



LAWS OF KENYA



**EXTRADITION (CONTIGUOUS AND FOREIGN COUNTRIES)
ACT**

CHAPTER 76

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CHAPTER 76

EXTRADITION (CONTIGUOUS AND FOREIGN COUNTRIES) ACT

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CHAPTER 76

EXTRADITION (CONTIGUOUS AND FOREIGN COUNTRIES) ACT

[Date of assent: 1st March, 1966.]

[Date of commencement: 29th March, 1966.]

An Act to amend and consolidate the Law relating to the extradition of criminals and for matters connected therewith and incidental thereto

[L.N. 94/1966, Act No. 9 of 1967, Act No. 65 of 1968, Act No. 18 of 1970, Act No. 13 of 1982, Act No. 11 of 1983, Act No. 22 of 1987, Act No. 2 of 2002, Act No. 9 of 2009, Act No. 6 of 2010.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Extradition (Contiguous and Foreign Countries) Act.

[Act No. 65 of 1968, s. 19.]

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**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;

“**extradition crime**” means a crime which, if committed within the jurisdiction of Kenya, would be one of the crimes described in the Schedule to this Act;

“**fugitive criminal**” means any person accused or convicted of an extradition crime committed within the jurisdiction of any other country who is in or is suspected of being in Kenya, and a reference to a fugitive criminal of a country is a reference to a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that country;

“**magistrate**” means a chief magistrate, a senior principal magistrate, a principal magistrate, a senior resident magistrate or a resident magistrate;

“**warrant**” in the case of any other country includes any judicial document authorizing the arrest of a person accused or convicted of a crime.

(2) If any fugitive criminal or other person is arrested in pursuance of the provisions of this Act and 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.

[Act No. 22 of 1987, Sch. Act No. 2 of 2002, Sch.]

PART II – SURRENDER OF FUGITIVE CRIMINALS

3. Application of Part

(1) Where an agreement has been made with any country other than a designated Commonwealth country within the meaning of the Extradition (Commonwealth Countries) Act (Cap. 77), with respect to the surrender to that country of any fugitive criminal, the Minister may, by order published in the *Gazette*, declare that this Part of this Act shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and this Part shall apply accordingly.

(2) An order made under this section shall recite or embody the terms of the agreement and shall not remain in force for any longer period than the agreement.

(3) Every order made under this section shall be laid before the House of Representatives.

[Act No. 65 of 1968, s. 19.]

4. Liability of fugitive criminals to surrender

Subject to the provisions of section 16, where this Part of this Act applies in the case of any country, every fugitive criminal of that country who is in or suspected of being in Kenya shall be liable to be arrested, detained and surrendered in the manner provided by this Part of this Act—

- (a) whether the crime in respect of which the surrender is sought was committed before or after the commencement of this Act or the application of this Part of this Act to that country; and
- (b) whether there is or is not any concurrent jurisdiction in a court in Kenya over that crime.

5. Requisition for surrender

(1) A requisition for the surrender of a fugitive criminal of any country who is in or suspected of being in Kenya shall be made to the Minister by a diplomatic representative or consular officer of that country and, upon receipt of such requisition, the Minister may, by order under his hand, signify to a magistrate that a requisition has been made and require the magistrate to issue his warrant for the arrest and detention of the fugitive criminal.

(2) If the Minister is of the opinion that the offence is one of a political character he may refuse to make an order and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

6. Issue of warrant

(1) The warrant for the arrest of a fugitive criminal, whether accused or convicted of a crime, who is in or suspected of being in Kenya, may be issued by a magistrate—

- (a) on the receipt of the order of the Minister and on such evidence as would, in the opinion of the magistrate, justify the issue of the warrant if the crime had been committed or the criminal convicted in Kenya; or

- (b) on such information or complaint and such evidence or after such proceedings as would, in the opinion of the magistrate, justify the issue of a warrant if the crime had been committed or the criminal convicted in Kenya.

(2) A magistrate issuing a warrant under this section without an order from the Minister shall forthwith send a report of the fact of the issue, together with the evidence and information or complaint or certified copies thereof, to the Minister, who may order the warrant to be cancelled and the person who has been arrested and detained on the warrant to be discharged.

(3) A fugitive criminal when arrested on a warrant under this section shall be brought before a magistrate as soon as possible.

(4) A fugitive criminal arrested and detained on a warrant issued without the order of the Minister shall be discharged by the magistrate unless the magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from the Minister an order signifying that a requisition has been made for the surrender of the criminal.

(5) The warrant of a magistrate issued in pursuance of this Part of this Act may be executed in any part of Kenya in the same manner as if it had been originally issued or subsequently endorsed by a magistrate having jurisdiction in the place where it is executed.

