

Chapter 49.
Extradition Act 1975.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 49.

Extradition Act 1975.

ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Interpretation.
 - “authority to proceed”
 - “court of committal”
 - “designated Commonwealth country”
 - “extradition offence”
 - “extradition treaty”
 - “foreign state”
 - “fugitive”
 - “magistrate”
 - “provisional warrant”
 - “the regulations”
 - “this Act”
 - “treaty state”
2. Act may be applied in relation to foreign state by regulations.
3. Effect of regulations applying act in relation to foreign state.
4. Application of act to foreign states other than treaty states.
5. Designated Commonwealth countries.

PART II – EXTRADITION OF FUGITIVE OFFENDERS.

6. Persons liable to extradition.
7. Extradition offences.
8. General restrictions on extradition.

PART III – PROCEEDINGS FOR EXTRADITION.

9. Authority to proceed.
10. Arrest for purposes of committal.
11. Proceedings for committal.
- 11A. Appeal by treaty state or designated Commonwealth country.
12. Actions concerning personal liberty.

13. Order for extradition.
14. Discharge in case of delay in extraditing.
15. Evidence.
16. Custody.
17. Form of warrants and orders.

**PART IV – EXTRADITION FROM FOREIGN STATES AND
DESIGNATED COMMONWEALTH COUNTRIES.**

18. Interpretation of Part IV.
19. Request for surrender of fugitive.
20. Person surrendered may be brought into Papua New Guinea.
21. Restriction on proceedings for other offences.
22. Restoration of persons not tried or acquitted.

PART V – MISCELLANEOUS.

23. Liability for arrest, etc., of fugitive offenders in respect of extradition offences.
24. Property found on fugitive offenders.
25. Taking of evidence in respect of criminal matters pending in courts of treaty states or designated Commonwealth countries.
- 25A. Taking of evidence for purposes of extradition.
26. Regulations.
28. Act deemed to apply to certain foreign States.

SCHEDULE 1 – Extradition and extraditable offences.

SCHEDULE 2 – Treaty States.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Extradition Act 1975,

Being an Act to provide for the extradition of fugitives to and from Commonwealth countries and foreign states, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“**authority to proceed**” means an order made under Section 9(1);

“**court of committal**” means a court before whom a person is brought under Section 11(1);

“**designated Commonwealth country**” means a country designated under Section 5, and includes the dependencies of that country;

“**extradition offence**” means an extradition offence within the meaning of Section 7;

“**extradition treaty**” means a treaty or agreement made by Papua New Guinea with a foreign state relating to extradition of fugitive offenders;

“**foreign state**” means any state outside Papua New Guinea, other than a Commonwealth country, and includes every constituent part of, and every dependency of, the state;

“**fugitive**” means a person who is accused or convicted of an extradition offence committed within the jurisdiction of a foreign state or of a Commonwealth country and is, or is suspected to be, in Papua New Guinea or in a foreign state or a Commonwealth country;

“**magistrate**” means a magistrate of a District Court;

“**provisional warrant**” means a warrant issued under Section 10(1)(b);

“the regulations” means any regulations made under this Act;

“this Act” includes the regulations;

“treaty state” means a foreign state with which an extradition treaty is in force.

(2) A reference in this Act to a fugitive from a foreign state or designated Commonwealth country shall be read as a reference to a fugitive—

(a) accused of an extradition offence that is alleged to have been committed; or

(b) convicted of an extradition offence that was committed,

at a place—

(c) in that foreign state or designated Commonwealth country; or

(d) within the jurisdiction of, or of a part of, that state or country.

(3) For the purposes of this Act, a person shall be deemed not to have been convicted of an offence against a law of, or of a part of, a foreign state or designated Commonwealth country where the conviction is, under that law, a conviction for contumacy, but a person so convicted for contumacy shall be deemed to be accused of an offence against that law.

(4) For the purposes of this Act, an offence against the law of a foreign state or designated Commonwealth country may be regarded as being an offence of a political character notwithstanding that there are no competing political parties in that state or country.

