

Namibia

## Extradition Act, 1996

Act 11 of 1996

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Extradition Act, 1996  
 Contents

Part I – Preliminary provisions ..... 1

    1. Definitions ..... 1

    2. Liability to extradition ..... 2

    3. Meaning of “extraditable offence” ..... 2

    4. Countries to which persons may be extradited ..... 2

Part II – Restrictions on return ..... 3

    5. Restrictions on return ..... 3

    6. Prosecution of Namibian citizens for extraditable offences committed in other countries ..... 4

Part III – Procedure ..... 5

    7. Requests for return of persons ..... 5

    8. Particulars and documents in support of request for return ..... 5

    9. Further particulars required by Minister ..... 6

    10. Authority to proceed and warrant of arrest ..... 6

    11. Provisional warrants of arrest on grounds of urgency ..... 6

    12. Enquiry proceedings for committal ..... 7

    13. Certain conditions for return ..... 8

    14. Appeals ..... 8

    15. Waiver of right to enquiry ..... 9

    16. Order for return ..... 9

    17. Extradition to Namibia ..... 10

Part IV – Miscellaneous ..... 11

    18. Authentication of foreign documents ..... 11

    19. Concurrent requests for return ..... 11

    20. Legal representation ..... 11

    21. Bail ..... 12

    22. Custody ..... 12

    23. Handing over of property ..... 12

    24. Transit ..... 13

    25. Regulations ..... 13

    26. Repeal of laws, savings and transitional provisions ..... 13

    27. Short title and commencement ..... 13

Schedule 1 (Section 26) ..... 13

Schedule 2 (Section 18) ..... 14



Republic of Namibia  
Annotated Statutes

## Extradition Act, 1996 Act 11 of 1996

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### ACT

To provide for the extradition of persons accused or convicted of certain crimes committed within the jurisdictions of certain countries, and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

#### Part I – Preliminary provisions

##### 1. Definitions

In this Act, unless the context otherwise indicates-

“enquiry” means an enquiry in terms of [section 12](#);

“external warrant” means a judicial document issued under the laws of a requesting country authorising the arrest of a person;

“extraditable offence” means an offence contemplated in [section 3](#);

“extradition agreement” means an agreement entered into by Namibia and another country in accordance with the Namibian Constitution, providing for the return on a reciprocal basis of persons accused or convicted of an extraditable offence;

[\[The phrase “and agreement” should be “an agreement”.\]](#)

“magistrate” includes an additional magistrate, divisional magistrate, or regional magistrate;

“Minister” means the Minister of Justice;

“**requesting country**” means any country contemplated in [section 4\(1\)](#) which requests the return to that country of a person accused or convicted of an extraditable offence in that country;

“**return**” means the surrender to a country contemplated in [section 4\(1\)](#) of a person requested to be returned to such country under this Act;

“**this Act**” includes the regulations made under [section 25](#).

## 2. Liability to extradition

- (1) Subject to the provisions of this Act, any person in Namibia, other than a Namibian citizen, who-
  - (a) is accused of having committed an extraditable offence within the jurisdiction of a country contemplated in [section 4\(1\)](#); or
  - (b) is alleged to be unlawfully at large after having been convicted of such an offence in such a country,

may, upon a request made by such country in terms of [section 7](#), be arrested and returned to that country in accordance with the provisions of this Act or, where applicable, the terms of an extradition agreement existing between Namibia and such country, whether or not such offence was committed before or after the commencement of this Act or before or after the date upon which the relevant extradition agreement came into operation.

- (2) A person referred to in subsection (1) shall include a person who is accused or convicted of having counselled, procured, commanded, aided or abetted the commission of an extraditable offence, or of being an accessory before or after the fact to such an offence.

## 3. Meaning of “extraditable offence”

- (1) For the purposes of this Act “extraditable offence” means an act, including an act of omission, committed within the jurisdiction of a country contemplated in [section 4\(1\)](#) which constitutes under the laws of that country an offence punishable with imprisonment for a period of 12 months or more and which, if it had occurred in Namibia, would have constituted under the laws of Namibia an offence punishable with imprisonment for a period of 12 months or more.
- (2) In determining whether any conduct constitutes an extraditable offence, all the surrounding circumstances pertaining to such conduct shall be taken into account, and it shall not matter that-
  - (a) the terminology which denotes the offence is not the same as, or that the conduct constituting the offence is not placed in the same category as, or that the constituent elements of the offence differ from, a similar offence in Namibia; or
  - (b) the offence for which the extradition is sought pertains to taxation, customs duty, exchange control, or any other form of fiscal regulation which is not enforced in Namibia.

