

The Laws of Zambia, Volume 7, pages 528-573

THE LAWS
OF THE
REPUBLIC OF ZAMBIA

1995 EDITION (REVISED)
PREPARED UNDER THE AUTHORITY OF
THE LAWS OF ZAMBIA (REVISED EDITION) ACT
BY
S. A. SICHEMBE
ASSISTANT COMMISSIONER FOR LAW REVISION

To be purchased from the Ministry of Legal Affairs, Lusaka, Zambia

1998
PRINTED BY MESSRS EYRE AND SPOTTISWOODE, HERTFORD, ENGLAND
PUBLISHED BY THE MINISTRY OF LEGAL AFFAIRS

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

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THE EXTRADITION ACT

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EXTRADITIONStatutory Instrument

8 of 1983

47 of 1968

An Act to amend and consolidate the law relating to extradition to and from foreign and Commonwealth countries; to provide for the reciprocal backing of warrants; to repeal the Extradition and Fugitive Offenders Act and the Fugitive Offenders (Interim Provision) Act; and also to repeal the Fugitive Offenders Act, 1881, and the Extradition Acts, 1870 to 1906, of the United Kingdom, in their application to the Republic; and to provide for matters connected with and related to the foregoing.

[Parts I and IX-25th October, 1968]

[Rest*Not in operation pending statutory order by the Attorney-General.*]

*Not in operation pending statutory order by the Attorney-General.

PART I PRELIMINARYPART I

PRELIMINARY

1. (1) This Act may be cited as the Extradition Act.Short title and commencement

(2) The provisions of Parts II to VIII inclusive, and of Part X shall, respectively, come into operation on such date, or on such different dates, as the Attorney-General may, by statutory order, appoint.

2. (1) In this Act, unless the context otherwise requires-

"act" includes omission;

"authenticated", when used in relation to any document submitted by a foreign or Commonwealth country for purposes of any request or application made by such country pursuant to this Act or for the purpose of any proceedings under this Act, has the meaning attributed to it by subsection (3) of section fifty-four;

"conviction" and "convicted" do not include or refer to a conviction which under the law of some other country is a conviction for contumacy, but the term "accused person" includes a person convicted of contumacy;

"date of commencement", in relation to Parts I and IX, means the 25th October, 1968, and, in relation to Parts II to VIII and Part X, respectively, means the date appointed by the Attorney-General in respect of each such Part pursuant to subsection (2) of section one;

"declared Commonwealth country" means a country declared by an order made under section sixteen to be a Commonwealth country in relation to which Part III applies;

"detention order", in relation to another country, means any order involving deprivation of liberty which has been made by a criminal court in that country in addition to or instead of a prison sentence;

"diplomatic agent" means an ambassador extraordinary and plenipotentiary, envoy extraordinary and minister plenipotentiary or charge d'affaires and includes a consular representative of a country for which no ambassador, envoy, minister or charge d'affaires has been accredited to the Republic;

"external warrant" means a judicial or other document issued under the law of, or of a part of, a country other than the Republic and authorising the apprehension of a person, and includes a warrant referred to in section forty-six;

"extraditable crime" means an offence against the law of the Republic for which extradition may be sought by the Republic-

(a) from any foreign country under any extradition agreement or under reciprocal facilities pursuant to Part II; or

(b) from any declared Commonwealth country pursuant to Part III;

"extraditable offence" means-

(a) an offence against the law of any foreign country for which extradition may be sought from the Republic under any extradition agreement or under reciprocal facilities pursuant to Part II; or

(b) an offence that is described in the First Schedule and for which extradition may be granted to a declared Commonwealth country pursuant to Part III;

"extradition" means the surrender of a person under the provisions of Part II or of Part III to or by a country in relation to which one of such Parts respectively applies;

"extradition agreement" has the meaning assigned to it by subsection (1) of section three;

"extradition provisions" means the provisions of an extradition agreement or of an order under section three applying Part II otherwise than in pursuance of an extradition agreement; or of an order under section sixteen applying Part III in relation to a declared Commonwealth country;

"foreign country" means any State outside the Republic other than a Commonwealth country, and includes every constituent part, colony or dependency of such State;

"habeas corpus" means the writ of habeas corpus ad subjiciendum;

"imprisonment" includes deprivation of liberty under a detention order;

"magistrate", except in subsection (3), means a senior resident magistrate or a

resident magistrate;

"magistrate's court" means a subordinate court of the first class presided over by a senior resident magistrate or a resident magistrate;

"person claimed" means a person whose extradition is requested under Part II or III;

"prescribed country" means a country to which Part V applies by virtue of an order made pursuant to section forty-five;

"prison" includes a gaol, lock-up or other place of detention;

"requested country" means a country which, under Part II or III, as the case may be, is requested to surrender a person to the Republic for prosecution or punishment for an offence;

"requesting country" means a country which, under Part II or III, as the case may be, requests extradition from the Republic;

"sentence" includes detention under a detention order or restriction under a restriction order.

(2) This Act applies, except where otherwise provided, in relation to an offence whether committed or alleged to have been committed before or after the commencement of this Act.

(3) Where a person, who has been arrested in pursuance of the provisions of this Act, is brought before a magistrate who has no power to exercise jurisdiction under this Act, that magistrate shall have power to order such person to be brought before some magistrate having such jurisdiction and to remand or admit such person to bail, and effect shall be given to any such order.

PART II EXTRADITION TO AND FROM FOREIGN COUNTRIES

EXTRADITION TO AND FROM FOREIGN COUNTRIES

A. Application of this Part

3. (1) Where by any international agreement or convention to which the Republic is a party an arrangement (in this Act referred to as an "extradition agreement") is made with a foreign country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the President is satisfied that reciprocal facilities to that effect will be afforded by a foreign country, the President may, by statutory order, apply this Part in relation to that country.

(2) Where the Republic is a party to an arrangement amending an extradition agreement, the President may, by statutory order, so declare and the extradition agreement shall thereupon have effect as so amended.

(3) An order relating to an extradition agreement or an amendment thereof shall recite or embody the terms of the agreement or amendment and shall be evidence of the making of the agreement or amendment and of its terms.

(4) An order applying this Part in relation to any country otherwise than in

pursuance of an extradition agreement may be made subject to such conditions, exceptions and qualifications as to its application as may be specified in the order.

(5) Every extradition agreement and every order applying this Part otherwise than in pursuance of an extradition agreement shall, subject to the provisions of this Part and of Part IV, have the force of law in accordance with its terms.

(6) The President may, by statutory order, revoke or amend any order made under this section.

(7) On the revocation of an order applying this Part in relation to any country, this Part shall cease to apply in relation to that country.

(8) Every order made under this section shall be laid before the National Assembly as soon as may be after the making thereof.

4. (1) Subject to subsection (2), extradition under this Part shall be granted only in respect of an offence which is punishable under the laws of the requesting country and of the Republic by imprisonment for a maximum period of not less than one year or by a more severe penalty or for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of not less than four months or a more severe penalty has been imposed. Extraditable offences

(2) If a request is made for extradition in respect of an offence to which subsection (1) applies and the request includes also any other offence which is punishable under the laws of the requesting country and of the Republic but does not comply with the conditions as to the period of imprisonment which may be, or has been, imposed, then extradition may, subject to the provisions of this Part, be granted also in respect of the latter offence.

(3) In this section, any reference to an offence punishable under the laws of the Republic shall be construed as including references to an act which, if it had been committed in the Republic, would constitute such an offence.

B. Extradition to Foreign Countries

5. Where a country in relation to which this Part applies duly requests the surrender of a person who is being proceeded against in that country for an offence or who is wanted by that country for the carrying out of a sentence, that person shall, subject to and in accordance with the provisions of this Part and of Part IV, be surrendered to that country. Obligation to extradite

6. A request for the extradition of any person under this Part shall be made in writing to the Attorney-General and shall be communicated by-

(a) a diplomatic agent of the requesting country, accredited to the Republic; or

(b) any other means provided in the relevant extradition provisions. Request for extradition

7. A request for extradition under this Part shall be accompanied by the following documents:

(a) the original or an authenticated copy of the conviction and sentence

immediately enforceable or, as the case may be, of the external warrant or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting country;

(b) a statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of the requesting country;

(c) a copy of the relevant enactments of the requesting country or, where this is not possible, a statement of the relevant law; and

(d) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality. Documents to support request

8. (1) If the Attorney-General receives a request made in accordance with this Part for the extradition of any person he shall, subject to the provisions of this section, signify to a magistrate that the request has been made and order the magistrate to issue a warrant for the arrest of that person and the magistrate shall issue a warrant accordingly. Warrant of arrest

(2) A warrant issued under this section may be executed in any part of the Republic and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed.