(5) An offence against a law of, or of a part of, a foreign state that is bound by the Convention for the Suppression of Unlawful Seizure of Aircraft, enters into force for Papua New Guinea, being an offence constituted by an act, including an act taking place in Papua New Guinea, that is of a kind referred to in Item 34 or 35 in Schedule 1 and over which the foreign state or designated Commonwealth country is required by paragraph 1 of Article 4 of that Convention to establish its jurisdiction, shall, for the purposes of this Act, be deemed to be an extradition offence and to have been committed within the jurisdiction of the foreign state or designated Commonwealth country, as the case may be.

2. ACT MAY BE APPLIED IN RELATION TO FOREIGN STATE BY REGULATIONS.

(1) Where an extradition treaty is in force between Papua New Guinea and a foreign state—

(a) if this Act applies in relation to the foreign state at the time of coming into force of the treaty—the regulations may provide that this Act applies in relation to that state after that time subject to such limitations, conditions, exceptions or qualifications as are necessary or desirable to give effect to the treaty and are specified in the regulations; or

- (b) if this Act does not apply in relation to the foreign state at the time of coming into force of the treaty—the regulations may provide that this Act applies in relation to that state after that time, and may also provide that it so applies subject to such limitations, conditions, exceptions or qualifications as are necessary or desirable to give effect to that treaty and are specified in the regulations.

(2) In relation to a foreign state, the limitations, conditions, exceptions or qualifications referred to in Subsection (1) may be expressed in the form—

“This Act applies in relation to (*insert name of state*) subject to (*the extradition treaty referred to in Section 2(1) of the Extradition Act*)”.

3. EFFECT OF REGULATIONS APPLYING ACT IN RELATION TO FOREIGN STATE.

(1) Subject to Subsection (2), where the regulations provide that this Act applies in relation to a foreign state, this Act applies in relation to that state.

(2) Where the regulations provide that this Act applies in relation to a foreign state subject to any limitations, conditions, exceptions or qualifications, this Act applies in relation to that state subject to those limitations, conditions, exceptions or qualifications.

4. APPLICATION OF ACT TO FOREIGN STATES OTHER THAN TREATY STATES.

Where the Head of State, acting on advice, is satisfied that, if this Act applied in relation to a foreign state, the law of that state would, with or without any limitations, conditions, exceptions or qualifications, permit the surrender to Papua New Guinea of persons accused or convicted of extraditable offences within the meaning of Part IV. who are found—

- (a) in that state; or
 (b) within the jurisdiction of, or of a part of, that state,

the regulations may provide that this Act applies in relation—

- (c) to that state; or
 (d) to that state subject to limitations, conditions, exceptions or qualifications specified in the regulations.

5. DESIGNATED COMMONWEALTH COUNTRIES.

(1) The regulations may designate a Commonwealth country as a designated Commonwealth country for the purposes of this Act.

(2) The Minister may, by notice in the National Gazette, direct that this Act has effect for the return of persons to, or in relation to persons returned from, any designated Commonwealth country subject to such exceptions, adaptations or modifications as are specified in the notice.

PART II. – EXTRADITION OF FUGITIVE OFFENDERS.**6. PERSONS LIABLE TO EXTRADITION.**

Subject to this Act, a person found in Papua New Guinea who—

- (a) is accused or convicted of an extradition offence in any treaty state or designated Commonwealth country; or
- (b) is alleged to be unlawfully at large after conviction of such an offence in any such state or country,

may be arrested and returned to that state or country as provided by this Act.

7. EXTRADITION OFFENCES.

(1) For the purposes of this Act, an offence of which a person is accused or has been convicted in a treaty state or in a designated Commonwealth country is an extradition offence if—

- (a) in the case of an offence against the law of a treaty state—it is an offence that is provided for by the extradition treaty; and
- (b) in the case of an offence against the law of a designated Commonwealth country—it is an offence, however described in that law, that—
 - (i) falls within any description set out in Schedule 1; and
 - (ii) is punishable under that law with imprisonment for a term of 12 months or any greater punishment; and
- (c) in any case, the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Papua New Guinea if it took place—
 - (i) within Papua New Guinea; or
 - (ii) in the case of an extra-territorial offence, in corresponding circumstances outside Papua New Guinea.

