



SAMOA

EXTRADITION ACT 1974

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EXTRADITION ACT 1974

AN ACT to provide for the extradition of fugitive offenders.

[Assent and commencement date: 30 December 1974]

PART 1
PRELIMINARY

1. Short title – This Act may be cited as the Extradition Act 1974.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“authority to proceed” means an authority to proceed within the meaning of section 7(1);

“Court of committal” in relation to a person whose extradition is requested under this Act, means the Court referred to in section 9(1);

“extradition country” means:

(a) a Commonwealth country that is designated by Order under section 3, together with the dependencies (if any) of that country; or

(b) a foreign country with which an extradition treaty is in force;

“extradition offence” in relation to an extradition country, means:

(a) an offence (including an offence of a purely fiscal character) against the law of that extradition country that—

(i) is an offence for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; and

(ii) is constituted by an act or omission that would constitute an offence against the law of Samoa if it took place within Samoa or in the case of an extra-territorial offence, in corresponding circumstances outside Samoa; or

(b) an offence (including an offence of a purely fiscal character) against the law of that extradition country that does not carry a penalty under the law

of that country but is constituted by conduct that, under an extradition treaty in relation to that country, is required to be treated as an offence for which the surrender of persons is permitted by that country and Samoa;

“extradition treaty” means a treaty or agreement relating to extradition, being:

- (a) a treaty made by Samoa with a foreign country; or
- (b) a treaty made before 1 January 1962 that extends to and is binding on, Samoa;

“foreign country” means any country outside Samoa (other than a Commonwealth Country), and includes any constituent part and dependency of such a country;

“Minister” means the Minister responsible for Justice.

(2) A reference in this Act to the law of any country includes a reference to a law of, or in force in, any part of that country.

PART 1A REQUIREMENTS FOR EXTRADITION

3. Designated Commonwealth countries – (1) The Head of State, acting on the advice of Cabinet may, by Order published in the Samoan Gazette or *Savali*, designate a Commonwealth country as a designated Commonwealth country for the purposes of this Act.

(2) The Head of State, acting on the advice of Cabinet, may by Order so published direct that this Act has effect for the return of persons to, or in relation to persons returned from, any Commonwealth country so designated subject to such exception, adaptations or modifications as may be specified in the Order.

(3) The Head of State, acting on the advice of Cabinet, may, by Order so published, direct that extradition between Samoa and a Commonwealth country so designated that is specified in the Order is to be conducted on the basis of record of case.

4. Person liable to extradition – Subject to the provisions of this Act, a person found in Samoa who is accused of an extradition offence in an extradition country or who is alleged to be unlawfully at large after conviction of an extradition offence in an extradition country may be arrested and returned to that extradition country as provided by this Act.

5. *Repealed by section 6 of the Extradition Amendment Act 1994*

6. General restrictions on extradition – (1) A person shall not be extradited under this Act to an extradition country or committed to or kept in custody for the purposes of such extradition if it appears to the Minister, or to the Court of committal or the Supreme Court on an application for habeas corpus or for review of the order of committal:

- (a) that the offence of which that person is accused or was convicted is an offence of a political character;
- (aa) that the offence of which the person is accused or was convicted is an offence under the military law, but not under the ordinary criminal law, of the requesting country;
- (b) that the request for extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing the person on account of his or her race, religion, ethnic identity, nationality, or political opinions; or
- (c) that the person might, if extradited, be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, religion, ethnic identity, nationality or political opinions.

(2) A person accused of an offence shall not be extradited under this Act to any country, or committed to or kept in custody for the purpose of his or her extradition, if it appears as aforesaid, that if charged with the offence in Samoa the person would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be extradited under this Act to any country, or committed or kept in custody for the purposes of such extradition, unless provision is made by the law of that country, or by an arrangement made with the country, for securing that the person will not, unless he or she has first been restored or had an opportunity of returning to Samoa, be dealt with in that country, for or in respect of any offence committed before extradition under this Act other than:

- (a) the offence in respect of which the extradition under this Act is requested;
- (b) any lesser offence proved by the facts proved before the Court of committal; or
- (c) any other offence being an extradition offence in respect of which the Minister may consent to his or her being so dealt with.