(3) If the Attorney-General is of opinion that the information communicated to him in pursuance of section seven is insufficient, he may request the requesting country to furnish such further information as he thinks proper and may fix a time limit for the receipt thereof.

(4) The Attorney-General shall refuse extradition if he is of opinion that the case is one in which extradition is prohibited under any provision of this Part or of Part IV or under the relevant extradition provisions.

(5) A person arrested under a warrant issued under this section shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall be brought before a magistrate as soon as practicable.

(6) The provisions of section twenty-nine pertaining to the seizure and handing over of property of the person claimed shall apply to the execution of a warrant under this section.

9. (1) A magistrate, if he so thinks proper, may, without an order of the Attorney-General under section eight, issue a provisional warrant for the arrest of any person on the sworn information of a police officer not below the rank of Assistant Superintendent that a request for the provisional arrest of that person has been made, on the ground of urgency, on behalf of a country in relation to which this Part applies and on being satisfied that the request complies with the requirements of this section. Provisional warrant

(2) A request for the provisional arrest of any person shall-

(a) state that one of the documents mentioned in paragraph (a) of section seven exists in respect of that person and that it is intended to send a request for his extradition;

(b) specify the nature of the offence and the time at which and the place where the offence is alleged to have been committed; and

(c) give a description of the person whose arrest is sought.

(3) A request for provisional arrest may be transmitted by post or telegraph or by any other means affording evidence in writing of the making of such request.

(4) Where a magistrate issues a warrant under subsection (1) he shall forthwith inform the Attorney-General of the issue of the warrant and the Attorney-General may, if he is of opinion that the case is one in which extradition is prohibited under the provisions of this Part or of Part IV or of the relevant extradition provisions, order the warrant to be cancelled and the person arrested thereunder to be discharged.

(5) A warrant issued under this section may be executed in any part of the Republic and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed.

(6) A person arrested under a warrant issued under this section shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall, unless the warrant is cancelled under subsection (4), be brought, as soon as practicable, before a magistrate, and the magistrate shall remand the said person, either in custody or on bail, pending the receipt from the Attorney-General of a notice or order signifying that the request for extradition has been duly received, or ordering the release of that person under section thirty, and for this purpose the magistrate shall have the same powers of remand as if that person were brought before him on a preliminary inquiry.

(7) If, within the period of eighteen days after such person's arrest, no such notice or order, as is referred to in subsection (6), is received, he shall be released.

(8) The release of any person under subsection (4) or (7) shall not prejudice his re-arrest and extradition if a request for his extradition is afterwards made.

10. (1) Where a person claimed is before a magistrate pursuant to section eight or nine and-Committal or discharge of person whose extradition is requested

(a) there is adduced before such magistrate-

(i) in the case of a person who is accused of an extraditable offence, such evidence as would, in the opinion of the magistrate, according to the law, justify the committal for trial of the person if the act constituting that offence had taken place in the Republic; or

(ii) in the case of a person who is alleged to have been convicted of an extraditable offence, sufficient evidence to satisfy the magistrate that the person had been convicted of that offence and is unlawfully at large; and

(b) the magistrate is satisfied, after hearing any evidence tendered by the person, that-

(i) the extradition of that person has been duly requested; and

- (ii) this Part applies in relation to the requesting country; and
- (iii) extradition of the person claimed is not prohibited by this Part or Part IV or by the relevant extradition provisions; and
- (iv) the documents required to accompany a request for extradition under section seven have been produced;

the magistrate shall make an order committing that person to a prison there to await the warrant of the Attorney-General for his surrender to the requesting country and shall forward a copy of such committal order to the Attorney-General.

(2) The magistrate may, if of opinion that the information communicated under section seven is insufficient to enable a decision to be made, adjourn the hearing for such period as the magistrate thinks proper to enable information to be produced and, pending consideration of the case, the magistrate shall have the same powers of adjournment and remand as if the person claimed were brought before him on a preliminary inquiry.

(3) If after hearing the evidence adduced the magistrate is not satisfied that extradition should be granted under this Act in the case of the person claimed, he shall order that the person claimed be discharged and shall forthwith notify the Attorney-General in writing of the making of such order and of his reasons therefor.

11. A person committed under section ten shall not, except with his consent, given before a magistrate, be surrendered to the requesting country until the expiration of fifteen days from the date of his committal or until the conclusion of any habeas corpus proceedings brought by him or on his behalf or the determination of any request made pursuant to an application under subsection (2) of section thirty-one, whichever is the later. Lapse of time before surrender

12. (1) Subject to sections eleven and thirty-eight, the Attorney-General may, if the person claimed is committed under section ten and is not discharged by the decision of the High Court in any habeas corpus proceedings, or consequent upon any request made pursuant to an application under subsection (2) of section thirty-one, issue a warrant directing that the person claimed be brought to some convenient point of departure from the Republic and there be delivered to such other person as, in the opinion of the Attorney-General, is duly authorised by the requesting country to receive him and convey him from the Republic to the requesting country; and he shall be surrendered accordingly. Surrender of prisoner under warrant of Attorney-General

(2) Any person to whom a warrant under subsection (1) directs a person claimed to be delivered may, for the purposes of surrender under this Act, receive, hold in custody, and convey out of the Republic the person so delivered to him.

(3) Any person to whom a person claimed is delivered under a warrant pursuant to subsection (1), shall, in execution of such warrant, convey the said person claimed out of the Republic without undue delay for the purpose of his surrender to the requesting country.

(4) The Attorney-General shall not issue a warrant under subsection (1) if he is of the opinion that the extradition of the person claimed would involve transit through any territory where there is reason to believe that his life or

his freedom may be threatened by reason of his race, religion, nationality or political opinion, and, in such case, the Attorney-General shall order the discharge of the person claimed.

C. Extradition to Zambia from Foreign Countries

13. For the purposes of this Part, "extraditable crime" means an offence (wherever committed) against the law in force in the Republic and punishable under the laws of the Republic, being an offence for which extradition is provided under the terms of an extradition agreement, or for which reciprocal extradition facilities are afforded, between the Republic and the requested country; the requested country being one to which this Part applies by virtue of an order made pursuant to section three. Definition

14. Where a person accused or convicted of an extraditable crime is, or is suspected of being, in or on his way to a foreign country to which this Part applies, or of being within the jurisdiction of, or of a part of, such a country, the Attorney-General may make a request to that country for the surrender of the person. Request to foreign country may be made by Attorney-General

15. Where a person accused or convicted of an extraditable crime is surrendered by a foreign country to which this Part applies, the person may be brought into the Republic to be dealt with according to law. Person surrendered may be brought to the Republic

PART III EXTRADITION TO AND FROM DECLARED COMMONWEALTH COUNTRIES PART III

EXTRADITION TO AND FROM DECLARED COMMONWEALTH COUNTRIES

A Application of this Part

16. (1) The President may, by statutory order, declare a Commonwealth country other than the Republic to be a Commonwealth country in relation to which this Part applies, and, subject to subsection (2), where any such order for the time being in force so declares, this Part applies in relation to that country. Application of Part III in relation to Commonwealth countries

(2) Any order made pursuant to subsection (1) may provide that this Part applies in relation to a declared Commonwealth country subject to such limitations, conditions, exceptions or qualifications as are specified in the said order and, where any such order for the time being in force so provides, this Part applies in relation to that country subject to those limitations, conditions, exceptions or qualifications.

(3) The President may, by statutory order, revoke or amend an order under this section.

(4) On the revocation of an order applying this Part in relation to any Commonwealth country, this Part shall cease to apply in relation to that country.

(5) Every order made under this section shall be laid before the National Assembly as soon as may be after the making thereof.

17. For the purposes of this Part, an extraditable offence means an offence against the law of, or of part of, a declared Commonwealth country-

(a) the maximum penalty for which is death or imprisonment for not less than twelve months; and

(b) the act constituting which would, if it took place in the Republic, constitute an offence against the law of the Republic that-Extraditable offences under this Part

(i) is described in the First Schedule;

(ii) 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 circumstance of aggravation, necessary to constitute the offence.

B. Extradition to Declared Commonwealth Countries

18. (1) Every person claimed by a declared Commonwealth country is liable, subject to this Part and to Part IV and to any limitations, conditions, exceptions or qualifications to which the application of this Part in relation to that country is subject, to be arrested and surrendered to that country as provided by this Part and is so liable whether the offence to which the request for the surrender of the person claimed relates is alleged to have been committed, or was committed, before or after the commencement of this Act or before or after the time when that country became a declared Commonwealth country. Liability of person claimed to be surrendered and request for his surrender

(2) Every request for the surrender of a person claimed under this Part shall be made in writing to the Attorney-General by the declared Commonwealth country, which request shall be accompanied by an external warrant for the arrest of the person claimed issued by and in accordance with the law of the requesting declared Commonwealth country.