## 4. Countries to which persons may be extradited

- (1) Subject to the provisions of this Act, the extradition of persons from Namibia may be effected to-
  - (a) any country which has entered into an extradition agreement with Namibia; and
  - (b) any other country, including a Commonwealth country, which has been specified by the President by proclamation in the *Gazette* for purposes of this Act; and

**[paragraph (b) substituted by section 1(a) of Act 19 of 2018]**

  - (c) any country which is party to a multilateral agreement, provided that-
    - (i) such agreement provides for it to be used as a basis for extradition; and

- (ii) Namibia is also party to such agreement.

[paragraph (c) added by section 1(b) of Act 19 of 2018]

- (2) The President may revoke or amend any proclamation made under subsection (1).

## Part II – Restrictions on return

### 5. Restrictions on return

- (1) Notwithstanding [section 2](#) or the terms of any extradition agreement which may be applicable, no person shall be returned to a requesting country, or be committed or kept in custody for the purposes of such return, if it appears to the Minister acting under [section 6\(3\)](#), [10](#) or [16](#) or the magistrate concerned acting under [11](#) or [12](#), as the case may be-
  - (a) that the offence for which such return was requested is an offence of a political nature: Provided that this provision shall not apply to any offence declared not to be a political offence for purposes of extradition by an multilateral international convention to which both Namibia and the requesting country concerned are parties;  

[The word “an” in the phrase “an multilateral international convention” should be “a” or “any”.]
  - (b) that the offence for which such return was requested is an offence under military law which is not also an offence under the criminal law of the requesting country;
  - (c) that there is substantial evidence to suggest that the requesting country is likely to prosecute or punish the person on account of his or her race, religion, nationality, or political opinion;
  - (d) that the person will be or may be liable to a death penalty or any other type of punishment that is not applied in Namibia if he or she is so returned, unless the requesting country guarantees that the death penalty or such other type of punishment will not be imposed or, if imposed, will not be carried out;
  - (e) that the offence for which such return was requested has, according to the laws of Namibia or the requesting country, prescribed through lapse of time;
  - (f) that the offence for which such return was requested is regarded under the laws of Namibia as having been committed in Namibia, and in respect of which-
    - (i) proceedings are pending in Namibia against that person;
    - (ii) a final judgement has been passed; or
    - (iii) the Prosecutor-General has decided not to institute or has terminated proceedings against that person;
  - (g) that such return or custody would be irreconcilable with humanitarian considerations in view of the age or health of the person;
  - (h) that the granting of the request for such return would be in conflict with Namibia’s obligations in terms of any international convention, agreement, or treaty;
  - (i) that such person would be entitled to be discharged under any rule of law relating to previous acquittal or previous conviction if charged in Namibia with the offence for which his or her return was requested; or
  - (j) that the person has been sentenced or would be liable to be tried or sentenced in the requesting country by an extraordinary or ad hoc court or tribunal: Provided that an international tribunal constituted under the authority of the United Nations to try persons accused of war crimes, crimes against humanity, or crimes against peace shall not be regarded as an extraordinary or ad hoc court or tribunal as contemplated by this paragraph.