(4) An arrangement mentioned in subsection (3) may be or an arrangement made for the particular case an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Minister responsible for Foreign Affairs confirming the existence of an arrangement with a country and stating its terms is conclusive evidence of the matters contained in the certificate.

PART 2 PROCEEDINGS FOR EXTRADITION

7. Authority to proceed – (1) Subject to the provisions of this Act relating to provisional warrants, a person is not to be dealt with thereunder except under an order of the Minister (in this Act referred to as an “authority to proceed”) issued in pursuance of a request made to him or her by or on behalf of the extradition country in which the person to be extradited is accused or was convicted.

(2) Subject to subsection (2A), a request made on behalf of any extradition country (in this subsection and in subsections (2A) and (2B) called the requesting country) for the extradition of a person accused of an offence shall be accompanied by:

- (a) a warrant for the arrest of the person issued in the requesting country; and
- (b) particulars of the person; and
- (c) particulars of the facts upon which, and the law under which, the person is accused; and
- (d) evidence for the purposes of section 9(4)(a).

(2A) If the requesting country is a Commonwealth country and an order under section 3(3) directs that extradition between Samoa and the requesting country is to be conducted on the basis of record of case, the request shall be accompanied by:

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- (a) a record of the case in respect of the alleged offence that contains the following particulars and documents—
 - (i) particulars of the description, identity, nationality and, if available, the whereabouts of the person sought;
 - (ii) particulars of each offence in respect of which extradition is sought, specifying the date and place of commission, the legal definition of the offence and the relevant provisions of the law of the requesting country, including a certified copy of any such definition in the written law of the requesting country;
 - (iii) the original, or a certified copy, of any warrant or process issued in the requesting country against the person sought;
 - (iv) a recital of the evidence acquired to support the extradition of the person sought;
 - (v) a certified copy, reproduction or photograph of each exhibit, or item of documentary evidence, mentioned in that recital of evidence; and
- (b) an affidavit, sworn statement or affirmation of an officer of the investigating authority of the requesting country stating that—
 - (i) the record was prepared by, or under the direction of, that officer; and
 - (ii) the evidence referred to in the record has been preserved for use in Court; and
- (c) a certificate of the Attorney General of the requesting country stating that, in the Director of Public Prosecutions opinion, the record discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.

(2B) A certification required by subsection (2A)(a) may be done by any person in the requesting country who is, or holds office as, the Attorney General's or a legal practitioner, notary public, commissioner of oaths or commissioned police officer.

(2C) A request made on behalf of any extradition country for the extradition of a person unlawfully at large after conviction of an offence shall be accompanied by:

- (a) a certificate of the conviction and sentence in that country; and
- (b) a statement of the amount (if any) of that sentence which has been served; and,
- (c) particulars of the person; and
- (d) particulars of the facts upon which, and the law under which the person was convicted.

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

8. Arrest for the purposes of committal – (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 by a District Court Judge:

- (a) on the receipt of an authority to proceed by a District Court Judge;
- (b) without such an authority by a District Court Judge upon information that the person is or is believed to be on his way to Samoa,—

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

(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the District Court Judge, authorise the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence.

(3) Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Minister, and transmit to the Minister the information and evidence, or certified copy of the information and evidence, upon which it was issued; and the Minister may in any case, and shall if the Minister decides not to issue an authority to proceed in respect of the person to whom the warrant relates by order cancel the

warrant and, if that person has been arrested thereunder, discharge the person from custody.

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

9. Proceedings for committal – (1) A person arrested in pursuance of a warrant under section 8 shall (unless previously discharged under section 8(3)) be brought as soon as practicable before a Court presided over by a District Court Judge (in this Act referred to as the Court of committal).

(2) For the purpose of proceedings under this section, a Court of committal has the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as if the proceedings were the hearing of an information for an offence triable before a District Court Judge.

(3) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of that person, the Court of committal may fix a reasonable period (of which the Court shall give notice to the Minister) after which the person will be discharged from custody unless such an authority has been received.