19. (1) The Attorney-General shall not give notice under subsection (1) of section twenty or issue a warrant under subsection (3) of section twenty-four in respect of a person claimed by a declared Commonwealth country if-Restrictions on power of Attorney-General

(a) he is satisfied that to do so in the circumstances would be contrary to any of the provisions of Part IV expressly prohibiting extradition; or

(b) the President notifies the Attorney-General that he, the President, is satisfied that-

(i) the request for the surrender of the person claimed was made for the purposes of prosecuting or punishing him on account of his political opinions; or

(ii) if the person claimed is surrendered to that country, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his political opinions.

(2) If the Attorney-General is satisfied that, by reason of-

(a) the trivial nature of the offence that a person claimed is alleged to have committed or has committed; or

(b) the accusation against a person claimed not having been made in good faith or in the interests of justice; or

(c) the passage of time since the offence is alleged to have been committed or was committed;

and having regard to the circumstances under which the offence is alleged to have been committed or was committed, it would be unjust, oppressive or too severe a punishment to surrender the person claimed or to surrender him before the expiration of a particular period, the Attorney-General shall not issue a warrant under subsection (3) of section twenty-four in respect of the person claimed or shall not issue such a warrant before the expiration of that period, as the case may be.

20. (1) Subject to the provisions of section nineteen and of subsection (2), where a request for the surrender of a person claimed who is, or is suspected of being, in or on his way to the Republic is made to the Attorney-General by a declared Commonwealth country, the Attorney-General shall-Notices by Attorney-General

(a) if a warrant for the arrest of the person claimed has not been issued under section twenty-one, direct a notice in writing in accordance with Form 1 in the Second Schedule to a magistrate informing the said magistrate that the request has been made and authorising him to issue a warrant for the arrest of the person claimed; or

(b) if a provisional warrant for the arrest of the person claimed has been issued under paragraph (b) of subsection (1) of section twenty-one, and a person has been arrested under such warrant, direct a notice in writing in accordance with Form 2 in the Second Schedule to a magistrate before whom the person may be brought, informing the said magistrate that the request has been made.

(2) If the Attorney-General is of the opinion that the person claimed is not liable to be surrendered to the requesting country, he shall not direct a notice under subsection (1) in respect of the person claimed.

(3) If the Attorney-General is of opinion that the person claimed is not liable to be surrendered to the requesting country and a provisional warrant for his arrest has been already issued pursuant to paragraph (b) of subsection (1) of section twenty-one, the Attorney-General shall, by order in writing, direct such warrant to be cancelled, and, if the person claimed has been arrested under such warrant, the provisions of subsection (6) of section twenty-one shall apply mutatis mutandis in the event of such cancellation.

21. (1) Where-Issue of warrants

(a) a magistrate is authorised by the Attorney-General by a notice under paragraph (a) of subsection (1) of section twenty to issue a warrant for the arrest of a person claimed; or

(b) an application is made to a magistrate for the issue of a provisional warrant for the arrest of any person claimed who is, or is suspected of being, in or on his way to the Republic, and such application is made on the sworn information of a police officer not below the rank of Assistant Superintendent that a request for the provisional arrest of that person has been made, on the ground of urgency, on behalf of a declared Commonwealth country, and that the

said country intends to send a request for the surrender of the said person claimed;

and there is produced to the magistrate such evidence as would, in his opinion, if the act constituting the extraditable offence had taken place within the Republic, justify, according to the law-

(i) the arrest by a police officer of the person claimed without the issue of a warrant; or

(ii) the issue of a warrant for the arrest of the person claimed;

the magistrate shall, in accordance with Form 3 or 4 in the Second Schedule, as the case may be, issue a warrant for the arrest of the person claimed.

(2) A warrant issued under this section may be executed in any part of the Republic and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed.

(3) Where a magistrate issues a provisional warrant pursuant to paragraph (b) of subsection (1) he shall forthwith send to the Attorney-General a report stating that he has issued the said warrant and setting forth the evidence adduced on the application therefor.

(4) It is a sufficient compliance with subsection (3) in relation to any evidence consisting of testimony given on oath, or declared or affirmed to be true, by a person if-

(a) where the testimony was given in writing, the magistrate sends to the Attorney-General a copy of that writing certified by him to be a true copy; or

(b) where the testimony was given orally-

(i) if it has been reduced to writing, the magistrate sends to the Attorney-General that writing certified by him to be a true record of the testimony; or

(ii) if it has not been reduced to writing, the magistrate sends to the Attorney-General the notes made by the magistrate in respect of the testimony and certified by him to be a true summary of the testimony.

(5) Where the Attorney-General-

(a) receives a report of the issue of a provisional warrant and of the evidence pursuant to subsection (3); or

(b) otherwise becomes aware of the issue of such provisional warrant;

he may, if he thinks fit, by order in writing direct that the said warrant be cancelled.

(6) Where a person has been arrested under a warrant that is directed to be cancelled pursuant to subsection (5)-

(a) if he is held in custody, the person holding him shall, upon receipt of the order, cause him to be released; or

(b) if he has been admitted to bail, the recognizances upon which he was admitted to bail shall be, by force of this subsection, discharged.

22. (1) A person who is arrested under any warrant issued pursuant to section twenty-one shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall, unless he is sooner discharged, be brought as soon as practicable before a magistrate's court. Proceedings after arrest

(2) A magistrate may remand a person brought before the court under this section, either in custody or on bail for a period or periods not exceeding seven days at any one time and, where a magistrate remands a person for such a period, the person may, at the expiration of the period, be brought before a magistrate's court presided over by that magistrate or any other magistrate.

(3) In the application of subsection (4) in relation to a person who has been arrested under a warrant issued pursuant to section twenty-one, "the magistrate" means the magistrate who presided over the magistrate's court before which the person is brought after arrest or upon the expiration of a period for which he has been remanded under this section, as the case may be.

(4) If the person was arrested under a provisional warrant issued pursuant to paragraph (b) of subsection (1) of section twenty-one, the magistrate shall remand the person pursuant to subsection (2) until the magistrate receives from the Attorney-General a notice under paragraph (b) of subsection (1) of section twenty, informing the magistrate that a request for the surrender of the person has been made to the Attorney-General by a declared Commonwealth country, or directing that the said warrant be cancelled pursuant to subsection (3) of that section.

(5) Where the magistrate does not receive such a notice under paragraph (b) of subsection (1) of section twenty within such time as is reasonable having regard to all the circumstances, the magistrate shall order the provisional warrant to be cancelled and shall-

(a) if the person arrested is held in custody, order that he be released; or

(b) if the person arrested has been admitted to bail, make an order discharging the recognizances upon which he was admitted to bail.

(6) If the person was arrested under a warrant issued pursuant to an authority under paragraph (a) of subsection (1) of section twenty or the magistrate receives a notice from the Attorney-General under paragraph (b) of that subsection, and-

(a) there is produced to the magistrate an authenticated external warrant in respect of the person issued in the declared Commonwealth country that made the request for the surrender of the person; and

(b) there is adduced before the magistrate-

(i) in the case of a person who is accused of an extraditable offence, such evidence as would, in the opinion of the magistrate, according to the law, justify the committal for trial of the person if the act constituting that offence had taken place in the Republic; or

(ii) in the case of a person who is alleged to have been convicted of an

extraditable offence, sufficient evidence to satisfy the magistrate that the person had been convicted of that offence; and

(c) the magistrate is satisfied, after hearing any evidence tendered by the person, that the person is liable to be surrendered to the declared Commonwealth country that made the request for the surrender;

the magistrate shall, subject to the provisions of section twenty-three, by warrant in accordance with Form 5 in the Second Schedule, commit the person to prison to await the warrant of the Attorney-General for his surrender.

(7) Where the magistrate is of the opinion that it would be dangerous to the life or prejudicial to the health of the person to commit him to prison, he may, in lieu of committing him to prison, by warrant order that he be held in custody at the place where he is for the time being, or at any other place to which the magistrate considers he can be removed without danger to his life or prejudice to his health, until such time as he can without such danger or prejudice be committed to prison or he is surrendered, and, in such a case, the warrant shall be in accordance with Form 5 in the Second Schedule with such variations as are necessary to meet the circumstances.

(8) Where, pursuant to this section, a magistrate commits a person to prison or otherwise orders that he be held in custody, he shall forthwith send to the Attorney-General a certificate to that effect and such report, if any, relating to the proceedings as he thinks fit.