- (2) Notwithstanding [section 2](#) or any extradition agreement which may be applicable, no person who is alleged to be unlawfully at large after conviction of an extraditable offence shall be returned to a requesting country, or be committed or kept in custody for the purposes of such return, if it appears to the Minister acting under [section 6\(3\)](#), [10](#) or [16](#) or the magistrate concerned acting under [section 11](#) or [12](#), as the case may be-
- (a) that the conviction was obtained in such person's absence;
  - (b) that it would not be in the interests of justice to return such person on the ground of that conviction; or
  - (c) that a period of less than six months of the sentence in question remains to be served.
- (3) Notwithstanding [section 2](#) or any extradition agreement which may be applicable, no person shall, except with the written consent of the Minister or of that person, be returned to a requesting country, or be committed or kept in custody for the purposes of such return, unless provision is made in the relevant laws of the requesting country or it has otherwise been arranged with that country that the person concerned shall not be surrendered by the requesting country to any other country seeking that person for an offence which he or she is accused to have committed in the latter country.
- (4) Notwithstanding [section 2](#) or any extradition agreement which may be applicable, no person shall be returned to a requesting country, or be committed or kept in custody for the purposes of such return, unless provision is made in the relevant laws of the requesting country or it has otherwise been arranged with that country that such person shall not, unless he or she has first had an opportunity to leave the requesting country, be detained, charged with, or punished for any offence other than-
- (a) the offence in respect of which such return was sought;
  - (b) any lesser offence proved on the facts on which such return was sought; or
  - (c) an offence committed after such person has been so returned:
- Provided that the Minister may give his or her written consent that such person may be so returned to be dealt with in respect of any offence not being an offence contemplated in paragraphs (a), (b), or (c).

## 6. Prosecution of Namibian citizens for extraditable offences committed in other countries

- (1) A Namibian citizen shall be prosecuted and punished in Namibia in accordance with the laws of Namibia for any extraditable offence which such Namibian citizen may have committed or is accused of having committed within the jurisdiction of a country contemplated in [section 4\(1\)](#), but no such prosecution shall be instituted unless -
- [introductory text in subsection (1) substituted by section 2 of Act 19 of 2018]**
- (a) a request for the return of that person has been made in accordance with the provisions of this Act; and
  - (b) the Prosecutor-General has in writing authorized the institution of such prosecution.
- (2) For the purpose of determining the jurisdiction in relation to proceedings under subsection (1), the conduct constituting the offence shall for all purposes connected with or consequential to the trial of such offence be deemed to have been committed within the magisterial district of Windhoek.
- (3) Notwithstanding [section 2\(1\)](#), the Minister may in writing authorize a magistrate to proceed under [sections 10](#) and [12](#) against a Namibian citizen whose return has been requested under [section 7](#), if in the opinion of the Minister such return is warranted due to-
- (a) the seriousness of the extraditable offence;

- (b) the cost involved in bringing the necessary witnesses and other evidence to Namibia; or
- (c) any other circumstances justifying extradition,

provided that the Minister is satisfied that the order for such return can lawfully be made in accordance with this Act.

### Part III – Procedure

#### 7. Requests for return of persons

Subject to [section 8](#), a request for the return of a person under this Act shall be made in writing to the Minister-

- (a) in such manner as may be specified in an extradition agreement which may be applicable; or
- (b) by a diplomatic or consular representative of the requesting country, accredited to Namibia,

but if the requesting country is a Commonwealth country, such request may also be made by or on behalf of the government of such country.

#### 8. Particulars and documents in support of request for return

- (1) Notwithstanding the terms of any extradition agreement which may be applicable, a request made under [section 7](#) shall be accompanied-
  - (a) by the full particulars of the person whose return is requested and information, if any, to establish that person's location and identity;
  - (b) by the full particulars of the offence of which the person is being accused or was convicted and in respect of which his or her return is sought, a reference to the relevant provisions of the law of the requesting country which were breached by the person and a statement of the penalties which may be imposed for such offence;
  - (c) by a certificate issued by the appropriate authority in charge of the prosecution in the foreign state concerned, stating that it has sufficient evidence at its disposal to warrant the prosecution of the person concerned;  

**[paragraph (c) substituted by section 3 of Act 19 of 2018]**
  - (d) by the original or an authenticated copy of the external warrant issued in relation to the person whose return is requested; and
  - (e) in the case of a person who is unlawfully at large after conviction of an extraditable offence-
    - (i) by the original or authenticated copy of the record of the conviction and sentence and a certificate stating any outstanding period of any such sentence; or
    - (ii) if no sentence has been imposed, by the original or authenticated copy of the record of the conviction and a statement by a competent judicial or public officer of the requesting country affirming that a competent court intends to impose a sentence.
- (2) All particulars and copies of all documents contemplated in subsection (1) shall be made available to the person whose return is requested.
- (3) Any document referred to in subsection (1) which is not drawn up in the English language shall be accompanied by a sworn translation thereof in that language.