(4) Where:

- (a) an authority to proceed has been issued in respect of the person arrested;
- (b) subject to subsection (5), the Court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extradition offence; and—
 - (i) where that person is accused of the offence, that the evidence would be sufficient to warrant the person's trial for that offence if it had been committed within the jurisdiction of the Court;
 - (ii) where that person is alleged to be unlawfully at large after conviction of the offence, that the person has been so convicted and appears to be so at large; and

(c) committal of the person is not prohibited by any other provision of this Act, -
the Court shall commit the person to custody to await extradition; but, if the Court is not so satisfied or if the committal of that person is so prohibited, the Court shall discharge the person from custody.

(5) In a case in which the request for the extradition of a person for an alleged offence is accompanied, in accordance with section 7(2A), by a record of the case, the requirements of subsection (4)(b) are met if the Court is satisfied that the record of the case indicates that:

- (a) the offence to which the authority to proceed relates is an extradition offence; and
- (b) according to the law of the country requesting the extradition of the person, the person has committed the offence to which the record relates.

10. Actions concerning personal liberty – (1) Where a person is committed to custody under section 9, the Court shall inform the person in ordinary language of the person's right of action in the Supreme Court for redress of a contravention of the person's right to personal liberty or for review of the order of committal, and shall forthwith give notice of the committal to the Minister.

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

- (a) in any case, until the expiration of the period of 15 days beginning with the day on which the order for his or her committal is made;
- (b) if an action has been instituted in the Supreme Court for redress of a contravention of his or her right to personal liberty or for review of the order of committal so long as proceedings on that action are pending.

(3) In any such action, the Supreme Court may, without prejudice to any other jurisdiction of the Court, order the person committed to be discharged from custody if it appears to the Court that:

- (a) by reason of the trivial nature of the offence of which he or she is accused or was convicted; or

(b) by reason of the passage of time since he or she is alleged to have committed it or to have become unlawfully at large, as the case may be; or

(c) because the accusation against the person is not made in good faith in the interests of justice,—

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

(4) On any such application, the Supreme Court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 or under subsection (3).

(5) For the purposes of this section, proceedings in an 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 an appeal shall be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if the appeal is not brought or the application made within that time.

11. Order for extradition – (1) Where a person is committed to await his or her extradition and is not discharged by order of the Supreme Court, the Minister may by warrant order the person to be extradited to the country by which the request for his or her extradition was made unless the extradition of that person is prohibited or prohibited for the time being, by section 6 or this section, or the Minister decides under this section to make no such order in his or her case.

(2) An order is not to be made under this section in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in Samoa:

- (a) in the case of a person serving such a sentence, until the sentence has been served;
- (b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment (not being a suspended sentence), until the sentence has been served.

(3) The Minister shall not make an order under this section in the case of any person if it appears to the Minister, on the ground mentioned in section 10(3), that it would be unjust or oppressive to return that person.

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

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

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

that preference should be given to the other request.

(6) The Minister may refuse to extradite a person who is a citizen of Samoa.

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

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

- (a) in any case, the period of 2 months beginning with the first day on which, having regard to section 10(2), he or she could have been extradited;
- (b) where a warrant for his or her extradition has been issued under section 11, the period of 1 month beginning with the day on which that warrant was issued,-

the person may apply to the Supreme Court for his or her discharge.

(2) If upon any such application the Supreme Court is satisfied that reasonable notice of the proposed application has been given to the Minister, the Court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and, if a warrant for his or her extradition has been issued under the section 11, cancel that warrant.

13. Evidence – (1) In any proceedings under this Act, including proceedings on an application for the review of the order in respect of a person in custody under this Act:

- (a) a document, duly authenticated, which purports to set out evidence given on oath in an extradition country is admissible as evidence of the matters stated therein;
- (b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceedings in an extradition country is admissible in evidence;
- (c) a document, duly authenticated, which 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, an extradition country is admissible as evidence of the fact and date of the conviction.

(2) A document is taken to be duly authenticated for the purposes of this section:

- (a) in the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge or officer in the extradition country in question to be the original document containing or recording that evidence or a true copy of such a document;
- (b) in the case of a document which purports to have been received in evidence as aforesaid or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been, so received;
- (c) in the case of a document which certifies that a person was convicted as aforesaid if the document purports to be certified as aforesaid,—

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the extradition country.