7. Hearing of case and evidence

(1) When a fugitive criminal is brought before a magistrate, the magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as in a trial before a subordinate court.

(2) The magistrate shall receive any evidence which may be tendered to show that the case is one to which the relevant provisions of section 16 apply or that the crime of which the prisoner is accused is not an extradition crime.

[Act No. 13 of 1982, Second Sch.]

8. Committal or discharge of prisoner

(1) In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of the criminal is duly authenticated, and such evidence is produced as, subject to the provisions of this Act, would according to the law of Kenya, justify the committal for trial of the prisoner if the crime of which he is accused was committed in Kenya, the magistrate shall commit him to prison, but otherwise shall order him to be discharged.

(2) In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as, subject to the provisions of this Act would, according to the law of Kenya, prove that the prisoner was convicted of such crime, the magistrate shall commit him to prison, but otherwise shall order him to be discharged.

(3) If the magistrate commits such criminal to prison, he shall commit him to prison to await the warrant of the Minister for his surrender; and the magistrate shall forthwith send to the Minister a certificate of the committal and such report on the case as he may think fit.

9. Surrender of fugitive criminal

(1) Whenever a magistrate commits a fugitive criminal to prison under this Part of this Act he shall inform the criminal that he will not be surrendered until after the expiration of fifteen days and that he has a right to apply for the issue of directions in the nature of *habeas corpus*.

(2) Upon the expiration of the period of fifteen days, or, if directions in the nature of *habeas corpus* are issued, after the decision of the court upon the return to the directions, as the case may be, or after such further period as may be allowed in either case by the Minister, the Minister may by warrant under his hand order the fugitive criminal, if not set at liberty on the decision of the court, to be surrendered to such person as is in his opinion, duly authorized to receive the fugitive criminal by the country from which the requisition for the surrender proceeded, and the fugitive criminal shall be surrendered accordingly.

(3) Any person to whom such warrant is directed, and the person so authorized as aforesaid, may receive, hold in custody and convey into the jurisdiction of that country the criminal mentioned in the warrant.

10. Discharge of fugitive criminal

Whenever a fugitive criminal who has been committed to prison is not surrendered and conveyed out of Kenya within two months after the committal, or if directions in the nature of *habeas corpus* are issued, after the decision of the court upon the return to the directions, any judge of the High Court may—

- (a) upon application made to him by or on behalf of the criminal; and
- (b) upon proof that reasonable notice of the intention to make the application has been given to the Minister,

order the criminal to be discharged out of custody unless sufficient cause is shown to the contrary.

PART III – RECIPROCAL BACKING OF WARRANTS**11. Application of Part**

(1) Where the Minister is satisfied that reciprocal provision has been or will be made by or under the law of any contiguous country other than a designated Commonwealth country within the meaning of the Extradition (Commonwealth Countries) Act (Cap. 77), for the backing of warrants issued in Kenya and their execution in that country and that it is appropriate to do so, he may, by order published in the *Gazette*, declare that this Part of this Act shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and this Part shall apply accordingly.

(2) Every order made under this section shall be laid before the House of Representatives.

[Act No. 65 of 1968, s. 19.]

12. Backing of warrants issued in another country

(1) Where a warrant has been issued in a country to which this Part of this Act applies for the arrest of a person accused of an offence punishable by law in that country and he is or is suspected of being in or on the way to Kenya, a magistrate may, if satisfied that the warrant was issued by a person having lawful authority to issue it, endorse such warrant.

(2) An endorsement of a warrant shall be signed by the magistrate and shall authorize all or any of the persons named in the endorsement and every police officer to execute the warrant by arresting the person named in it and bringing him before a magistrate.

(3) A warrant endorsed under this section shall be sufficient authority to arrest, within the jurisdiction of the endorsing magistrate, the person named in the warrant and to bring him before a magistrate.

(4) This Part of this Act shall apply whatever the date of the warrant and whether the offence is alleged to have been committed before or after the commencement of this Act or the application of this Part of this Act to the country concerned.

13. Provisional warrant

(1) Notwithstanding that a warrant for the arrest of any person issued in a country to which this Part of this Act applies may not yet have been endorsed in pursuance of this Part, a magistrate may issue a provisional warrant 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 Kenya and had been committed within his jurisdiction; and such warrant may be endorsed in the manner provided in the Criminal Procedure Code (Cap. 75), and may be executed accordingly.

