warrant” means a provisional warrant issued in terms of subsection (4).

(2) Notwithstanding section *sixteen*, a request for the provisional arrest of a person in respect of whom it is intended to make a request for extradition to a designated country may be submitted to the Minister.

(3) If the Minister, on receipt of a request in terms of subsection (2), is satisfied that such course is warranted in the circumstances, he may submit an authority to a magistrate to issue a provisional warrant for the arrest of the person concerned.

(4) On receipt of an authority referred to in subsection (3) a magistrate shall issue a provisional warrant for the arrest of the person concerned.

(5) A provisional warrant shall be executed by a police officer and shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein for the purposes of this section.

(6) A person arrested in terms of a provisional warrant shall be brought before a magistrate as soon as possible and may be remanded by the magistrate, either in custody or on bail, for such period not exceeding fourteen days at any one time as the magistrate may direct.

(7) If a person who has been arrested in terms of a provisional warrant is not arrested in terms of a warrant issued in terms of section *sixteen* or *twenty-four*, as the case may be, within twenty-eight days of his arrest under the provisional warrant he shall be released from custody.

(8) Sections 34, 35, 36 and 37 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, to a provisional warrant.

PART IV

GENERAL

26 Bail and legal representation

(1) A person who has been arrested for the purposes of extradition in terms of this Act shall have the same right to bail and legal representation as if he were arrested in connection with a criminal offence for which he was to be charged within Zimbabwe.

(2) In the absence of a legal practitioner instructed by the government of the foreign country or designated country concerned, in any proceedings in terms of this Act the Attorney-General or any person appointed by him may appear on behalf of that government.

27 Retaking and re-extradition of persons

(1) Subject to this Act, in any proceedings in terms of this section, a magistrates court shall receive evidence in the same manner, and shall have the same powers, including the power to remand and to admit a person to bail, as if the proceedings were a preparatory examination held in terms of the Criminal Procedure and Evidence Act [Chapter 9:07].

(2) Where a person, who is in custody in Zimbabwe for the purposes of his extradition in terms of this Act, escapes from such custody, he may be retaken in the same manner and shall be subject to the same penalties as if he were a person in custody in respect of a similar offence committed in Zimbabwe.

(3) Where the Minister is satisfied that a person who has been extradited in terms of this Act has returned to Zimbabwe, having by his unlawful act avoided any criminal proceedings or punishment in respect of the offence for which he was extradited, the Minister may issue a certificate to that effect and a magistrate shall, on receipt of such certificate, issue a warrant for the arrest of the person concerned.

(4) A warrant issued in terms of subsection (3) shall be sufficient authority throughout Zimbabwe for the arrest and detention of the person named therein for the purposes of this Act.

(5) Sections 34, 35, 36 and 37 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply, *mutatis mutandis*, to a warrant issued in terms of subsection (3).

(6) A person arrested on the authority of a warrant issued in terms of subsection (3) shall, as soon as possible, be brought before a magistrates court.

(7) Where a person has been brought before a magistrates court in terms of subsection (6), the court, if satisfied that—

- (a) the person who has been brought before it is the person named in the warrant; and
- (b) the person has previously been extradited to the country concerned in terms of this Act; and
- (c) proceedings in respect of the offence for which the person was extradited were not completed in the country concerned or, as the case may be, that he has not undergone all the punishment imposed on him in that country in respect of that offence;

shall order that the person be extradited to the country concerned and, pending such extradition, that he be committed to custody or admitted to bail as the court thinks fit.

(8) Where a court is not satisfied as specified in subsection (7), it shall order the discharge of the person concerned.

(9) Where a court has in terms of subsection (7) ordered the extradition of any person to—

- (a) a foreign country with which an extradition agreement has been entered into, sections *seven*, *eight* and *nine* shall apply, *mutatis mutandis*, in respect of such person;
- (b) a designated country, sections *seventeen*, *eighteen*, *nineteen* and *twenty* shall apply, *mutatis mutandis*, in respect of such person.

28 Postponement of extradition

If, in terms of this Act, a request is received for the extradition of a person against whom criminal proceedings have been instituted in Zimbabwe or who is undergoing any punishment in Zimbabwe in respect of any offence, the Minister may postpone the issue of an authority to proceed in terms of this Act or direct that all proceedings in connection with the extradition of the person in terms of this Act be postponed, as may be appropriate, until—

- (a) the criminal proceedings have been completed and the person concerned has undergone any punishment that may have been imposed upon him in respect of those proceedings; or
- (b) the person concerned has undergone the punishment that he was undergoing when the request was received;

as the case may be:

Provided that, if the Minister is satisfied—

- (a) that such postponement would—
 - (i) lead to the prescription of the offence concerned in the country that requested the extradition; or
 - (ii) otherwise not be in the interests of justice in the country that requested the extradition;

and

- (b) whether from undertakings given by the country concerned or otherwise, that—
 - (i) it will return the person to Zimbabwe as soon as proceedings in connection with the offence have been completed in that country; and
 - (ii) adequate arrangements have been made for the custody of the person while he is in that country or for preventing his absconding from that country;

the Minister shall issue an authority for the temporary extradition of the person in terms of this Act, or revoke any direction issued by him in terms of this section, as the case may be.