(2) In determining for the purposes of this section whether an offence against the law of a designated Commonwealth country falls within the description set out in Schedule 1, any special intent or state of mind or special circumstances of aggravation that are necessary to constitute the offence under that law shall be disregarded.

(3) The descriptions set out in Schedule 1 shall be deemed to include offences—

- (a) of attempting or conspiring to commit, of assisting, counselling or procuring, the commission of, or being accessory before or after the fact to, the offences in Schedule 1; and
- (b) of impeding the apprehension or prosecution of persons guilty of those offences.

(4) References in this section to the law of any state or country include references to the law of any part of that country.

8. GENERAL RESTRICTIONS ON EXTRADITION.

(1) A person shall not be—

- (a) extradited under this Act to a treaty state or to a designated Commonwealth country; or
- (b) committed to or kept in custody for the purposes of extradition to a treaty state or designated Commonwealth country,

if it appears to the Minister, or to the court of committal or the National Court on an application for *habeas corpus* or for review of the order of committal—

- (c) that the offence of which that person is accused or was convicted is an offence of a political character; or
- (d) that the request for extradition (although purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
- (e) that, if extradited, he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(2) A person accused of an offence shall not be—

- (a) extradited under this Act to any state or country; or
- (b) committed to or kept in custody for the purpose of his extradition,

if it appears to the Minister that if charged with the offence in Papua New Guinea the person would be entitled to be discharged under any law relating to previous acquittal or conviction.

(3) A person shall not be—

- (a) extradited under this Act to any state or country; or
- (b) committed or kept in custody for the purposes of extradition to any state or country,

unless provision is made by the law of that state or country, or by an arrangement made with that state or country, for securing that, unless he has first been restored or had an opportunity of returning to Papua New Guinea, he will not be dealt with in that state or country for or in respect of any offence committed before his extradition under this Act other than—

- (c) the offence in respect of which the extradition under this Act is requested; or
- (d) any lesser offence proved by the facts proved before the court of committal; or

(e) any other offence, that is an extradition offence in respect of which the Minister consents to his being so dealt with.

(4) An arrangement referred to in Subsection (3) may be an arrangement—

(a) made for the particular case; or

(b) of a general nature,

and for the purposes of that subsection a certificate issued by or under the authority of the Minister—

(c) confirming the existence of an arrangement with a foreign state or Commonwealth country; and

(d) stating its terms,

is conclusive evidence of the matters contained in the certificate.

(5)¹ ²For the purposes of Subsection (1)(c), “**an offence of a political character**” shall not include an offence established under an international agreement to which both Papua New Guinea and the treaty state or designated Commonwealth country are parties and which (however expressed) declares that offence not to be a political offence for the purposes of extradition.

¹ Section 8(5) amended by No. 17 of 1984, s1.

² Section 8(5) amended by No. 17 of 1984, s1.

PART III. – PROCEEDINGS FOR EXTRADITION.

9. AUTHORITY TO PROCEED.

(1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except under an order of the Minister issued in accordance with a request made to him by or on behalf of the treaty state or the designated Commonwealth country in which the person to be extradited is accused or was convicted.

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

- (a) in the case of a person accused of an offence—a warrant for his arrest issued in that state or country; and
- (b) in the case of a person unlawfully at large after conviction of an offence—a certificate of the conviction and sentence in that state or country, and a statement of the amount (if any) of that sentence that has been served,

together, in each case, with—

- (c) particulars of—
 - (i) the person whose extradition is requested; and
 - (ii) the facts on which and the law under which he is accused or was convicted; and
- (d) evidence sufficient to satisfy the issue of a warrant for his arrest under Section 10.