23. If the magistrate before whom a person claimed is brought pursuant to section twenty-two, or the court to which a person claimed has applied for a writ of habeas corpus is satisfied—Power of magistrate or court to discharge or to postpone surrender

(a) that to surrender the person claimed would, in the circumstances, be contrary to any of the provisions of Part IV expressly prohibiting extradition, he or it shall order that the person claimed be discharged; or

(b) that by reason of—

(i) the trivial nature of the offence that the person claimed is alleged to have committed or has committed; or

(ii) the accusation against the person claimed not having been made in good faith, or in the interests of justice; or

(iii) the passage of time since the offence is alleged to have been committed or was committed;

and, having regard to the circumstances under which the offence is alleged to have been committed or was committed, it would be unjust, oppressive, or too severe a punishment to surrender the person claimed to the declared Commonwealth country, or to surrender him before the expiration of a particular period of time, the magistrate or court may—

A. order that the person claimed be discharged; or

B. order that the person claimed be remanded for a period specified in the order and be released on bail until the expiration of that period; and that he, thereafter, unless previously discharged by order of the Attorney-General, under

subsection (2) of section thirty, be committed to prison to await the warrant of the Attorney-General for his surrender; or

C. make such other order as he or it deems fit.

24. (1) When, in pursuance of this Part, a magistrate commits a person claimed (in this section referred to as "the prisoner") to prison, or otherwise orders that he be held in custody, to await the warrant of the Attorney-General for his surrender to a declared Commonwealth country, the magistrate shall inform the prisoner that he will not be surrendered until after the expiration of the period of fifteen days from the date of the committal or order and that, if he asserts that his detention is unlawful, he may apply to a court of competent jurisdiction for a writ of habeas corpus. Surrender of person claimed to Commonwealth country

(2) A prisoner committed or ordered to be held in custody under subsection (1) shall not, except with his consent given before a magistrate, be liable to be surrendered to the declared Commonwealth country until the expiration of fifteen days from the date of the committal or order, or until the conclusion of any habeas corpus proceedings brought by him or on his behalf, or upon the determination of any request made pursuant to an application under subsection (2) of section thirty-one, whichever is the later.

(3) Upon the expiration of the operative period referred to in subsection (2), and subject to the provisions of section nineteen, the Attorney-General shall, if he is satisfied that the prisoner is liable to be surrendered to the declared Commonwealth country, by warrant in accordance with Form 6 in the Second Schedule, or where the prisoner is held in custody otherwise than at a prison, in accordance with that Form with such variations as are necessary to meet the circumstances of the case, order that the prisoner be brought to a convenient point of departure from the Republic there to be delivered into the custody of a person specified in the warrant and to be conveyed by that person, without undue delay, to a place in that country or within the jurisdiction of, or of a part of, that country and there surrendered to some person appointed by that country to receive him.

(4) A warrant issued pursuant to subsection (3) may be executed according to its tenor.

(5) The provisions of section twenty-nine pertaining to the seizure and handing over of property of the person claimed shall apply to the execution of a warrant under this section.

C. Extradition to Zambia from Declared Commonwealth Countries

25. For the purposes of this Part, "extraditable crime" means an offence (wherever committed) against the law in force in the Republic and punishable under the laws of the Republic by imprisonment for a maximum period of not less than twelve months or by a more severe penalty, being an offence that-

(a) is described in the First Schedule; 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 circumstance of aggravation, necessary to constitute the offence. Definition

26. Where a person accused or convicted of an extraditable crime is, or is suspected of being, in or on his way to a declared Commonwealth country or within the jurisdiction of, or of a part of, such a country, the Attorney-General may make a request to that country for the surrender of the person. Request to Commonwealth country to be made by Attorney-General

27. Where a person accused or convicted of an extraditable crime is surrendered by a declared Commonwealth country, the person may be brought into the Republic and delivered to the proper authorities to be dealt with according to law. Person surrendered may be brought to the Republic

PART IV GENERAL PROVISIONS ON EXTRADITIONPART IV

GENERAL PROVISIONS ON EXTRADITION

28. This Part shall apply to all requests for extradition made pursuant to Part II and to Part III and to proceedings relating thereto or arising therefrom. Application of Part IV

29. (1) A police officer executing a warrant under section eight, nine, twenty-one or twenty-four may seize and retain any property-Seizure and handing over of property

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

(b) which appears to him to have been acquired as a result of the alleged offence; and

(c) which-

(i) is found at the time of arrest in the possession of the person arrested under the warrant; or

(ii) is discovered subsequently.

(2) Subject to the provisions of this section, any property seized under subsection (1) shall, if a warrant is issued by the Attorney-General under section twelve or twenty-four for the surrender of the person claimed, be handed over to any person, who appears to the Attorney-General to be duly authorised by the requesting country to receive it, as soon as may be after the issue of the said warrant and the said property shall be so handed over notwithstanding that the extradition in question cannot be carried out by reason of the death or escape of the person claimed.

(3) Any property seized under subsection (1) may, if any criminal proceedings to which the property relates are pending in the Republic, be retained in the Republic in accordance with the law until the conclusion of the said proceedings or may, if the Attorney-General so directs, be handed over on condition that the requesting country shall return the property.

(4) Nothing in this section shall prejudice or derogate from any rights that may lawfully have been acquired by the Republic or by any person in the Republic in any property to be handed over under this section and, where any such rights exist, the property shall not be handed over except upon condition that the requesting country shall return it as soon as may be after the trial of the person surrendered and without charge to the Republic or the person having such

rights.

30. (1) Whenever the Attorney-General is of opinion, in relation to a person who is for the time being on remand or awaiting his surrender to a requesting country, that extradition is prohibited under any relevant provision of this Act, the Attorney-General may at any time refuse extradition. General power of Attorney-General to release

(2) In any such case, or in case it appears to the Attorney-General that the request for extradition is not being proceeded with, the Attorney-General may order that the said person, if in custody, shall be released, or if admitted to bail that the recognizances under which he was so admitted to bail be discharged.

31. (1) If the Attorney-General-Political offences

(a) believes, for any reason, that the offence for which extradition is sought is a political offence or an offence connected with a political offence; or

(b) receives from a magistrate a request pursuant to subsection (2);

he shall refer the request for extradition together with the accompanying documents and such other documents as he may deem to be relevant and also a statement of any other relevant information he may have in that regard to the President for a ruling on that issue.

(2) A person claimed under Part II or III may, at any time during the course of any extradition proceedings under this Act, apply to the magistrate to submit to the Attorney-General a request for a determination of the question whether the offence for which such person's extradition is sought is or is not a political offence or an offence connected with a political offence, and the magistrate shall within two days after the making of the said application submit such request in writing to the Attorney-General.

(3) The proceedings during which an application is made pursuant to subsection (2) shall not be suspended by reason of the making of such application.

(4) Within seven days after the receipt of a reference to him pursuant to subsection (1), the President shall certify in writing to the Attorney-General his ruling upon such reference.

(5) Upon receipt by the Attorney-General of the certificate of the ruling of the President on any reference made pursuant to paragraph (b) of subsection (1), the Attorney-General shall forthwith notify the requesting magistrate thereof.

(6) If, upon any reference made to the President pursuant to paragraph (a) of subsection (1), the President certifies to the Attorney-General his ruling that the offence for which extradition is requested-

(a) is not a political offence or an offence connected with a political offence, the Attorney-General may grant or refuse extradition as provided by this Act but not upon the grounds of its being a political offence or an offence connected with a political offence;

(b) is a political offence or an offence connected with a political offence, the Attorney-General shall thereupon refuse extradition of the person claimed.

(7) Where a provisional warrant for the arrest of the person claimed has been issued pursuant to section nine or to paragraph (b) of subsection (1) of section twenty-one, and the President certifies to the Attorney-General his ruling that the offence for which extradition is requested is a political offence, the Attorney-General shall, pursuant to paragraph (b) of subsection (6), refuse extradition and further shall, by order in writing, direct that the said warrant be cancelled, and if the person claimed has been arrested under such warrant which has been cancelled and-

(a) is held in custody, the person holding him shall, upon receipt of the order, cause him to be released; or

(b) has been admitted to bail, the recognizances upon which he was admitted to bail shall be, by force of this subsection, discharged.

(8) If there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purposes of prosecuting or punishing the person claimed on account of his political opinions, or that that person may be prejudiced for that reason, the said request may, for the purposes of this section, be deemed to be a request for extradition for a political offence or an offence connected with a political offence.

(9) An offence against the law of the requesting country may be regarded as being a political offence or an offence connected with a political offence notwithstanding that there are no competing political parties in that country.