## 9. Further particulars required by Minister

If the Minister considers any information provided in terms of [section 8](#) to be insufficient to decide on the request for return, he or she may, by using the same channel of communication as was used for making the request, require the requesting country to furnish the necessary further particulars within such time as the Minister may determine.

## 10. Authority to proceed and warrant of arrest

- (1) Upon receiving a request made under [section 7](#) the Minister shall, if he or she is satisfied that an order for the return of the person requested can lawfully be made in accordance with this Act, forward the request together with the relevant documents contemplated in [sections 8 and 9](#) to a magistrate and issue to that magistrate an authority in writing to proceed with the matter in accordance with [section 12](#).
- (2) Upon receiving the documents and authorization referred to in subsection (1) or [section 6\(3\)](#), as the case may be, the magistrate shall, if he or she is satisfied that the external warrant accompanying the request is authenticated as contemplated in [section 18\(1\)](#), endorse that warrant, and whereupon that warrant may be executed in the manner contemplated in subsection (3) as if it were issued in the court of that magistrate under the laws of Namibia relating to criminal procedure.
- (3) A warrant endorsed in terms of subsection (2) may be executed in any part of Namibia.
- (4) Any person arrested under subsection (3) shall in accordance with Article 11 of the Namibian Constitution-
  - (a) be informed promptly in a language that he or she understands of the grounds for such arrest; and
  - (b) be brought before a magistrate within 48 hours of his or her arrest or, if it is not reasonably possible, as soon as possible thereafter, to be dealt with in accordance with the provisions of [section 12](#).

## 11. Provisional warrants of arrest on grounds of urgency

- (1) Notwithstanding [section 7](#), and subject to subsection (2) of this section-
  - (a) any diplomatic or consular representative of a country contemplated in [section 4\(1\)](#); or
  - (b) the International Police Commission (Interpol), on behalf of such a country; or
  - (c) in the case of a Commonwealth country contemplated in [section 4\(1\)](#), in addition to the ways set out in paragraphs (a) and (b) of this subsection, the government of such country or any person acting on its behalf,may in urgent circumstances apply to the Minister for the arrest of a person who is accused or was convicted of an extraditable offence in such a country, pending the communication of a request for the return of that person in accordance with the said [section 7](#).
- (2) An application in terms of subsection (1) shall-
  - (a) be made in writing;
  - (b) state the grounds for its urgency;
  - (c) state the full particulars of the person whose arrest is requested and information, if any, to establish that person's location and identity;
  - (d) specify the nature and particulars of the extraditable offence, the time and place at which that offence is alleged to have been committed or, if such person is alleged to be unlawfully



- at large after conviction of and sentencing for such an offence, the period of such sentence which remains to be served; and
- (e) state that the return of the person will be requested in accordance with sections [7](#) and [8](#).
- (3) An application referred to in subsection (1) may be transmitted by post or telegraphic or similar written or printed communication providing proof of such request.
- (4) The Minister shall forward to a magistrate the application referred to in subsection (1), and if such magistrate is satisfied that a state of urgency exists in regard to that application and that the return of the person concerned is not prohibited under Part II, he or she may issue, subject to subsection (6), a warrant of arrest for that person.
- (5) The magistrate referred to in subsection (4) shall forthwith inform the Minister-
- (a) of the issue of a warrant in terms of that subsection; or
- (b) of his or her decision not to issue such warrant and give his or her reasons therefor.
- (6) A warrant of arrest issued under subsection (4)-
- (a) shall be in the form and shall be executed in the manner as may be prescribed in respect of warrants of arrest in general by or under the laws of Namibia relating to criminal procedure; and
- (b) may be executed in any part of Namibia.
- (7) Any person arrested under subsection (6) shall in accordance with Article 11 of the Namibian Constitution be-
- (a) informed promptly in a language that he or she understands of the grounds for such arrest; and
- (b) be brought before a magistrate within 48 hours of his or her arrest or, if it is not reasonably possible, as soon as possible thereafter.
- (8) The magistrate referred to in subsection (7)(b), while awaiting an authorization under [section 10](#)(1) from the Minister to proceed with the matter in accordance with [section 12](#), shall remand a person brought before him or her either in custody or on bail as if such person was brought before him or her for a preparatory examination or trial.
- (9) If no request contemplated in subsection (2)(e) is made within a period of 30 days from the date of arrest under subsection (6) of the person concerned, that person shall be released from custody or bail, as the case may be, but any such release shall not absolve that person from being dealt with in accordance with this Act if the request in question is received at a later date.