(3) On receipt of a request in accordance with this section, the Minister may issue an authority to proceed unless it appears to him that an order for extradition of the person concerned cannot lawfully be made, or would not in fact be made, in accordance with this Act.

10. ARREST FOR PURPOSES OF COMMITTAL.

³(1) A warrant for the arrest of a person accused of an extradition offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued—

- (a) on the receipt of an authority to proceed by a magistrate within the jurisdiction of whom such person is or is believed to be; or
- (b) without such an authority by a magistrate on information that the person is in Papua New Guinea or is believed to be on his way to Papua New Guinea.

(2) A warrant of arrest under this section may be issued on such evidence (including information contained in an international notice issued by the

³ Section 10 amended by No. 17 of 1984, s2.

International Criminal Police Organization) as, in the opinion of the magistrate, would authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence or of a person alleged to be unlawfully at large after conviction of an offence, as the case may be, within the jurisdiction of the magistrate.

(3) Where a warrant is issued under Subsection (1)(b)–

(a) the authority by whom it is issued shall promptly give notice to the Minister, and transmit to him the information and evidence, or a certified copy of the information and evidence, on which it was issued; and

(b) the Minister may, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested under the warrant, discharge him from custody.

(4) A warrant of arrest issued under this section may be executed by any person to whom it is directed or by any member of the Police Force.

(5) Where a warrant is issued under this section for the arrest of a person accused of–

(a) an offence of stealing or receiving stolen property; or

(b) any other offence in respect of property,

a magistrate has the same power to issue a warrant to search for the property as if the offence had been committed within Papua New Guinea.

11. PROCEEDINGS FOR COMMITTAL.

(1) A person arrested under a warrant issued under Section 10 shall (unless previously discharged under Section 10(3)) be brought as soon as practicable before a court presided over by a magistrate.

(1A)⁴ ⁵A person brought before a court of committal under Subsection (1) may waive committal proceedings, and where the court of committal is satisfied that the person has voluntarily and with a full understanding of a waiver, waived committal proceedings, it shall make an order by consent committing him to custody to await his extradition.

(2) For the purpose of proceedings under this section, a court of committal has the same jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrate conducting committal proceedings under the *District Courts Act 1963* in relation to an indictable offence.

(3) Where the person arrested is in custody under a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a reasonable period (of which the court shall give notice to the Minister) after

⁴ Section 11(1A) added by No. 17 of 1984, s3.

⁵ Section 11(1A) added by No. 17 of 1984, s3.

which, unless an authority to proceed has been received, he will be discharged from custody.

(4) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of the person or on behalf of the person, that the offence to which the authority relates is an extradition offence, and is further satisfied—

- (a) where the person is accused of the offence—that the evidence would be sufficient to warrant his trial for that offence if it had been committed within Papua New Guinea; or
- (b) where the person is alleged to be unlawfully at large after the conviction for the offence—that he has been so convicted and appears to be so at large,

the court, unless his committal is prohibited by any other provision of this Act, shall commit him to custody to await his extradition under the authority, but if the court is not so satisfied or if the committal of that person is so prohibited the court shall discharge him from custody.

11A. APPEAL BY TREATY STATE OR DESIGNATED COMMONWEALTH COUNTRY.

⁶(1) A treaty state or a designated Commonwealth country may appeal against a decision by a committal court under Section 11 to discharge from custody a person, being the subject of a request made by that treaty state or designated Commonwealth country.

(2) An appeal under Subsection (1) shall be made to the National Court within 30 days of the date of the order discharging the person, and may be made on questions of fact or law or both fact and law.

12. ACTIONS CONCERNING PERSONAL LIBERTY.

(1) Where a person is committed to custody under Section 11, the court shall inform him in ordinary language of his right of action in the National Court for redress of a contravention of his right to personal liberty or for review of the order of committal, and shall promptly give notice of the committal to the Minister.