(2) Where a person is arrested under such a provisional warrant—

- (a) no order may be made under section 14 for his return to the country in which the original warrant was issued unless the original warrant is produced and endorsed in accordance with this Part; and
- (b) he shall be discharged unless the original warrant is produced and endorsed within such time as the magistrate thinks reasonable in the circumstances.

14. Return of prisoner

(1) Subject to the provisions of section 16, where a person arrested under a warrant endorsed in accordance with section 12, or a provisional warrant issued under section 13 is brought before a magistrate and, in the case of a person arrested under a provisional warrant, the original warrant has been produced and endorsed, the magistrate may, if he is satisfied—

- (a) that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue the same; and
- (b) by evidence on oath, that the prisoner is the person named or otherwise described in the warrant,

order the prisoner to be returned to the country in which the original warrant was issued, and for that purpose to be delivered into the custody of the persons to whom the warrant is directed or any one or more of them and to be held in custody and conveyed into that country.

(2) A person to whom the warrant is directed and the person so authorized may receive, hold in custody and convey into the jurisdiction of that country the prisoner mentioned in the warrant.

(3) A magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail a prisoner, as he has in the case of a person arrested under a warrant issued by him.

(4) In proceedings under this section, the magistrate shall receive any evidence which may be tendered to show that the case is one to which the relevant provisions of section 16 apply.

15. Discharge of prisoner

(1) Whenever a prisoner whose return is authorized in pursuance of this Part of this Act is not conveyed out of Kenya within one month after the date of the order for his return, a magistrate may—

- (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 chief officer 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 directions in the nature of a writ of *habeas corpus* in respect of anything purporting to be done under this Part of this Act, any order or refusal to make an order of discharge under subsection (1) of this section may be the subject of an appeal to the High Court.

(3) If, in any proceedings under this Part of this Act which are brought to his attention, the Minister is of opinion that the offence is one of a political character, he may order a person arrested under this Part to be discharged from custody.

PART IV – MISCELLANEOUS PROVISIONS RELATING TO SURRENDER AND RETURN

Restrictions

16. Restriction on surrender or return

(1) A fugitive criminal shall not be surrendered under Part II of this Act and a person arrested under Part II of this Act shall not be returned—

- (a) if the offence in respect of which his surrender is required, or the offence specified in the warrant, as the case may be, is one of a political character or if it appears to a court or the Minister that the requisition for the surrender, or the application for endorsement of a warrant and the return of the person named therein, has in fact been made with a view to try or to punish him for an offence of a political character: or
- (b) if the fugitive criminal or the person arrested is accused of some offence triable by a court in Kenya or is undergoing sentence under any conviction in Kenya, until after he has been discharged, whether by acquittal or on the expiration of his sentence or otherwise.

(2) Subject to the provisions of section 27, a fugitive criminal shall not be surrendered under Part II—

- (a) unless provision is made by the law of the country to which he is to be surrendered, or by agreement, that the fugitive criminal shall not, unless he has been restored or had an opportunity of returning to Kenya, be detained or tried in that country for any offence committed before his surrender other than an extradition crime proved by the facts on which the surrender is grounded; or
- (b) until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

(3) Where the return of a prisoner is sought or arranged under Part III, and it appears to the magistrate that by reason of the trivial nature of the case, or by reason of the application for the return of the prisoner not being made in good faith in the interests of justice, or otherwise, it would, having regard to the distance, to the facilities of communication and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the prisoner either at all or until the expiration of a certain period, the magistrate may discharge the prisoner either absolutely or on bail or order that he shall not be returned until after the expiration of the period named in the order or may make such other order in the matter as the magistrate thinks proper.

(4) Without prejudice to any application for directions in the nature of a writ of *habeas corpus* in respect of anything purporting to be done under Part III of this Act, an order or refusal to make an order of discharge under subsection (3) may be the subject of an appeal to the High Court.

Evidence

17. Evidence

(1) Depositions or statements on oath or affirmation taken in the country concerned and copies of the original depositions or statements and official certificates of or judicial documents stating the fact of conviction may, if duly authenticated, be received in evidence in any proceedings under this Act.

(2) In addition to any other means by which the same may be proved, a magistrate or the High Court—

- (a) shall take judicial notice of any law of a country by which the surrender of a fugitive criminal is required which makes provision for any such matter as is referred to in section 16(2)(a), if an official copy of such law is produced and certified by the Minister responsible for foreign affairs or a diplomatic representative or consular officer of that country to be in force;
- (b) may receive as *prima facie* evidence of any such agreement as is referred to in the said paragraph a certificate to that effect by such Minister or diplomatic representative or consular officer aforesaid.