32. Extradition shall not be granted if there are substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing the person claimed on account of his race, religion or nationality or that the position of the person claimed may be prejudiced for any of these reasons. Race, religion or nationality

33. Extradition shall not be granted for offences under military law which are not offences under ordinary criminal law. Military offences

34. Extradition shall not be granted where a person claimed is a citizen of the Republic, unless the relevant extradition provisions otherwise provide. Zambian citizens

35. Extradition shall not be granted where the offence for which it is requested is regarded under the law of the Republic as having been committed in the Republic. Place of commission

36. Extradition shall not be granted where a prosecution is pending in the Republic against the person claimed for the offence for which extradition is requested. Pending proceedings for the same offence

37. (1) Subject to the provisions of sections thirty and thirty-eight and of subsection (2), where a person claimed who, pursuant to Part II or III, has been committed to prison or otherwise ordered to be held in custody, is in custody and is not surrendered or conveyed out of the Republic within two months after Discharge of person claimed if not conveyed out of the Republic

(a) the date of committal or order; or

(b) the date of the final conclusion of any habeas corpus proceedings brought by him or on his behalf; or

(c) the date of the determination by the President of a request made pursuant to an application under subsection (2) of section thirty-one;

whichever is the later, the High Court, upon application made to it by or on behalf of the person claimed and upon proof that reasonable notice of the intention to make the application has been given to the Attorney-General, shall, unless reasonable cause is shown for the delay, order the person claimed to be discharged.

(2) Where, on application to the High Court under subsection (1), the Court is satisfied-

(a) that the state of health of the person claimed or other circumstances beyond the control of the Republic or the requesting country have prevented the person claimed from being conveyed out of the Republic; and

(b) that it is likely that within a reasonable time such circumstances will no longer prevent his removal;

the Court may fix a period within which he may be surrendered and he shall be discharged if not conveyed out of the Republic within that period.

(3) Pending the final determination of any application to the High Court under subsection (1), the person claimed shall not be surrendered or conveyed out of the Republic.

38. Where the person claimed is held in custody or has been admitted to bail in the Republic in respect of an offence that is alleged to have been committed in the Republic, or where such person is undergoing a sentence of imprisonment for a conviction in the Republic, the surrender of such person may be postponed by the Attorney-General until the said person has been discharged from custody, or the recognizances upon which he was admitted to bail have been discharged, as the case may be, whether as the result of an acquittal or on the expiration of his sentence or otherwise. Postponement of surrender

39. (1) Extradition shall not be granted in respect of an offence if final judgment has been passed by a competent court or authority in the Republic or in a third country upon the person claimed or he has undergone the punishment provided by the law of, or of a part of, the Republic or any third country in respect of that offence or of another offence constituted by the same act as that offence. Non bis in idem

(2) Extradition may be refused by the Attorney-General for an offence which is also an offence under the law of the Republic if the Director of Public Prosecutions has decided either not to institute or to terminate proceedings against the person claimed in respect of the offence.

40. Extradition shall not be granted when the person claimed has, according to the law of either the requesting country or the Republic, become immune by reason of lapse of time from prosecution or punishment. Lapse of time

41. Extradition shall not be granted for an offence which is punishable by death under the law of the requesting country but is of a category for which the death penalty is not provided for by the law of the Republic or is not generally

carried out, unless the requesting country gives such assurances as the Attorney-General considers sufficient that the death penalty will not be carried out. Capital punishment

42. (1) Extradition shall not be granted unless provision is made by the law of the requesting country or by the extradition agreement-Rule of speciality

(a) that the person claimed shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or otherwise restricted in his personal freedom, for any offence committed prior to his surrender other than that for which his extradition is requested or any other offence of which he could be convicted upon proof of the facts upon which the request for his surrender is based, except in the following cases:

(i) with the consent of the Attorney-General; or

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

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

(2) Notwithstanding anything in subsection (1), the fact that the law of the requesting country permits the taking of any measures necessary to remove the person from its territory or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time shall not of itself prevent his extradition.

(3) The consent of the Attorney-General referred to in sub-paragraph (i) of paragraph (a) of subsection (1) shall not be given in the case of a person claimed under Part II unless a request for consent is submitted by the requesting country, accompanied by the documents mentioned in section seven and a legal record of any statement made by the person claimed in respect of the offence concerned.

(4) The consent of the Attorney-General referred to in sub-paragraph (i) of paragraph (a) of subsection (1) shall not be given in the case of a person claimed under Part III unless a request for consent is submitted by the requesting country, accompanied by the document mentioned in subsection (2) of section eighteen and a legal record of any statement made by the person claimed in respect of the offence concerned.

(5) The consent of the Attorney-General referred to in subparagraph paragraph (i) of paragraph (a) of subsection (1) shall be given if the offence for which it is requested is itself one for which there is an obligation to grant extradition.

43. (1) Extradition shall not be granted unless provision is made by the law of the requesting country or by the extradition agreement that that country shall not surrender to another country a person surrendered to the requesting country and sought by the other country for an offence committed before his surrender to the requesting country, except in the following

cases:Re-extradition to a third country

(a) with the consent of the Attorney-General; or

(b) where that person, having had an opportunity to leave the territory of that country, has not done so within forty-five days of his final discharge in respect of the offence for which he was extradited or has returned to the territory of that country after leaving it.

(2) Before acceding to a request for consent to the extradition of a person claimed under Part II to whom subsection (1) applies, the Attorney-General may request the production of the documents mentioned in section seven.

(3) Before acceding to a request for consent to the extradition of a person claimed under Part III to whom subsection (1) applies, the Attorney-General may request the production of the document mentioned in subsection (2) of section eighteen.

(4) A person who has been surrendered to the Republic by a requested country shall not be surrendered to a third country for an offence committed before his surrender, except in the following cases:

(a) with the consent of the requested country signified under the seal of a Minister of State of that country, which seal shall be judicially noticed; or

(b) where that person, having had an opportunity to leave the Republic, has not done so within forty-five days of his final discharge in respect of the offence for which he was surrendered to the Republic or has returned to the Republic after leaving it.

44. If extradition is requested concurrently by more than one country, either for the same offence or for different offences, the Attorney-General shall decide which, if any, of the requests is to be proceeded with, having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the citizenship or nationality, and the ordinary place of residence of the person claimed and the possibility of subsequent surrender to another country. Conflicting requests

PART V RECIPROCAL BACKING OF WARRANTSPART V

RECIPROCAL BACKING OF WARRANTS

45. (1) Where the President is satisfied that reciprocal provision has been or will be made by or under the law of any country for the backing of warrants issued in the Republic and their execution in that country and that it is appropriate to do so, he may, by statutory order, declare that this Part shall apply in the case of that country (hereinafter called the "prescribed country") subject to such conditions, exceptions and qualifications as may be specified in the order and this Part shall apply accordingly. Application of Part V

(2) The President may, by statutory order, revoke or amend any order made under this section.

(3) Every order made under this section shall be laid before the National Assembly as soon as may be after the making thereof.

46. (1) Where an external warrant has been issued in a prescribed country for the arrest of a person accused or convicted of an offence against the law of that country and he is, or is suspected of being, in or on his way to the Republic, a magistrate may, if satisfied that the warrant is duly authenticated, make an endorsement on the warrant in accordance with Form 1 in the Third Schedule authorising the execution of the warrant in the Republic. Backing of warrant issued in another country

(2) An endorsement of an external warrant shall be signed by the magistrate and shall authorise any police officer to execute the warrant by arresting the person named in it and bringing him before a magistrate.

(3) A warrant endorsed under the provisions of this section shall be sufficient authority to any police officer to execute the warrant in any part of the Republic in accordance with this Part, and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed.

(4) This Part shall apply whatever the date of the external warrant sought to be endorsed pursuant to subsection (1) and whether the offence to which it relates is alleged to have been committed before or after the commencement of this Act.

47. Notwithstanding that an external warrant issued in a prescribed country for the arrest of any person may not yet have been endorsed in pursuance of this Part, a magistrate may issue a provisional warrant in accordance with Form 2 in the Third Schedule for the arrest of such person on such information and under such circumstances as would, in his opinion, justify the issue of a warrant if the offence of which that person is accused were an offence punishable by the law of the Republic and had been committed within his jurisdiction; and such provisional warrant may be executed according to its tenor. Provisional warrant

48. Where an external warrant for the arrest of a person accused of an offence has been endorsed in pursuance of this Part, the magistrate shall have the same power of issuing a warrant to search for any property alleged to be stolen or otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed, wholly within the jurisdiction of such magistrate. Search warrant

49. (1) A person who is arrested under an external warrant endorsed pursuant to section forty-six, or under a provisional warrant issued pursuant to section forty-seven, shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall be brought as soon as practicable before a magistrate. Proceedings after arrest

(2) A magistrate may remand a person brought before him under this section, either in custody or on bail, for a period or periods not exceeding seven days at any one time, and where a magistrate remands a person for such a period, the person may, at the expiration of the period, be brought before that magistrate or before any other magistrate.

(3) In the application of the succeeding subsections in relation to a person who has been arrested under an external warrant endorsed pursuant to section forty-six or under a provisional warrant issued pursuant to section forty-seven, "the magistrate" means the magistrate before whom the person is brought after arrest or at the expiration of a period for which he had been remanded under

subsection (2), as the case may be.