(2) A person committed to custody under Section 11 shall not be extradited under this Act—

- (a) until the expiration of the period of 15 days beginning with the day on which the order for his committal is made, unless the person himself agrees to a shorter period; or

⁶ Section 11A added by No. 17 of 1984, s4.

- (b) if an action has been instituted in the National Court for redress of a contravention of his right to personal liberty or for review of the order of committal, while proceedings on the action are pending.

(3) In an action referred to in Subsection (2), the National Court, without prejudice to any other jurisdiction of the Court, may order the person committed to be discharged from custody if it appears to the Court that—

- (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
- (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
- (c) because the accusation against him is not made in good faith in the interests of justice,

it would be unjust or oppressive to extradite him, having regard to all the circumstances.

(4) On an application under this section the National Court may receive additional evidence relevant to the exercise of its jurisdiction under Subsection (3) or Section 14.

(5) For the purposes of this section—

- (a) proceedings in an action for redress of a contravention of a person's right to personal liberty or for review of an order shall be treated as pending until any appeal in those proceedings is disposed of; and
- (b) an appeal shall be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if the appeal is not brought or the application made within that time.

13. ORDER FOR EXTRADITION.

(1) Where a person is committed to await his extradition and is not discharged by order of the National Court, the Minister, by warrant, may order him to be extradited to the state or country by which the request for his extradition was made unless his extradition—

- (a) is prohibited, or is prohibited for the time being, by Section 8 or this section; or
- (b) the Minister decides under this section to make no such order in his case.

(2) An order shall not be made under this section—

- (a) in the case of a person who is held in custody, or has been admitted to bail, in Papua New Guinea—
 - (i) in the case of a person held in custody—until he has been discharged from custody; and

- (ii) in the case of a person who has been admitted to bail—until the recognizances on which he was admitted to bail have been discharged,

whether as a result of his acquittal, or the expiration of his sentence, or otherwise; or

- (b) in the case of any person—if it appears to the Minister, on a ground mentioned in Section 12(3), that it would be unjust or oppressive to return the person.

(3) The Minister may decide to make no order under this section in the case of a person accused or convicted of a relevant offence not punishable in Papua New Guinea with death if the person could be or has been sentenced to death for the offence in the country by which the request for his return is made.

(4) The Minister may decide to make no order under this section for the return of a person committed in consequence of a request made on behalf of any state or country if another request for his return under this Act has been made on behalf of another state or country and it appears to the Minister, having regard to all the circumstances of the case, and in particular to—

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

that preference should be given to the other request.

(5) Notice of the issue of a warrant under this section must be given promptly to the person to be extradited under it.

14. DISCHARGE IN CASE OF DELAY IN EXTRADITING.

⁷(1) Subject to Subsection (3) if a person committed to await his extradition is in custody in Papua New Guinea under this Act after the expiration of—

- (a) the period of two months beginning with the first day on which, having regard to Section 12(2), he could have been extradited; or
- (b) where a warrant for his extradition has been issued under Section 13, the period of one month beginning with the day on which the warrant was issued,

he may apply to the National Court for his discharge.

(2) If on an application under Subsection (1) the Court is satisfied that reasonable notice of the proposed application has been given to the Minister, the Court, unless sufficient cause is shown to the contrary, may by order direct the

⁷ Section 14 amended by No. 17 of 1984, s5.

applicant to be discharged from custody and, if a warrant for his extradition has been issued under Section 13, quash the warrant.

(3) This section does not apply to a person who has waived committal proceedings under Section 11(1A).

15. EVIDENCE.

(1) In this section, “**oath**” includes affirmation or declaration.

(2) Nothing in this section prejudices the admission in evidence of any document that is admissible in evidence apart from this section.

(3) In any proceedings under this Act, including proceedings on an application for the review of an order in respect of a person in custody under this Act, a document, duly authenticated, that—

- (a) purports to set out evidence given on oath in a treaty state or a designated Commonwealth country is admissible as evidence of the matters stated in it; and
- (b) purports to have been received in evidence, or to be a copy of a document so received, in any proceedings in a treaty state or designated Commonwealth country is admissible in evidence; and
- (c) certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, a treaty state or designated Commonwealth country is admissible as evidence of the fact and date of the conviction.