## 12. Enquiry proceedings for committal

- (1) Where the return of a person has been requested under this Act and the Minister has under section [6](#)(3) or [10](#)(1) authorized a magistrate to proceed with such matter, such person shall, subject to [section 15](#), be brought before that magistrate who shall hold an enquiry with a view to make a finding as to the return of such person to the country concerned.
- (2) Subject to this Act, the magistrate holding the enquiry shall proceed in the manner in which a preparatory examination is held in the case of a person charged with having committed an offence in Namibia and shall, for the purposes of holding such enquiry, have the same powers, including the power of committing any person for further examination and of admitting to bail any person detained, as he or she would have at a preparatory examination so held.
- (3) The Prosecutor-General or any person delegated by him or her shall appear-
- (a) at any enquiry; or

- (b) at any proceedings in the High Court or the Supreme Court under this Act.

[subsection (3) substituted by section 4(a) of Act 19 of 2018]

- (4) [subsection (4) deleted by section 4(b) of Act 19 of 2018]
- (5) If at any enquiry the magistrate concerned is satisfied, after hearing the evidence tendered at such enquiry, that-
- (a) the offence to which the request in question relates is an extraditable offence;
  - (b) the country requesting the return of the person concerned is a country contemplated in [section 4\(1\)](#);
  - (c) the person brought before him or her at the enquiry is the person who is alleged to have committed such extraditable offence in such country or to be unlawfully at large after conviction for an extraditable offence in such country;
  - (d) in the case of a person being accused of having committed an extraditable offence, the evidence adduced would be sufficient to justify the committal for trial of the person concerned if the conduct constituting the offence had taken place in Namibia; and
  - (e) the return of the person concerned has been requested in accordance with this Act and that the return of that person is not prohibited under Part II,

the magistrate shall issue an order committing that person to prison to await the Minister's decision under [section 16](#) with regard to that person's return to the requesting country.

- (6) On issuing an order of committal under subsection (5), the magistrate shall forthwith forward to the Minister a copy of the record of the proceedings and such report as he or she may deem necessary.
- (7) If at an enquiry the magistrate concerned is not satisfied that all the requirements set out in subsection (5) have been complied with, the magistrate shall order the discharge of the person concerned whose return was requested, and shall forthwith notify the Minister in writing of such order and his or her reasons therefor.

[subsection (7) substituted by section 4(c) of Act 19 of 2018]

### 13. Certain conditions for return

No person committed to prison under [section 12\(5\)](#) to await the Minister's decision contemplated in that section shall, except with his or her consent given before a magistrate in writing, be returned to the requesting country concerned-

- (a) unless the Minister orders such return under [section 16](#); and
- (b) until the expiration of a period of 15 days from the date of the order of committal in question or until the conclusion of an appeal made by such person or on his or her behalf in terms of [section 14](#), whichever is the latter.

[The word "latter" is misspelt in the Government Gazette, as reproduced above.]

### 14. Appeals

- (1) Any person or the government of the requesting country concerned may, within 14 days from the date of an order made in terms of [section 12](#), appeal to the High Court against that order, and the High Court may, upon such appeal, make such order in the matter as it thinks the magistrate ought to have made.