18. Authorization of warrants and depositions

(1) Warrants and depositions or statements on oath or affirmation and copies thereof and certificate of or judicial documents stating the fact of a conviction

shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or—

- (a) if the warrant purports to be signed by a judge, magistrate or officer of the country where it was issued; or
- (b) if the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate or officer of the country where they were taken to be the original depositions or statements or to be true copies thereof, as the case may require; or
- (c) if the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate or officer of the country where the conviction took place; and

if in every case the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or—

- (i) in a case to which Part II of this Act applies, by being sealed with the official seal of the Minister for the time being responsible for legal affairs, or some other Minister of State, of the country concerned; or
- (ii) in a case to which Part III of this Act applies, by sealing in the manner aforesaid or by the signature of the Attorney-General, Solicitor-General or Director of Public Prosecutions of the country concerned.

(2) All courts and magistrates shall take judicial notice of the official seal and signature referred to in paragraphs (i) and (ii) of subsection (1) and shall admit any such document so authenticated in evidence without further proof.

Miscellaneous

19. Escape

If a prisoner 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 has 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 Kenya may be retaken upon an escape.

20. Search warrants

Where a warrant for the arrest of a person accused of an offence has been endorsed in pursuance of Part III of this Act, 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.

21. Rules

(1) The Chief Justice may make rules of court for appeals to the High Court under this Act.

(2) The Minister may prescribing forms for the purposes of this Act, and forms so prescribed or forms as near thereto as the circumstances permit may be used in all matters to which such forms refer.

22. Declaration of application

The Minister may from time to time, by order published in the *Gazette*, declare the countries to which Part II and Part III of this Act apply (including the countries to which Part II applies under section 27 of this Act and, subject to any later order providing for the discontinuance of such application, the declaration shall be conclusive as to the application of the relevant Part to countries to which it relates.

[Act No. 9 of 1967, Sch.]

23. Discontinuance

Whenever it appears to the Minister that an agreement with a country to which Part II of this Act applies is no longer in force (or in the case of a country to which Part II applies under section 27(1)(a), that the law of that country no longer contains reciprocal provision), or that the law of a country to which Part III of this Act applies no longer makes reciprocal provision or that such provision has ceased to apply to Kenya or any part thereof, he may, by order published in the *Gazette*, discontinue the application of the appropriate Part to that country.

PART V – TAKING OF EVIDENCE FOR CRIMINAL TRIALS IN OTHER COUNTRIES**24. Obtaining evidence in Kenya**

(1) The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in any other country in like manner as it may be obtained in relation to any civil matter under any rules of court or any enactment for the time being in force in that part of Kenya in which the testimony is to be taken for the taking of evidence in relation to civil and commercial matters pending before the tribunals of other countries.

(2) Nothing in this section shall apply in the case of any criminal matter of a political nature.

25. Taking of evidence in Kenya for foreign criminal matters

(1) Subject to section 24(2), the Minister may, by order, require a magistrate to take evidence for the purpose of any criminal matter pending in any court or tribunal in any other country.

(2) A magistrate, upon the receipt of an order made under this section, shall take down in writing the evidence of every witness appearing before him for the purpose in like manner as if the witness appeared in a preliminary inquiry and shall certify at the foot of the deposition so taken that the evidence was taken before him, and shall transmit it to the Minister.

(3) The evidence may be taken in the presence or absence of the person charged, if any, and the fact of the presence or absence shall be stated in the deposition.

(4) Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents in like manner and subject to like conditions as he may in the case of a trial for an offence.

PART VI – CRIMINALS SURRENDERED TO KENYA

26. Trial of criminal surrendered

(1) Subject to subsection (2) of this section, where in pursuance of an agreement with another country any person accused or convicted of any crime described in the Schedule to this Act is surrendered by that country that person shall not, until he has been restored or had an opportunity of returning to that country, be triable or tried for any offence committed before his surrender to Kenya other than such of the crimes as may be proved by the facts on which the surrender is grounded.

(2) Nothing in this section shall apply in relation to a person surrendered or returned to Kenya by a country to which Part III of this Act applies.

PART VII – TRANSITIONAL, REPEAL AND APPLICATION

27. Transitional

(1) Subject to any order made under section 3 or section 23 of this Act—

- (a) a country to which Part I of the Fugitive Offenders Act, 1881 (No. 44 and 45 Vict., Cap. 69) (as in force in Kenya) applied immediately before the commencement of this Act; and
- (b) a country to which the Fugitive Criminals Surrender Act (Cap. 77) applied immediately before the commencement of this Act,

shall be a country to which Part II of this Act applies.