(4) A document shall be deemed to be duly authenticated for the purposes of this section—

- (a) in the case of a document referred to in Subsection (3)(a)—if the document purports to be certified by a judge, magistrate or officer in or of the state or country in question to be the original document containing or recording the evidence referred to in that paragraph, or a true copy of such a document; and
- (b) in the case of a document or copy of a document to which Subsection (3)(b) refers—if the document purports to be certified in accordance with Paragraph (c) to have been, or to be a true copy of a document referred to in Subsection (3)(b); and
- (c) in the case of a document to which Subsection (3)(c) refers, if the document purports to be certified in accordance with that subsection,

and the document is authenticated by the oath of a witness or by the official seal of a Minister of the treaty state or the designated Commonwealth country, as the case may be.

16. CUSTODY.

(1) A person remanded or committed to custody under Section 10 shall be committed to the like institution as a person charged with an offence before the court of committal.

(2) If a person who is in custody under a warrant under this Act escapes out of custody, he may be taken in any part of Papua New Guinea in the same way as a person escaping from custody under a warrant for his arrest in Papua New Guinea in respect of an offence committed in Papua New Guinea.

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

(4) A warrant under Section 13 for the extradition of any person to any state or country is sufficient authority for all persons to whom it is directed and all members of the Police Force to receive him, keep him in custody and convey him into the jurisdiction of that state or country.

17. FORM OF WARRANTS AND ORDERS.

A warrant or order to be issued or made by the Minister under this Act shall be given under the hand of the Minister, and be in the prescribed form.

PART IV. – EXTRADITION FROM FOREIGN STATES AND DESIGNATED COMMONWEALTH COUNTRIES.

18. INTERPRETATION OF PART IV.

In this Part, “**extraditable offence**” means an offence (wherever committed) against the law of Papua New Guinea that–

- (a) is described in Schedule 1; or
- (b) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstances of aggravation, necessary to constitute the offence.

19. REQUEST FOR SURRENDER OF FUGITIVE.

Where a person accused or convicted of an extraditable offence is, or is suspected of being, in a treaty state or designated Commonwealth country, the Minister may request the state or country, as the case may be, to surrender the person.

20. PERSON SURRENDERED MAY BE BROUGHT INTO PAPUA NEW GUINEA.

Where a person accused or convicted of an extraditable offence is surrendered by a treaty state or designated Commonwealth country, the person may be brought into Papua New Guinea and delivered to the proper authorities to be dealt with according to law.

21. RESTRICTION ON PROCEEDINGS FOR OTHER OFFENCES.

(1) This section applies to a person accused or convicted of an extraditable offence who is returned to Papua New Guinea from any treaty state or designated Commonwealth country, under any law of that state or country corresponding with this Act.

(2) During the period described in Subsection (3), a person to whom this section applies shall not be dealt with in Papua New Guinea for or in respect of an offence committed before he was extradited to Papua New Guinea, other than–

- (a) the offence in respect of which he was extradited; or
- (b) any lesser offence proved by the facts proved for the purposes of securing his extradition; or
- (c) any other offence in respect of which the Government of the state or the country from which he was extradited consents to his being dealt with.

(3) The period referred to in Subsection (2) in relation to a person to whom this section applies is the period beginning with the day of his arrival in Papua New Guinea on his extradition as mentioned in Subsection (1) and ending 45 days after

the first subsequent day on which he has the opportunity to leave Papua New Guinea.

22. RESTORATION OF PERSONS NOT TRIED OR ACQUITTED.

(1) This section applies to a person accused of an offence under the law of Papua New Guinea who is extradited to Papua New Guinea under Section 19.