(4) Where the person is arrested under a provisional warrant pursuant to section forty-seven and the external warrant referred to in section forty-six authorising the arrest of the person has not been endorsed, the magistrate may, and shall if a reasonable time has elapsed for the endorsement of the external warrant-

(a) if the person arrested is held in custody, order his release; or

(b) if he has been admitted to bail, make an order discharging the recognizances upon which he was admitted to bail.

(5) Where the person is arrested-

(a) under an external warrant endorsed pursuant to section forty-six; or

(b) under a provisional warrant issued pursuant to section forty-seven and the external warrant referred to in section forty-six, authorising the arrest of the person, has been endorsed;

the magistrate shall, subject to the provisions of section fifty and subsections (6) and (7), by warrant in accordance with Form 3 in the Third Schedule, order the person to be surrendered to the prescribed country in which the external warrant was issued and, for that purpose, to be brought to some convenient point of departure from the Republic and there delivered into the custody of the person specified (whether by name or rank) in the said endorsed external warrant to receive him.

(6) The magistrate shall, in every case, suspend the execution of the warrant issued pursuant to subsection (5), for a period of fifteen days from the date thereof, and may order that the said person be remanded in custody or admitted to bail during that period, and that the said person be surrendered under the said warrant at the expiration of the said period of fifteen days or upon the determination against the said person of any application made pursuant to section fifty-one or fifty-two or of any proceedings for habeas corpus, whichever is the later.

(7) Where the magistrate is of opinion that it would be dangerous to the life or prejudicial to the health of the person to surrender him to the prescribed country referred to in subsection (5), he may, in lieu of ordering that he be surrendered to that country, by warrant order that he be held in custody at the place where he is for the time being, or at any other place to which the magistrate considers that he can be removed without danger to his life or prejudice to his health, until such time as he can without such danger or prejudice be surrendered to that country and, in such case, the warrant shall be in accordance with Form 3 in the Third Schedule with such variations as are necessary to meet the circumstances of the case.

(8) In proceedings under this section, the magistrate shall receive any evidence which may be tendered to show that the offence for which the surrender of the person arrested is requested under the said endorsed warrant or provisional warrant, as the case may be, is regarded under the law of the Republic as having been committed in the Republic or that a prosecution is pending in the Republic for the offence for which such person has been so arrested, and if the magistrate is satisfied that such is the case he shall refuse to order the surrender of the person to the prescribed country.

(9) A warrant issued pursuant to subsection (5) or (7) may be executed according to its tenor.

(10) Where the magistrate has ordered the surrender of a person pursuant to subsection (5), any property which was found in the possession of such person at the time of his arrest and which may be material as evidence in proving the offence for which he is being surrendered shall, if the magistrate so directs, be delivered up with the person on his surrender.

50. If a magistrate before whom a person is brought under this Part is satisfied that, by reason of-

(a) the trivial nature of the offence the person is alleged to have committed or has committed; or

(b) the accusation against the person not having been made in good faith or in the interests of justice; or

(c) the passage of time since the offence is alleged to have been committed or was committed;

and, having regard to the circumstances under which the offence is alleged to have been committed or was committed, it would be unjust, oppressive or too severe a punishment to surrender the person to a prescribed country, or to surrender him before the expiration of a particular period, the magistrate may-

(i) order that the person be discharged; or

(ii) order that the person be surrendered after the expiration of a period specified in the order and order his release on bail until the expiration of that period; or

(iii) make such other order as he deems just. Power of magistrate to order discharge or to postpone surrender of person

51. (1) Where-Review of order of magistrate

(a) a person, who is arrested under this Part, is dissatisfied with an order made by a magistrate under subsection (5) or (7) of section forty-nine or under section fifty; or

(b) a magistrate has made, under subsection (7) of section forty-nine or under section fifty, an order for the discharge of such arrested person, or an order for the surrender or admittance to bail of such person under the terms of which the person is not or may not be required to be surrendered to a requesting prescribed country within three months after the date of the order;

the arrested person, or the representative of the requesting prescribed country, or the person bringing the warrant, as the case requires, may apply to the High Court for a review of the order, and the said Court may review the order.

(2) The Court to which an application is made for the review of an order may-

(a) order the release on bail of the arrested person on such terms and conditions as the Court deems fit; or

(b) direct that the arrested person be kept in such custody as the Court directs until the order has been reviewed.

(3) The review of an order shall be by way of rehearing, and evidence in addition to, or in substitution for, the evidence given on the making of the order may be given on or in connection with the review.

(4) For the purpose of a review under this section, a copy of a public document or of a document filed in a department or office of the Republic, certified to be a true copy of the document by the person purporting by the certificate to have charge of the document, shall be admissible as evidence of the facts stated in the document.

(5) Upon the review of an order, the Court may confirm or vary the order, or quash the order and substitute a new order in its stead.

(6) The order as confirmed or varied, or the substituted order, shall be transmitted by the Court to the court of the magistrate who made the original order, and the magistrate shall cause the confirmed, varied or substituted order, as the case may be, to be executed according to its tenor.

52. (1) A person who is ordered to be surrendered pursuant to section forty-nine may, at the time the order is made or within five days thereafter, apply to the magistrate to submit to the Attorney-General a request for a determination of the question whether the offence to which the warrant relates is a political offence or an offence connected with a political offence, and the Attorney-General shall refer such request to the President for his ruling thereon. Restrictions on return of person

(2) Within seven days after the receipt of a reference to him pursuant to subsection (1), the President shall certify in writing his ruling upon such reference and the Attorney-General shall forthwith notify the magistrate, in writing, thereof.

(3) The ruling of the President on any reference pursuant to subsection (1) shall be binding upon the magistrate and shall be final.

(4) A person shall not be surrendered under this Part pending the ruling of the President on any reference pursuant to subsection (1).

(5) Any application made pursuant to subsection (1) shall be without prejudice to the right of the applicant, under section fifty-one, to apply for a review of the order of the magistrate by the High Court.

53. (1) Whenever a prisoner whose surrender is authorised in pursuance of this Part is not conveyed out of the Republic within one month after the date when his surrender could have been effected under this Part, a magistrate may-Discharge of prisoner

(a) upon application by or on behalf of the prisoner; and

(b) upon proof that reasonable notice of the intention to make the application has been given to the person holding the warrant and to the Commissioner of Police or the officer in charge of the police of the district, city, town or area where the prisoner is in custody; and

(c) unless sufficient cause is shown to the contrary;

order the prisoner to be discharged out of custody.

(2) Without prejudice to any application for an order of habeas corpus in respect of anything purporting to be done under this Part, any order or refusal to make an order of discharge under subsection (1) may be the subject of an appeal to the High Court.

PART VI MISCELLANEOUS PROVISIONS RELATING TO SURRENDER AND RETURNPART VI

MISCELLANEOUS PROVISIONS RELATING TO SURRENDER AND RETURN

A. Evidence and Authenticated Documents

54. (1) Any deposition or statement on oath or affirmation taken in the foreign requesting country, declared Commonwealth country or prescribed country, as the case may be, and any copy of any such original deposition or statement, and any document that purports to have been received in evidence in such country or to be a copy of a document that has been so received in evidence, and any document that purports to be an external warrant, and any official certificate of or judicial document stating the fact of conviction may, if authenticated, be accepted for the purpose of any request or application pursuant to this Act, or may be received in evidence in any proceedings under this Act. Evidence and authenticated documents

(2) In addition to any other means by which the same may be proved in proceedings under this Act, a magistrate or the High Court-

(a) shall take judicial notice of any law of a foreign requesting country or declared Commonwealth country which makes provision for any such matter as is referred to in paragraph (a) of subsection (1) of section forty-two, if an official copy of such law is produced and certified by the Minister responsible for the foreign affairs, or a diplomatic representative or consular officer, of that country to be in force;

(b) may receive as prima facie evidence of the existence and effect of any such agreement as is referred to in subsection (1) of section forty-two a certificate to that effect by such Minister or diplomatic representative or consular officer aforesaid.

(3) A document is authenticated for the purpose of any request or application made by a foreign, Commonwealth or prescribed country for the purpose of being admitted in evidence in proceedings under this Act if-

(a) in the case of a document that purports to be a deposition or statement on oath or affirmation given, declared or affirmed by a person in proceedings in the country concerned, the document purports to be certified by a Judge, magistrate or officer in or of that country to be the original document recording that testimony or a true copy of that original document;

(b) in the case of a document that purports to have been received in evidence, or to be a copy of a document that has been received in evidence, in proceedings in the country concerned, the document purports to be certified by a Judge, magistrate or officer in or of that country to have been, or to be a true copy of, a document that has been, so received in evidence;

(c) in the case of a document that certifies or states as a fact that a

person has been convicted of an offence in the country concerned, the document purports to be certified by a Judge, magistrate or officer in or of that country;

(d) in the case of a document that purports to be an external warrant, the document purports to be signed by a Judge, magistrate or officer in or of the country in which the document was issued;

and the document purports to be authenticated by the oath of a witness or to be sealed with the official seal of a Minister of State in or of that country.