(2) The application of Part II of this Act by subsection (1) of this section shall have effect—

- (a) in the case of a country to which subsection (1)(a) of this section refers—
 - (i) notwithstanding that no agreement has been made with that country or that the terms of an agreement are not embodied in any order; and
 - (ii) notwithstanding that no such provision or agreement as is referred to in section 16(2)(a) of this Act is in force in or has been made with that country,

and, unless provision is made by the Minister in an order under this section applying that paragraph to any such country, the surrender of a fugitive criminal to that country shall not be refused on the grounds set out in that paragraph;

- (b) in the case of a country to which subsection (1)(b) of this section refers, as if the terms of the relevant agreement and the conditions, exceptions and qualifications specified in any order made under the Fugitive Criminals Surrender Act and in force immediately before the commencement of this Act, had been specified by order made under this Act.

28. Repeals and saving

(1) The Extradition Act (Cap. 76) and the Fugitive Criminals Surrender Act (Cap. 77) are hereby repealed.

(2) The Fugitive Offenders Act, 1881 shall cease to apply to Kenya as part of the law thereof and section 23(3) of the Interpretation and General Provisions Act (Cap. 2) shall apply in relation to this subsection as if that Act had been repealed.

(3) Notwithstanding the repeal or disapplication of the laws set out in subsections (1) and (2) of this section, where, before the commencement of this Act, 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 any such case any steps taken before the commencement of this Act under any of the said laws shall be deemed to have been taken under and for the purposes of this Act.

SCHEDULE

[Section 2(1), Act No. 18 of 1970, s. 11, Act No. 11 of 1983, Sch., Act No. 9 of 2009, Act No. 6 of 2010.]

EXTRADITION CRIMES

Criminal Homicide and Similar Offences

Murder and attempt and conspiracy to murder.

Manslaughter.

Injury to Persons Not Amounting to Homicide

Wounding or inflicting grievous bodily harm.

Assault occasioning actual bodily harm and other aggravated assaults punishable by imprisonment for five years or more.

Abduction, Rape and Similar Offences

Rape, defilement and unlawful carnal knowledge.

Indecent assault.

Abortion and offences relating thereto.

Child-stealing.

Kidnapping and false imprisonment.

Procuration.

Narcotics and Dangerous Drugs

Offences relating to narcotics.

Offences relating to traffic in dangerous drugs.

Damage to Property

Malicious damage to property.

Arson.

Falsification of Currency and Similar Offences

Counterfeiting and altering money, and uttering counterfeit or altered money.

Offences relating to counterfeiting.

Forgery and Similar Offences

Forgery, counterfeiting, altering and uttering what is forged or counterfeited or altered.

Misappropriation, Fraud and Similar Offences

Theft, and offences relating thereto.

Fraudulent conversion.

Burglary and housebreaking, robbery, robbery with violence.

Threats by letter or otherwise with intent to extort; intimidation.

Obtaining money or goods by false pretences.

Perjury and subornation of perjury.

Bribery and corruption.

Offences by bankrupts against bankruptcy law, or any cognisable offence under the laws relating to bankruptcy.

Fraudulent misappropriations and fraud.

Receiving stolen property.

Organised Criminal Group Offences.

Piracy and Similar Offences

Piracy by the law of nations.

Sinking or destroying a vessel at sea or an aircraft in the air, or attempting or conspiring to do so.

Assault on board a ship on the high seas or an aircraft in the air with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt, by two or more persons, on board a ship on the high seas or an aircraft in the air against the authority of the master, or captain of the aircraft.

Hijacking and offences committed in relation thereto.

Offences relating to aircraft set out in section 5 of the Protection of Aircraft Act.

Slave Dealings

Offences against the Slave Trade Act, 1873, or otherwise in connexion with the slave trade, committed on the high seas or on land, or partly on the high seas and partly on land.

General

Counselling, procuring, aiding and abetting, or being an accessory before or after the fact to any of the foregoing.

Any offence that constitutes an offence of money laundering under the Proceeds of Crime Anti-Money Laundering Act, 2009 (No. 9 of 2009).

CHAPTER 76

EXTRADITION (CONTIGUOUS AND FOREIGN COUNTRIES) ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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ORDER APPLYING PART II TO THE FEDERAL REPUBLIC OF GERMANY, 1969

[L.N. 184/1969.]

ORDERS UNDER SECTION 3

WHEREAS an agreement has been made between the Government of Kenya and the Government of the Federal Republic of Germany that, pending the conclusion of a new Agreement between the two Governments, the Extradition Treaty concluded on 14th May, 1872, between the German Reich and Great Britain, should continue to be applied between Kenya and the Federal Republic of Germany;

AND WHEREAS the terms of the said Extradition Treaty are set forth in the Schedule to this Order;

NOW THEREFORE, in exercise of the powers conferred upon the Attorney-General by section 3 of the Extradition (Contiguous and Foreign Countries) Act, it is hereby declared that Part II of the said Act shall apply in the case of the Federal Republic of Germany.