(2) If, in the case of a person to whom this section applies—

(a) proceedings against him for the offence for which he was extradited are not begun within the period of six months beginning with the day of his arrival in Papua New Guinea on being extradited; or

(b) on his trial for that offence, he is acquitted or discharged,

the Minister may, if he thinks fit, on the request of the person, arrange for him to be sent back free of charge, and with as little delay as possible, to the country from which he was extradited.

PART V. – MISCELLANEOUS.**23. LIABILITY FOR ARREST, ETC., OF FUGITIVE OFFENDERS IN RESPECT OF EXTRADITION OFFENCES.**

Subject to this Act, a fugitive offender of a treaty state or designated Commonwealth country is liable to be arrested and dealt with whenever the offence in respect of which he is to be dealt with was committed.

24. PROPERTY FOUND ON FUGITIVE OFFENDERS.

Every thing found in the possession of an offender at the time of his arrest that may be material as evidence in proving the extradition offence may be delivered up with the offender when he is dealt with, subject to the rights (if any) of third persons in respect of it.

25. TAKING OF EVIDENCE IN RESPECT OF CRIMINAL MATTERS PENDING IN COURTS OF TREATY STATES OR DESIGNATED COMMONWEALTH COUNTRIES.

(1)⁸ ⁹The Minister, by written notice, may authorize a magistrate to take evidence for the purposes of a criminal matter pending in a court or tribunal of a treaty state or of a designated Commonwealth country other than a matter relating to an offence that is, by its nature or by reason of the circumstances in which it is alleged to have been committed, an offence of a political character.

(2) On receipt of the notice, the magistrate shall—

- (a) take the evidence of each witness appearing before him to give evidence in relation to the matter in the like manner as if the witness were giving evidence on a charge against a person for an offence against the law of Papua New Guinea; and
- (b) cause the evidence to be reduced to writing and certify at the end of the writing that the evidence was taken by him; and
- (c) cause the writing so certified to be forwarded to the Minister.

(3) The evidence of the witness may be taken in the presence or absence of the person charged with the offence against the law of, or of the part of, the treaty state or designated Commonwealth country, and the certificate by the magistrate that the evidence was taken by him shall state whether the person so charged was present or absent when the evidence was taken.

(4) The laws with respect to the compelling of persons to attend before a magistrate, and to give evidence, answer questions and produce documents, on the hearing of a charge against a person for an offence against the law of Papua New Guinea apply, so far as they are capable of application, with respect to the compelling

⁸ Section 25(1) amended by No. 19 of 1977, s2.

⁹ Section 25(1) amended by No. 19 of 1977, s2.

of persons to attend before a magistrate, and to give evidence, answer questions and produce documents, for the purposes of this section.

25A. TAKING OF EVIDENCE FOR PURPOSES OF EXTRADITION.

¹⁰(1) Where a warrant has been issued in the country for the apprehension of a person accused of an extraditable offence and that person is, or is suspected of being in, or within the jurisdiction of, or a part of, a treaty state or a designated Commonwealth country, the Minister may, by written notice, authorize a magistrate to take evidence in the country for transmission to that treaty state or designated Commonwealth country for use in any proceedings for the surrender of the person to the State.

- (2) On receipt of a notice under Subsection (1), the magistrate shall—
- (a) take the evidence on oath or affirmation of each witness appearing before him to give evidence in relation to the matter; and
 - (b) cause the evidence to be reduced to writing and certify at the end of that writing that the evidence was taken by him; and
 - (c) cause the writing so certified to be forwarded to the Minister.

26. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular for prescribing penalties of fines not exceeding K500.00 for offences against the regulations.

28. ACT DEEMED TO APPLY TO CERTAIN FOREIGN STATES.

(1) Subject to Subsection (2), (3) and (4), this Act applies to the foreign States specified in Schedule 2 being foreign States to which the *Extradition (Foreign States) Act 1966-1972* of Australia applied immediately before the commencement of this Act.