(3) In this section, "oath" includes affirmation or declaration; and nothing in this section prejudices the admission in evidence of any document which is admissible in evidence apart from this section.

14. Custody – (1) A person remanded or committed to custody under section 9 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 by virtue of a warrant under this Act escapes out of custody, the person may be taken in any part of Samoa in like manner as a person escaping from custody under a warrant for the person's arrest in Samoa in respect of an offence committed therein.

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

(4) A warrant under section 11 for the extradition of any person to an extradition country is sufficient authority for all persons to whom it is directed and all police officers to receive that person, keep the person in custody and convey him or her into the jurisdiction of that country.

15. Form of warrants and orders – Any warrant or order to be issued or made by the Minister under this Act shall be given under the hand of the Minister and shall be in the prescribed form.

PART 3
TREATMENT OF PERSONS
EXTRADITED FROM EXTRADITION COUNTRIES

16. Restriction upon proceedings for other offences – (1) This section applies to any person accused or convicted of an offence under the laws of Samoa who is returned to Samoa from an extradition country, under any law of that country corresponding with this Act.

(2) A person to whom this section applies shall not, during the period described in subsection (3) be dealt with in Samoa for or in respect of any offence committed before he or she was extradited to Samoa other than:

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

- (b) any lesser offence proved by the facts proved for the purposes of securing the person's extradition; or
- (c) any other offence in respect of which the Government of the extradition country from which he or she was extradited may consent to the person 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 or her arrival in Samoa on the person's extradition as mentioned in subsection (1) and ending 45 days after the first subsequent day on which he or she has the opportunity to leave Samoa.

17. Restoration of persons not tried or acquitted – (1) This section applies to any person accused of an offence under the law of Samoa who is extradited to Samoa as mentioned in section 16(1).

(2) If in the case of a person to whom this section applies either:

- (a) proceedings against the person for the offence for which he or she was extradited are not begun within the period of 6 months beginning with the day of his or her arrival in Samoa on being extradited; or
- (b) on his or her trial for that offence, the person is acquitted or discharged,–

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

PART 4 MISCELLANEOUS

18. Liability for arrest, etc., of fugitive offenders in respect of extradition offences – A person for whose extradition a request is made under this Act shall, subject to the provisions of this Act, be liable to be arrested and dealt with whether the offence in respect of which he or she is to be dealt with was committed before or after the commencement of this Act.

19. Property found on fugitive offenders – Everything found in the possession of a person at the time of his or her arrest, under this Act which may be material as evidence in proving the extradition offence may be delivered up with the person when he or she is dealt with subject to the rights, if any, of third persons in respect thereto.

20. Bilateral agreements – This Act applies, with necessary modifications, in a case where a bilateral agreement or bilateral arrangements exist between Samoa and another country.

21. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations for all or any of the following purposes:

- (a) prescribing forms for any of the purposes of this Act;
- (b) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

22. Repeal – The Extradition Act 1971 is repealed.

SCHEDULE

Repealed by section 6 of the Extradition Amendment Act 1994.

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date and Part numbering before the Part title.
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”

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- (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
- (iii) “shall have” changed to “has”
- (iv) “shall be guilty” changed to “commits”
- (v) “notwithstanding” changed to “despite”
- (vi) “pursuant to” changed to “under”
- (vii) “it shall be lawful” changed to “may”
- (viii) “it shall be the duty” changed to “shall”
- (ix) Numbers in words changed to figures
- (x) “hereby” and “from time to time” (or “at any time” or at all times”) removed
- (xi) “under the hand of” changed to “signed by”
- (xii) Part numbers changed to decimal

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the National Prosecution Office Act (No.38) which commenced on 1 January 2016:

Whole Act Omit “Attorney General” and substitute “Director of Public Prosecutions”.

By the Constitution Amendment Act (No. 1) 2017, No 8:

Whole Act Omit “Attorney General” and substitute “Director of Public Prosecutions”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Justice and Courts Administration.*