- (2) In considering an appeal under subsection (1) the High Court may order the discharge of the person who has been committed to prison under [section 12\(5\)](#) if it is of the opinion that, having regard to all the circumstances of the case, it would be unjust to return such person by reason of-
- (a) the violation of any of the provisions of Part II;
  - (b) the trivial nature of the offence concerned;
  - (c) 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
  - (d) the accusation against the person concerned not having been made in good faith or in the interest of justice.
- (3) Any person or the government of the requesting country concerned may, within 14 days from the date of an order made by the High Court in terms of subsection (1) or (2), apply for leave to appeal against that order, and the provisions of Sections 316 and 316A of the Criminal Procedure Act, 1977 (Act [No. 51 of 1977](#)) shall *mutatis mutandis* apply to the appeal so lodged, and the Supreme Court may, upon such appeal make such order in the matter as it thinks fit.

**[subsection (3) added by section 5 of Act 19 of 2018]**

- (4) In considering an appeal under subsection (3), the Supreme Court may order the discharge of the person who has been committed to prison under [section 12\(5\)](#) if it is of the opinion that having regard to all the circumstances of the case it would be unjust to return such person by reason of the-
- (a) violation of any of the provisions of Part II;
  - (b) trivial nature of the offence concerned;
  - (c) 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
  - (d) accusation against the person concerned not having been made in good faith or in the interest of justice.

**[subsection (4) added by section 5 of Act 19 of 2018]**

## 15. Waiver of right to enquiry

- (1) Any person whose return has been requested by a country contemplated in [section 4\(1\)](#) may in writing before a magistrate waive his or her right to an enquiry.
- (2) If the magistrate concerned is satisfied-
- (a) that a person contemplated in subsection (1) has voluntarily chosen to waive his or her right to an enquiry; and
  - (b) that such person understands the significance and all the implications of such waiver,
- the magistrate shall issue an order committing that person to prison to await the Minister's decision under [section 16](#) with regard to his or her return to the country concerned.
- (3) The magistrate shall forthwith notify the Minister in writing of any order made under subsection (2).

## 16. Order for return

- (1) Subject to subsection (2), whenever a person has been committed to prison under [section 12\(5\)](#) or [15\(2\)](#) for return to a requesting country, and, in the case of a person having been so committed under [section 12\(5\)](#), an appeal is not pending under [section 14](#) or the High Court has not in terms of the said section discharged such person, the Minister shall within 30 days, if he or she is satisfied

that the return of such person is not prohibited under this Act or any other law, issue a written order for the return of that person to the requesting country concerned.

**[subsection (1) substituted by section 6 of Act 19 of 2018]**

- (2) An order for the return of a person shall not be issued under subsection (1) until-
- (a) in the case of a person serving a sentence in Namibia for an offence other than the offence for which the return in question was requested, that sentence has been served;
  - (b) in the case of a person charged with an offence in Namibia being an offence other than the offence for which the return in question was requested, that charge has been disposed of or withdrawn, and if it results in such person serving a sentence of a term of imprisonment, until such sentence has been served:

Provided that if a postponement under this subsection of such order would lead under the laws of Namibia or the requesting country to the prescription through lapse of time of the offence for which the person concerned has been committed to prison under section 12(5) of 15(2), the Minister may, if he or she is satisfied that the requesting country will return such person to Namibia as soon as proceedings in connection with the extraditable offence have been completed in that country, issue such order for the return of such person to such country.

**[The phrase “section 12(5) of 15(2)” should be “section 12(5) or 15(2)”.]**

- (3) If the Minister orders the return of a person under subsection (1), he or she shall direct the person in whose custody that person is held to deliver on a specified date and to a named place of departure the person concerned, who shall be held in custody until he or she is conveyed out of Namibia.
- (4) (a) As soon as the Minister has under subsection (1) ordered the return of a person, he or she shall notify the requesting country concerned of the date and place referred to in subsection (3) at which such person shall be handed over to authorized officials of such country.
- (b) If the officials of the country referred to in paragraph (a) have not attended on the date and at the place referred to in that paragraph for the purpose of receiving the person to be returned, and such country has not, within 15 days thereafter, made arrangements to the satisfaction of the Minister for receiving such person, the Minister shall forthwith order the discharge of that person and no request for the return of that person for the same offence shall be further entertained.
- (5) The Minister shall notify the requesting country concerned of any final decision under this Act not to return to such country a person whose return was requested.