(2) If the application of the *Extradition (Foreign States) Act 1966-1972* of Australia to a foreign State was subject to any limitations, conditions, exceptions or qualifications, then this Act applies in relation to that State subject to those limitations, conditions, exceptions and modifications.

(3) The Regulations may provide that this Act ceases to apply in relation to a foreign State specified in the Regulations, being a foreign State in relation to which this Act applies by virtue of Subsection (1), and, upon the coming into operation of a regulation that so provides, this Act ceases to apply in relation to that State.

(4) The coming into operation of a regulation made for the purposes of Subsection (3) in relation to a foreign State does not prevent this Act from again

¹⁰ Section 25A added by No. 19 of 1977, s3; amended by No. 17 of 1984, s6.

applying in relation to that State under a regulation made for the purposes of Section 2.

(5) A foreign State to which this Act applies by virtue of this section shall be deemed to be a treaty State.”

Note Section 28 was omitted from the Revised Edition as a transitional provision.

SCHEDULE 1 – EXTRADITION AND EXTRADITABLE OFFENCES.

Secs. 7, 18.

- ¹¹1. Wilful murder; murder.
2. Manslaughter.
3. An offence against the law relating to abortion.
4. Maliciously or wilfully wounding or inflicting grievous bodily harm.
5. A malicious act with intent to injure passengers on a railway.
6. Assault occasioning actual bodily harm.
7. Assaulting a magistrate, a peace officer or a public officer.
8. Assault on board a ship or aircraft with intent to destroy life or to do grievous bodily harm.
9. Rape.
10. Unlawful sexual intercourse with a female.
11. Indecent assault.
12. Procuring, or trafficking in, women or young persons for immoral purposes.
- 13¹². **[Repealed.]**
14. Bigamy.
15. Kidnapping; abduction; false imprisonment; dealing in slaves.
16. Stealing, abandoning, exposing or unlawfully detaining a child.
17. Bribery.
18. Perjury; subornation of perjury; conspiring to defeat the course of justice.
19. Arson.
20. An offence concerning counterfeit currency.
21. An offence against the law relating to forgery.
22. Stealing; embezzlement; fraudulent conversion; fraudulent false accounting; obtaining property or money, or both, or credit by false pretences; receiving stolen property (including money); any other offence in respect of property (including money) involving fraud.
23. Fraud by an agent, bailee, banker, factor or trustee.
24. Burglary; housebreaking; any similar offence.
25. Robbery.
26. Blackmail or extortion by means of threats or by abuse of authority.

¹¹ Schedule 1.1 amended by No. 17 of 1984, s7.

¹² Schedule 1.13 repealed by No. 17 of 1984.

27. An offence against the law relating to bankruptcy or insolvency.
28. An offence against the law relating to companies.
29. Maliciously or wilfully damaging property.
30. An act done with the intention of endangering a vehicle, vessel or aircraft.
31. An offence against the law relating to dangerous drugs or narcotics.
32. Piracy.
33. Revolt against the authority of the master of a ship or the commander of an aircraft.
34. The unlawful seizure, or unlawful exercise of control, of an aircraft, by force or threat of force or by any other form of intimidation.
35. Aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, an offence described in a preceding item of this Schedule.
36. An offence established under an international agreement to which both Papua New Guinea and the treaty state are parties and which is designated under that international agreement as an offence for which extradition may be requested.

SCHEDULE 2 – ¹³TREATY STATES.

Sec. 28.

Austria	Luxembourg
Belgium	Monaco
Chile	Nicaragua
Czechoslovakia	Paraguay
Ecuador	Poland
Greece	Portugal
Guatemala	Switzerland
Hungary	United States of America
Iraq	Yugoslavia.
Austria	Luxembourg
Belgium	Monaco
Chile	Nicaragua
Czechoslovakia	Paraguay
Ecuador	Poland
Greece	Portugal
Guatemala	Switzerland
Hungary	United States of America
Iraq	Yugoslavia.

¹³ Schedule 2 amended by Statutory Instrument No. 12 of 1981.