SCHEDULE

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II

The crimes for which the extradition is to be granted are the following—

1. Murder, or attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
4. Forgery or counterfeiting, or altering or uttering what is forged or counterfeited or altered; comprehending the crimes designated in the German Penal Code as counterfeiting or falsification of paper-money, bank notes or other securities, forgery or falsification of other public or private documents, likewise the uttering or bringing into circulation or wilfully using such counterfeited, forged, or falsified papers.
5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Crimes by bankrupts against bankruptcy law; comprehending the crimes designated in the German Penal Code as bankruptcy liable to prosecution.
8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.
9. Rape.
10. Abduction.
11. Child stealing.
12. Burglary or housebreaking.

Extradition (Contiguous and Foreign Countries)

[Subsidiary]

13. Arson.
14. Robbery with violence.
15. Threats by letter, or otherwise, with intent to extort.
16. Sinking or destroying a vessel at sea, or attempting to do so.
17. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.
18. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III

No German shall be delivered up by the German Government to the Government of Kenya; and no subject of Kenya shall be delivered up by the Government thereof to the German Government.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the Government of Kenya, or the person claimed on the part of the German Government, has already been tried and discharged or punished, or is still under trial, in Germany, or in Kenya, respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of Kenya, or if the person claimed on the part of the German Government, should be under examination for any other crime in Germany, or in Kenya, respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties, respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

[Subsidiary]

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigations of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X

The extradition shall not take place before the expiration of fifteen days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

ARTICLE XI

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or Officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE XII

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XIII

All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XIV

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

ORDER APPLYING PART II TO THE UNITED STATES OF AMERICA, 1969

[L.N. 185/1969.]

WHEREAS an agreement has been made between the Government of Kenya and the Government of the United States of America that, pending the conclusion of a new Agreement between the two Governments, the Extradition Treaty concluded on 22nd May, 1931, between the United States of America and Great Britain, should continue to be applied between Kenya and the United States of America;

AND WHEREAS the terms of the said Extradition Treaty are set forth in the Schedule to this Order;

Now THEREFORE, in exercise of the powers conferred upon the Attorney-General by section 3 of the Extradition (Contiguous and Foreign Countries) Act, it is hereby declared that Part Hof the said Act shall apply in the case of the United States of America.

SCHEDULE**ARTICLE I**

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 3, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

ARTICLE II

For the purposes of the present Treaty the territory of the United States shall be deemed to be all territory wherever situated belonging to the United States, including its dependencies and all other territories under its exclusive administration or control.

ARTICLE III

Extradition shall be reciprocally granted for the following crimes or offences—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age.
6. Indecent assault if such crime or offence be indictable in the place where the accused or convicted person is apprehended.
7. Kidnapping or false imprisonment.
8. Child stealing, including abandoning, exposing or unlawfully detaining.
9. Abduction.
10. Procuration: that is to say, the procuring or transporting of a woman or girl under age, even with her consent, for immoral purposes, or of a woman or girl over age, by fraud, threats, or compulsion, for such purposes with a view in either case to gratifying the passions of another person provided that such crime or offence is punishable by imprisonment for at least one year or by more severe punishment.

*Extradition (Contiguous and Foreign Countries)***[Subsidiary]**

11. Bigamy.
12. Maliciously wounding or inflicting grievous bodily harm.
13. Threats, by a letter or otherwise, with intent to extort money or other things of value.
14. Perjury, or subornation of perjury.
15. Arson.
16. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.
18. Obtaining money, valuable security, or goods, by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
19.
 - (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
 - (b) Knowingly and without lawful authority making or having in possession any instrument, tool, or engine adapted and intended for the counterfeiting of coin.
20. Forgery, or uttering what is forged.
21. Crimes or offences against bankruptcy law.
22. Bribery, defined to be the offering, giving or receiving of bribes.
23. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
24. Crimes or offences or attempted crimes or offences in connexion with the traffic in dangerous drugs.
25. Malicious injury to property, if such crime or offence be indictable.
26.
 - (a) Piracy by the law of nations.
 - (b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.
27. Dealing in slaves.

Extradition is also to be granted for participation in any of the aforesaid crimes or offences, provided that such participation be punishable by the laws of both High Contracting Parties.

ARTICLE IV

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the territories of the High Contracting Party applied to, for the crime or offence for which his extradition is demanded.