(4) Nothing in this section shall prevent the proof of any matter, or the admission in evidence of any document, in accordance with any other provision of this Act or any other law of the Republic.

B Miscellaneous

55. If a person, who is under arrest, escapes, by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act or out of the custody of a person to whose custody he had been committed in accordance with this Act, he may be retaken in the same manner as a person accused of a crime against the law of the Republic may be retaken upon an escape. Escape

56. The laws with respect to-

(a) the conditions of imprisonment of persons imprisoned to await trial for offences against the law of the Republic;

(b) the treatment of such persons during imprisonment; and

(c) the transfer of such persons from prison to prison; apply, so far as they are capable of application, in relation to persons who have been committed to prison in the Republic pursuant to Part II, III or V. Conditions of imprisonment

57. Where a person accused or convicted of an extraditable crime is surrendered to the Republic under an extradition agreement, or under reciprocal extradition facilities by a foreign country or a declared Commonwealth country, pursuant to Part II or III, as the case may be, the person shall not, unless he has been returned, or has had an opportunity of returning, to that country-

(a) be proceeded against, sentenced or detained in the Republic for any offence that is alleged to have been committed, or was committed, prior to his surrender other than-Rule of speciality re a person surrendered to the Republic

(i) the offence to which the request for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that request was based; or

(ii) any other extraditable crime in respect of which that country consents to his being so detained or tried, as the case may be; or

(b) be detained in the Republic for the purpose of his being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to the Republic other than-

(i) an offence of which he could be convicted upon proof of the facts on which the request referred to in paragraph (a) was based; or

(ii) any offence in respect of which the country by which he was surrendered to the Republic consents to his being so detained.

58. (1) Transit through the Republic of a person being conveyed in custody from one country to another on his surrender pursuant to an agreement in the nature of an extradition agreement may be granted by the Attorney-General following a request to that effect made by the country to which he is being conveyed. Transit

(2) Any person who is in custody during such transit shall be in lawful custody.

(3) Any person who, pursuant to this Act, has been delivered into the custody of another person for the purpose of being conveyed to the country to which his surrender has been ordered, shall, while in transit in such custody through any part of the Republic, be in lawful custody.

PART VII OFFENCES COMMITTED ABROAD BY ZAMBIAN CITIZENS PART VII

OFFENCES COMMITTED ABROAD BY ZAMBIAN CITIZENS

59. (1) Where any citizen of the Republic does any act outside the Republic which constitutes an offence for which he would be liable to extradition but for the fact that he is a citizen of the Republic, he shall be guilty of the like offence and be liable on conviction to the like punishment as if the act were done within Zambia. Offences committed abroad by Zambian citizens

(2) No prosecution for an offence under subsection (1) shall be commenced without the sanction of the Director of Public Prosecutions given after the Attorney-General has certified to him in writing that a request for extradition of the person claimed has been made pursuant to section six or to subsection (2) of section eighteen, as the case may be, and that such request has been refused by reason of the provisions of section thirty-four.

(3) This section shall apply only to acts committed after the commencement of this Act.

(4) For the purpose of the exercise of jurisdiction, in relation to an offence to which subsection (1) applies, by any court of competent jurisdiction, the act constituting the offence shall be deemed to have been committed within the Lusaka District.

(5) For the purposes of this section-

(a) "the like offence" means such offence (by whatever name called) as would be punishable under the laws of Zambia if the act constituting the offence for which extradition is requested had been done in Zambia;

(b) "the like punishment" means punishment of the same form as, or of a less stringent form than, the punishment prescribed for such offence by the law of the requesting country.

PART VIII FORMS, REGULATIONS, RULES PART VIII

FORMS, REGULATIONS, RULES

60. (1) Strict compliance with any form in the Second and Third Schedules, or with any form prescribed under subsection (2), is not required, and any deviation therefrom which does not affect the substance of any such form or which is not calculated to mislead shall be sufficient. Prescribed forms

(2) The Attorney-General may, from time to time, by regulations made by statutory instrument, prescribe forms to be used for the purposes of this Act, and may, in like manner, amend, vary, cancel or alter any such prescribed form or any form in the Second and Third Schedules contained, or may prescribe additional forms for the purposes of the said Schedules.

61. The Attorney-General may, from time to time, by regulations made by statutory instrument, prescribe anything which he deems necessary for the better carrying out of this Act, and in like manner may prescribe such matters as may, by the provisions of this Act, be prescribed, and in respect of which no other prescribing authority is specified. Regulations

62. The Chief Justice may, by statutory instrument, make rules providing for the practice and procedure in relation to the performance by magistrates of functions under this Act, including the remanding of persons either in custody or on bail, the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation, the administering of oaths or affirmations, the payment of expenses of witnesses and the protection and immunity of magistrates, of legal practitioners appearing before magistrates, and of witnesses. Rules of court

63. The Attorney-General shall have an embossed official seal for the purpose of authentication of documents in respect of extradition to or from the Republic under Part II or III, respectively. Official seal

PART IX INTERIM PROVISIONS

INTERIM PROVISIONS

64. (1) Pending the coming into operation of Part II, the Minister responsible for foreign affairs may, on behalf of the Republic, at any time, negotiate and conclude international agreements or conventions with foreign countries for the purposes of the said Part II, as if that Part already had the force of law. Power to implement Part II pending commencement

(2) Any international agreement or convention entered into with any foreign country, pursuant to subsection (1), shall not be implemented by the Republic until such time as Part II is applied in relation to that country by virtue of an order made pursuant to subsection (1) of section three.

65. (1) Pending the coming into operation of Part III, the President may, at any time, make and publish orders pursuant to subsection (1) of section sixteen applying Part III in relation to Commonwealth countries, as if Part III already had the force of law. Power to implement Part III pending commencement

(2) Any order made by the President pursuant to subsection (1) shall be deemed to come into force simultaneously with the coming into operation of Part III by virtue of an order made by the Attorney-General pursuant to subsection (2) of section one.

66. Pending the coming into operation of Part X, nothing in section sixty-four or sixty-five shall be deemed to have the effect of repealing or disapplying, in whole or in part, the Acts intended to be repealed or disappplied by section sixty-seven. Provisions relating to sections 64 and 65

PART X REPEALS PART X

REPEALS

67. (1) The Extradition and Fugitive Offenders Act and the Fugitive Offenders (Interim Provision) Act are hereby repealed. Repeals and savings.
Cap. 162.

(2) The Fugitive Offenders Act, 1881, of the United Kingdom, shall cease to apply to the Republic as part of the law thereof and subsection (3) of section fourteen of the Interpretation and General Provisions Act shall apply in relation to this subsection as if that Act had been repealed. Cap. 163 of the old edition
Cap. 2

(3) The Extradition Act, 1870, the Extradition Act, 1873, and the Extradition Act, 1906, of the United Kingdom, shall cease to apply to the Republic as part of the law thereof and subsection (3) of section fourteen of the Interpretation and General Provisions Act shall apply in relation to this subsection as if those Acts had been repealed. Cap. 2

(4) Notwithstanding the repeal or disapplication of the laws set out in subsections (1), (2) and (3), when, before the date of commencement, any request has been made or proceedings have been commenced for the surrender of a fugitive criminal or the return of a prisoner under any of the said laws to a country to which the relevant Part of this Act applies, the same may be continued under corresponding provisions of this Act, and in such case any steps taken before the date of commencement under any of the said laws shall be deemed to have been taken under and for the purposes of this Act.

FIRST SCHEDULE

(Sections 17 and 25)

OFFENCES-PART III

1. 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. Assault occasioning actual bodily harm.
6. Rape.
7. Unlawful sexual intercourse with a female.
8. Indecent assault.
9. Procuring, or trafficking in, women or young persons for immoral purposes.
10. Bigamy.
11. Kidnapping; abduction; false imprisonment; dealing in slaves.
12. Stealing, abandoning, exposing or unlawfully detaining a child.
13. Bribery.
14. Perjury; subornation of perjury; conspiring to defeat the course of justice.
15. Arson.
16. An offence concerning counterfeit currency.
17. An offence against the law relating to forgery.
18. Stealing; embezzlement; fraudulent conversion; fraudulent false accounting; obtaining property or credit by false pretences; receiving stolen property; any other offence in respect of property involving fraud.
19. Burglary; housebreaking; any similar offence.
20. Robbery.
21. Blackmail or extortion by means of threats or by abuse of authority.
22. An offence against the law relating to bankruptcy or insolvency.
23. An offence against the law relating to companies.