## 17. Extradition to Namibia

- (1) A person extradited to Namibia shall not, unless such person has first had an opportunity to leave Namibia, be prosecuted or punished in Namibia for any offence other than-
- (a) the offence in respect of which such person was returned;
  - (b) any lesser offence proved on the facts on which such person was returned;
  - (c) an offence committed in Namibia after such person's return; or
  - (d) an offence not being an offence contemplated in paragraph (a), (b) or (c) and in respect of which the country returning such person have consented to the person being tried.
- (2) Where a person contemplated in subsection (1) has before his or her return to Namibia been convicted in Namibia of an offence for which such return was not granted, any outstanding punishment for that offence shall be remitted, but such conviction shall be treated as a conviction for all other purposes.

## Part IV – Miscellaneous

### 18. Authentication of foreign documents

- (1) No deposition, statement on oath or affirmation taken, whether or not taken in the presence of the person whose return has been requested, or any document, or any record of any conviction, or any warrant issued in a requesting country, or any copy or sworn translation thereof, may be tendered under [section 8](#) or be received in evidence at an appeal under [section 14](#) or at an enquiry, unless such deposition, statement, affirmation, document, record, or warrant, or any copy or sworn translation thereof-
  - (a) has been authenticated in the manner in which foreign documents may be authenticated to enable them to be produced in any court in Namibia or in the manner provided for in the extradition agreement concerned; or
  - (b) has been certified as the original or as true copies or translations thereof by a judge or magistrate, or by an officer authorized thereto by one of them, of the requesting country concerned; and

**[paragraph (b) substituted by section 7(a) of Act 19 of 2018]**

- (c) is accompanied by a certificate similar to the one set out in Schedule 2.

**[paragraph (c) added by section 7(b) of Act 19 of 2018]**

- (2) Any-
  - (a) record of conviction and sentence by a court of competent jurisdiction;
  - (b) statement by a competent judicial or public officer of the law of a requesting country; or
  - (c) deposition, statement, or affirmation which has been made, sworn, or affirmed by any person,  
which has been authenticated or certified in the manner contemplated in subsection (1) shall on its production in an appeal under [section 14](#) or in any enquiry be *prima facie* proof of the facts stated therein.

### 19. Concurrent requests for return

If requests are concurrently made by or on behalf of the governments of more than one country for the return in terms of this Act of any person, the Minister shall, after taking into account all the circumstances, and in particular-

- (a) the place of commission of the offence in terms of its proximity to Namibia;
- (b) the relative seriousness of the respective offences;
- (c) the respective dates of the requests; and
- (d) the possibility of a violation of the provisions of this Act,

determine which of such requests, if any, is to be proceeded with in terms of this Act.

### 20. Legal representation

- (1) Any person who has been arrested for the purposes of being returned to a requesting country in terms of this Act shall have the right to be legally represented.
- (2) Notwithstanding the provisions of the Legal Aid Act, 1990 (Act [29 of 1990](#)), if no legal practitioner has been instructed by the person whose return has been requested, the Director of Legal Aid

referred to in that Act shall instruct a legal practitioner to represent such person, and any fees of such legal practitioner, if he or she is not employed in the Public Service, shall be met by the country requesting such return.

## 21. Bail

- (1) A person-
  - (a) committed to prison under section [12\(5\)](#) or [15\(2\)](#) to await the Minister's decision in terms of [section 16](#);
  - (b) committed to prison under [section 12\(5\)](#) to await the Minister's decision in terms of [section 16](#) and who has appealed against the committal order in question in terms of [section 14](#); or
  - (c) whose return to a designated country has been ordered by the Minister under [section 16](#),may apply to be released on bail in an amount of money as determined by the magistrate that such person deposits with the clerk of court or any police station.
- (2) If the magistrate orders that the applicant be released on bail in terms of subsection (1), the provisions of sections 66, 67, 68 and 307(3), (4) and (5) of the Criminal Procedure Act, 1977( Act [No. 51 of 1977](#)) shall *mutatis mutandis* apply to bail so granted, and any reference in those sections to the-
  - (a) prosecutor who may act under those sections, shall be deemed to be a reference to the person who may appear at an enquiry held under this Act;
  - (b) accused, shall be deemed to be a reference to the person released on bail under this subsection;
  - (c) court, shall be deemed to be a reference to the magistrate who released such person on bail; and
  - (d) trial or sentence, shall be deemed to be a reference to the magistrate's order given under [section 12](#).