If the person claimed should be under examination or under punishment in the territories of the High Contracting Party applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the High Contracting Party applying or applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in custody or be brought to trial in the territories of the High Contracting Party to whom the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

ARTICLE VIII

The extradition of fugitive criminals under the provisions of this Treaty shall be carried out in the United States and in the territory of Kenya respectively, in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed.

ARTICLE IX

The extradition shall take place only if the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of such High Contracting Party, or to prove that the prisoner is the identical person convicted by the courts of the High Contracting Party who makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the High Contracting Party applied to.

ARTICLE X

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the Power whose claim is earliest in date, unless such claim is waived.

ARTICLE XI

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the High Contracting Party applied to, or the proper tribunal of such High Contracting Party, shall direct, the fugitive shall be set at liberty.

ARTICLE XII

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the High Contracting Party granting the extradition.

ARTICLE XIII

All expenses connected with the extradition shall be borne by the High Contracting Party making the application.

ORDER APPLYING PART II TO THE REPUBLIC OF ITALY, 1969

[L.N. 206/1969.]

WHEREAS an agreement has been made between the Government of Kenya and the Government of Italy that, pending the conclusion of a new Agreement between the two Governments, the Extradition Treaty signed in Rome on 5th February, 1873, between Italy and the United Kingdom, should continue to be applied between Kenya and Italy;

AND WHEREAS the terms of the said Extradition Treaty are set forth in the Schedule to this Order;

NOW THEREFORE, in exercise of the powers conferred upon the Attorney-General by section 3 of the Extradition (Contiguous and Foreign Countries) Act, it is hereby declared that Part II of the said Act shall apply in the case of the Republic of Italy.

SCHEDULE

ARTICLE I

The High Contracting Parties engage to deliver up to each other reciprocally any persons who, being accused or convicted of any of the crimes specified in the Article following, committed within the territory of either of the said Parties, shall be found within the territory of the other, in the manner and under the conditions determined in the present Treaty.

ARTICLE II

The crimes for which the extradition is agreed to are the following—

1. Murder, or attempt or conspiracy to murder, comprising the crimes designated by the Italian Penal Code as the association of criminals for the commission of such offences.
2. Manslaughter, comprising the crimes designated by the Italian Penal Code as wounds and blows wilfully inflicted which cause death.
3. Counterfeiting or altering money, and uttering or bringing into circulation counterfeit or altered money.
4. Forgery, counterfeiting or altering, or uttering of the thing or document that is forged or counterfeited or altered.
5. Larceny, or unlawful abstraction or appropriation.
6. Obtaining money or goods by false pretences (cheating or fraud).
7. Fraudulent bankruptcy.
8. Fraud, abstraction, or unlawful appropriation by a bailee, banker, agent, factor, trustee, director, or member, or officer of any public or private company or house of commerce.
9. Rape.
10. Abduction.
11. Child stealing.
12. Burglary and housebreaking, comprising the crimes designated by the Italian Penal Code as entry by night, or even by day, with fracture or escalade, or by means of false key or other instrument, into the dwelling of another person with intent to commit a crime.

Extradition (Contiguous and Foreign Countries)

[Subsidiary]

13. Arson.
14. Robbery with violence.
15. Threats by letter or otherwise, with intent to extort money or anything else.
16. Piracy, according to international law, when the pirate, a subject of neither of the High Contracting Parties, has committed depredations on the coasts, or on the high seas, to the injury of citizens of the requiring party, or when, being a citizen of the requiring party, and having committed acts of piracy, to the injury of a third State, he may be within the territory of the other party, without being subjected to trial.
17. Sinking or destroying, or attempting to sink or destroy, a vessel at sea.
18. Assaults on board a ship on the high seas with intent to kill or to do grievous bodily harm.
19. Revolt or conspiracy by two or more persons on board a ship on the high seas, against the authority of the master.

Accomplices before the fact in any of these crimes shall, moreover, also be delivered up, provided their complicity be punishable by the laws of both the Contracting Parties.

ARTICLE III

The Italian Government shall not deliver up any Italian to Kenya and no subject of Kenya shall be delivered up by it to the Italian Government.

ARTICLE IV

In any case where an individual convicted or accused shall have obtained naturalization in either of the two Contracting States after the commission of the crime, such naturalization shall not prevent the search for, arrest, and delivery of the individual. The extradition may, however, be refused if five years have elapsed from the concession of naturalization and the individual has been domiciled, from the concession thereof, in the State to which the application is made.

ARTICLE V

No accused or convicted person shall be given up if the offence for which he is claimed is political; or if he proves that the demand for his surrender has been made with the intention of trying and punishing him for a political offence.