24. Maliciously or wilfully damaging property.
25. An act done with the intention of endangering a vehicle, vessel or aircraft.
26. An offence against the law relating to dangerous drugs or narcotics.
27. Piracy.
28. Revolt against the authority of a master of a ship or the commander of an aircraft.
29. Contravention of a prohibition on the importation or exportation of precious stones, gold or other precious metals.
30. 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 paragraph of this Schedule.

SECOND SCHEDULE

FORMS UNDER PART III

FORM 1

(Section 20 (1) (a))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

NOTICE BY THE ATTORNEY-GENERAL

To:.....a Senior/Resident Magistrate at .

WHEREAS a request has been made to me, the Attorney-General, by
 , a declared Commonwealth country for the purposes
of the Extradition Act, for the surrender
of.....(in this Notice referred to as "the
said person claimed"), who is accused (or has been convicted) of the offence
of.....alleged to have been committed (or
committed) in (or within the jurisdiction of)..... and
is, or is suspected of being, in or on his way to the Republic:

NOW THEREFORE I, the Attorney-General, inform you that the said request has
been made and authorise you to issue a warrant for the arrest of the said person
claimed provided that the provisions of the Extradition Act relating to the
issue of such warrant have, in your opinion, been complied with.

Given under my hand at Lusaka
this.....day
of....., 19.....

Attorney-General

FORM 2

(Section 20 (1) (b))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

NOTICE BY THE ATTORNEY-GENERAL

To:....., a Senior/Resident Magistrate at

I, the Attorney-General, hereby inform you that a request has been made to me by....., a declared Commonwealth country for the purposes of the Extradition Act, for the surrender of..... who is accused (or has been convicted) of the offence of..... alleged to have been committed (or committed) in (or within the jurisdiction of).....

Given under my hand at Lusaka
this.....day of
....., 19.....

Attorney-General

FORM 3

(Section 21 (1) (a))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

WARRANT OF ARREST

To: Each and all Police Officers of Zambia:

WHEREAS the Attorney-General has notified me, a Senior/Resident Magistrate at....., that a request has been made to him for the surrender of.....(in this warrant referred to as "the said person claimed"), who is accused (or has been convicted) of the offence of.....alleged to have been committed (or committed) in (or within the jurisdiction of).....and is, or is suspected of being, in or on his way to the Republic:

THIS IS THEREFORE to authorise and command you forthwith to find the said person claimed and, having found him, to arrest him and to bring him before any Senior Resident Magistrate or Resident Magistrate to show cause why he should not be surrendered to..... pursuant to the Extradition Act.

Issued
at.....the.....
.....day of....., 19.....

Senior/Resident Magistrate

FORM 4

(Section 21 (1) (b))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

PROVISIONAL WARRANT OF ARREST

To: Each and all Police Officers of Zambia:

WHEREAS it has been shown to me, a Senior/Resident Magistrate at
....., that
..... (in this warrant referred to as "the person
claimed") is accused (or has been convicted) of the offence of
..... alleged to have been committed (or
committed) in (or within the jurisdiction of)
..... and the said person claimed
is, or is suspected of being, in or on his way to the Republic:

THIS IS THEREFORE to authorise and command you forthwith to find the said
person claimed and, having found him, to arrest him and to bring him before any
Senior Resident Magistrate or Resident Magistrate to be further dealt with
according to law.

Issued at this
..... day of,
19.....

Senior/Resident Magistrate

FORM 5

(Section (6), (7))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

WARRANT OF COMMITMENT

To: Each and all Police Officers of Zambia and to the Superintendent/Officer in Charge of the Government Prison at and to any Prison Officer into whose hands this warrant shall come:

WHEREAS on this day of , 19 (in this warrant referred to as "the said person claimed") has been brought before me a Senior/Resident Magistrate of District to show cause why he should not be surrendered pursuant to the Extradition Act, on the ground of his being accused (or having been convicted) of the offence of alleged to have been committed (or committed) in (or within the jurisdiction of):

AND WHEREAS no sufficient cause has been shown to me why the said person claimed should not be surrendered pursuant to the Extradition Act:

THIS IS THEREFORE to authorise and command-

(a) you, the said police officers, to convey the said person claimed to the Government prison at and deliver him there to the Superintendent/Officer in Charge of the said prison together with this warrant; and

(b) you, the said Superintendent/Officer in Charge, to receive the said person claimed into your custody in the said prison and there safely to keep him until he is delivered therefrom in accordance with law.

Issued at this day of , 19.....

Senior/Resident Magistrate

FORM 6

(Section 24 (3))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

WARRANT FOR SURRENDER OF PERSON CLAIMED

To: Each and all Police Officers of Zambia; and to the Superintendent/Officer in Charge of the Government Prison at and to any Prison Officer into whose hands this warrant shall come; and to:

WHEREAS (in this warrant referred to as "the said person claimed") who is accused (or has been convicted) of the offence of alleged to have been committed (or committed) in (or within the jurisdiction of) was delivered into the custody of you the said Superintendent/Officer in Charge by warrant dated the day of, 19....., pursuant to the Extradition Act:

NOW THEREFORE I, the Attorney-General, in pursuance of the Extradition Act, order-

- (a) you, the said Superintendent/Officer in Charge, to deliver the said person claimed into the custody of the police officer bearing this warrant; and
- (b) you, the said police officer bearing this warrant, to receive the said person claimed into your custody and to convey him together with this warrant to a convenient point of departure from the Republic and there to surrender him to the said; and
- (c) you, the said, to receive the said person claimed into your custody and to convey him to a place in or within the jurisdiction of and there surrender him to some person appointed to receive him.

Given under my hand at Lusaka this day of, 19.....

Attorney-General

THIRD SCHEDULE

FORMS UNDER PART V

FORM 1

(Section 46 (1))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

ENDORSEMENT ON WARRANT

Subordinate Court (First Class)

District of.....}

Republic of Zambia

WHEREAS I, a Senior/Resident Magistrate, am satisfied that the within warrant is authenticated for the purpose of the Extradition Act:

THIS IS THEREFORE to authorise and command
each and all police officers of Zambia to find the said
..... in the Republic and, having found
him, to arrest him and to bring him before any Senior Resident Magistrate or
Resident Magistrate to be further dealt with according to law.

Issued at on the day
of, 19.....

Senior/Resident Magistrate

FORM 2

(Section 47)

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

PROVISIONAL WARRANT OF ARREST

To: Each and all Police Officers of Zambia:

WHEREAS (here specify the information and circumstances that justify the issue of the warrant):

THIS IS THEREFORE to authorise and command you forthwith to find
..... in the Republic and, having found him, to arrest
him and to bring him before any Senior/Resident Magistrate to be further dealt
with according to law.

Issued at this
day of, 19.....

Senior/Resident Magistrate

FORM 3

(Section 49 (5), (7))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

WARRANT FOR SURRENDER OF PERSON

To: Each and all Police Officers of Zambia; and

To: The Superintendent/Officer in Charge of the Government Prison at
.....; and

To: Any Prison Officer;

into whose hands this warrant shall come:

WHEREAS has been arrested under an external warrant endorsed pursuant to section 46 of the Extradition Act, for an offence alleged to have been committed (or committed) against the law of;

OR

WHEREAS has been arrested under a provisional warrant issued pursuant to section 47 of the Extradition Act, and an external warrant for his arrest for an offence against the law of has been endorsed pursuant to section 46 of the said Extradition Act:

AND WHEREAS the said was delivered into the custody of you, the said Superintendent/Officer in Charge by order dated the day of, 19..... pursuant to subsection (5)/(7) of section 49 of the Extradition Act:

NOW THEREFORE I, a Senior/Resident Magistrate of District, order that the said be surrendered to and for that purpose order-

(a) you, the said Superintendent/Officer in Charge to deliver the said into the custody of the police officer bearing this warrant; and

(b) you, the said police officer bearing this warrant, to receive the said person into your custody and to convey him together with this warrant and the external warrant for his arrest endorsed pursuant to section 46 of the Extradition Act to a convenient point of departure from the Republic and there to surrender the said together with the said endorsed warrant to the person specified (whether by name or rank) in the said endorsed warrant to receive him.

Issued at this
..... day of ,
19.....

Senior/Resident Magistrate

SUBSIDIARY LEGISLATION

THE EXTRADITION ACT

THE EXTRADITION (DECLARED COMMONWEALTH COUNTRIES) ORDER.

Order by the President.

1. This Order may be cited as the Extradition (Declared Commonwealth Countries) Order. Title
2. Every country other than the Republic which is at the relevant time a member of the Commonwealth is hereby declared to be a Commonwealth country in relation to which Part III of the Act applies. Declaration of Commonwealth countries