**[section 21 struck down on constitutional grounds by  
Alexander v Minister of Justice & Others 2010 (1) NR 328 (SC)]**

**[section 21 substituted by section 8 of Act [19 of 2018](#)]**

## 22. Custody

- (1) Any person who is remanded in or committed to custody under this Act shall be detained in a like institution, under the same conditions and be accorded the same treatment, as a person charged with an offence before a court of law in Namibia.
- (2) Any person ordered to be returned to a country under this Act may be removed from Namibia in the custody of the person authorized to receive him or her.
- (3) Any person who is in custody in terms of this Act and who escapes or attempts to escape from such custody-
  - (a) may be arrested in any part of Namibia in the like manner as a person escaping from custody after being arrested for an offence under the laws of Namibia;
  - (b) shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

## 23. Handing over of property

- (1) Subject to the provisions of any other law and the rights of third parties under common law, any property found in Namibia that is duly proved to have been acquired as a result of the offence for

which the return of a person has been granted under this Act or that may be required as evidence may, if the requesting country concerned so indicates and at that country's expense, be transferred thereto under an order issued by a magistrate.

- (2) The magistrate may issue the order for the surrender of property in terms of subsection (1) notwithstanding the fact that the return in question cannot be carried out by reason of the death or escape of the person to be returned.

## 24. Transit

Transit through Namibia of a person being extradited from one foreign country to another may be permitted by the Minister following a request made by the country to which that person is being conveyed, and if that person is in custody during such transit, he or she shall remain in custody throughout the transit period.

## 25. Regulations

The Minister may make regulations-

- (a) prescribing the form of any warrant, form, order, or other document which is required to be issued for the purposes of this Act;
- (b) prescribing, generally, any matter which he or she considers necessary or expedient to prescribe in order that the objects of this Act may be better achieved.

## 26. Repeal of laws, savings and transitional provisions

- (1) The laws specified in Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule.

[subsection (1) substituted by section 9 of Act 19 of 2018]

- (2) Subject to subsections (3) and (4), anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.
- (3) Subject to subsection (4), any request made under a law repealed by subsection (1) for the return of a person to a country to which the provisions of this Act apply shall be dealt with and finalized under the corresponding provisions of this Act.
- (4) Any enquiry commenced on or before the date of commencement of this Act under a law repealed by subsection (1) and which has not been completed on the said date of commencement shall be proceeded with and the matter finalized as if this Act had not been passed.

## 27. Short title and commencement

This Act shall be called the Extradition Act, 1995, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

[The date "1995" is in error. The short title of the Act must be the "Extradition Act, 1996" since it was gazetted on 16 July 1996. The title of the Act in the heading at the top of this annotated version has been corrected to refer to the year 1996.]

## Schedule 1 (Section 26)

[title substituted by section 10 of Act 19 of 2018]

No. and year of law	Short title	Extent of repeal
Act <a href="#">67 of 1962</a>	Extradition Act, 1962	The whole
Act <a href="#">93 of 1963</a>	General Law Further Amendment Act, 1963	Sections 18 to 20, inclusive
Act <a href="#">70 of 1968</a>	General Law Amendment Act, 1968	Sections 53 and 54
Act <a href="#">101 of 1969</a>	General Law Amendment Act, 1969	Section 21
Act <a href="#">46 of 1987</a>	Extradition Amendment Act, 1987	The whole

## Schedule 2 (Section 18)

### *Apostille*

*(Convention de la Haye du 5 Octobre 1961)*

1. Country \_\_\_\_\_  
This public document \_\_\_\_\_
2. Has been signed by \_\_\_\_\_
3. Acting in the capacity of \_\_\_\_\_
4. Bears the seal/stamp of \_\_\_\_\_

### *Certified*

5. at \_\_\_\_\_
6. the (date) \_\_\_\_\_
7. by \_\_\_\_\_
8. No. \_\_\_\_\_
9. Seal/stamp:  
\_\_\_\_\_
10. Signature \_\_\_\_\_

[Schedule 2 added by section 11 of Act [19 of 2018](#)]