29 Concurrent requests for extradition

If two or more requests, made by the governments of different countries, are received for the extradition of the same person in terms of this Act, the Minister shall, after taking into account all the circumstances and in particular—

- (a) the relative seriousness of the offences in question; and
- (b) the date on which each request was received; and
- (c) the nationality or citizenship of the person concerned and his place of residence;

determine to which of the requests preference should be given, and shall—

- (i) decline to issue an authority to proceed in terms of this Act in respect of the other request or requests; or
- (ii) direct that no proceedings be instituted for the extradition of the person concerned in compliance with the other request or requests, or that any such proceedings that have already been instituted be terminated;

as may be appropriate.

30 Search warrants

Where a warrant for the arrest of a person in connection with any offence has been issued or endorsed in terms of this Act, any court and magistrate within whose jurisdiction the warrant may be issued or endorsed shall have the same power to issue a warrant to search for any property involved in the offence concerned as that court or magistrate would have had if the offence concerned had been committed within the jurisdiction of such court or magistrate.

31 Handling over of property

(1) Where a person is extradited in terms of this Act, in respect of any offence, any magistrate may order that any property within his jurisdiction which may serve as proof of the offence and which was seized under the authority of a search warrant issued in terms of section *thirty* or which was in the possession of such person at the time of his arrest, shall be handed to the appropriate authorities of the foreign country or designated country concerned.

(2) If any property which is the subject of an order made in terms of subsection (1) is—

- (a) property liable to seizure or confiscation in terms of any enactment; or
- (b) property in respect of which any person in Zimbabwe claims any title or interest;

the magistrate making such order may direct that the property be handed over to the appropriate authorities of the foreign country or designated country concerned on condition that it is returned to Zimbabwe at the conclusion of the proceedings relating to the offence in respect of which the extradition is sought.

32 Evidence

(1) In any proceedings in terms of this Act, any document which is duly authenticated and which purports to be—

- (a) a warrant of arrest which has been issued by a judicial officer or other competent official; or
- (b) a record, certified by a judicial or other competent official, of a conviction by a court or tribunal in any country against any person; or
- (c) a record, certified by a judicial or other competent official, of any sentence imposed upon any person following upon his conviction by any court or tribunal in any country; or
- (d) a statement, made by a judicial or other competent official, of the portion of a sentence, if any, already served by a person who has been convicted and sentenced by a court or tribunal in any country; or
- (e) a statement, made by a judicial or other competent official, of the law of any foreign country and of the maximum penalties for any offence against such law; or
- (f) a deposition, sworn statement or affirmation which has been made, sworn or affirmed by any person; or
- (g) a record of a case submitted in terms of the proviso to paragraph (b) of subsection (1) of section *sixteen*; or
- (h) a certificate of an Attorney-General accompanying a record of a case submitted in terms of the proviso to paragraph (b) of subsection (1) of section *sixteen*;

shall, if such document purports to have been issued, certified, made, sworn or affirmed, as the case may be, in a country with which an extradition agreement has been entered into or a designated country, be admissible on its mere production by any person as *prima facie* evidence of the facts stated therein.

(2) A document referred to in subsection (1) shall be duly authenticated for the purposes of that subsection if it purports to be authenticated by the signature of a judicial or other competent official and to have been sealed or stamped with the official seal or stamp of a Minister of the foreign country or designated country concerned.

(3) A document purporting to be—

(a) a warrant or authority issued or given by the Minister in terms of this Act; or

(b) a certificate of the Registrar-General of Citizenship of Zimbabwe certifying that any person is or is not, according to his records, a citizen of Zimbabwe; or

(c) a record of any proceedings held in Zimbabwe for the purposes of this Act;

shall, on its mere production by any person, be admissible in evidence in any proceedings in terms of this Act as *prima facie* proof of the facts stated therein.

33 Discharge from extradition

(1) If any person in custody awaiting his extradition in terms of this Act is still in custody after the expiry of a period of two months beginning with the first day on which he could in terms of this Act have been extradited, he may apply to the High Court for his discharge from custody.

(2) If upon application made in terms of subsection (1) the High Court is satisfied that reasonable notice of the proposed application has been given to the Minister it shall, unless good cause to the contrary is shown, order that the applicant be forthwith discharged.

34 Regulations and rules of court

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient for the better carrying out or giving effect to this Act.

(2)

[Subsection repealed by s. 10 of Act 9 of 1997]

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