ARTICLE VI

The extradition shall not be granted if, since the commission of the crime, the commencement of proceedings, or the conviction, such a length of time has elapsed as to bar the penal prosecution or the punishment, according to the laws of the State to which application is made.

ARTICLE VII

The accused or convicted person who has been given up shall not, until he has been liberated, or had an opportunity of returning to the country in which he was living, be imprisoned or subjected to trial in the State to which he has been given up, for any crime or on any charge other than that on account of which the extradition took place.

This does not apply to offences committed after the extradition.

ARTICLE VIII

If the individual claimed is under prosecution or in custody for a crime committed in the country where he has taken refuge, his surrender may be deferred until the law has taken its course.

[Subsidiary]

In case he should be proceeded against or detained in such country on account of obligations contracted with private individuals, or any other civil claim, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims against him before the competent authority.

ARTICLE IX

The requisitions for extradition shall be made, respectively, by means of the Diplomatic Agents of the High Contracting Parties.

The demand for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State applying for the extradition, and by such proof as, according to the law of the place where the fugitive is found, would justify his arrest if the crime has been committed there.

If the requisition relates to a person convicted, it must be accompanied by the sentence of condemnation of the competent Court of the State applying for the extradition.

The demand for extradition must not be founded upon a sentence *in contumacia*.

ARTICLE X

If the demand for extradition be made according to the foregoing stipulations, the competent authorities of the State, to which the requisition is made, shall proceed to arrest the fugitive.

The prisoner shall be taken before the competent magistrate, who shall examine him, and make the preliminary investigations of the affair, in the same manner as if the arrest had taken place for a crime committed in the same country.

ARTICLE XI

In the examinations to be made in conformity with the preceding stipulations, the authorities of the State to which the demand is addressed shall admit, as entirely valid evidence, the documents and depositions taken on oath in the other State or copies of them, and likewise the warrants and sentences issued there; provided that such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or stamped with the official seal of the Department of Justice or some other Department of State.

ARTICLE XII

If, within two months from the arrest of the accused, sufficient evidence be not produced for his extradition he shall be liberated.

ARTICLE XIII

The extradition shall not take place until the expiration of fifteen days after the arrest, and then only if the evidence has been found sufficient, according to the laws of the State to which the demand is addressed, to justify the committal of the prisoner for trial in case the crime had been committed in the territory of that State; or to show that the prisoner is the identical person condemned by the Tribunals of the State which demands him.

ARTICLE XIV

If the prisoner be not given up and taken away within two months from his apprehension or from the decision of the Court upon the demand for a writ of *habeas corpus* in Kenya, he shall be set at liberty, unless sufficient cause be shown for the delay.

ARTICLE XV

If the individual claimed by one of the two Contracting Parties, in conformity with the present Treaty, should be also claimed by another or by other States on account of crimes committed in their territories, his surrender shall, in preference, be granted, according to priority of demand, unless an agreement be made between the Governments which make the requisition, either on account of the gravity of the crimes committed, or for any other reason.

Extradition (Contiguous and Foreign Countries)

[Subsidiary]

ARTICLE XVI

Every article found in the possession of the prisoner at the time of his arrest shall be seized, in order to be delivered up with him. Such delivery shall not be limited to the property or articles obtained by the robbery or fraudulent bankruptcy, but shall include everything that may serve as evidence of the crime; and it shall take place even when the extradition, after having been ordered, cannot take effect either on account of the escape or the death of the delinquent.

ARTICLE XVII

The High Contracting Parties renounce all claim for repayment of the expenses incurred for the arrest and maintenance of the person to be given up, and for his conveyance on board a ship; such expenses shall be borne by themselves respectively.

ARTICLE XVIII

(Not applicable.)

ARTICLE XIX

The High Contracting Parties declare that the present stipulations apply as well to persons accused or convicted, whose crimes, on account of which the extradition is demanded, may have been committed previously, as to those whose crimes may be committed subsequently to the date of this Treaty.

ORDER APPLYING PART II TO THE KINGDOM OF GREECE, 1969

[L.N. 210/1969.]

WHEREAS an agreement has been made between the Government of Kenya and the Royal Hellenic Government that, pending the conclusion of a new Agreement between the two Governments, the Extradition Treaty concluded on 24th September, 1910, between Greece and the United Kingdom, should continue to be applied between Kenya and the Kingdom of Greece:

AND WHEREAS the terms of the said Extradition Treaty are set forth in the Schedule to this Order;

Now THEREFORE, in exercise of the powers conferred upon the Attorney-General by section 3 of the Extradition (Contiguous and Foreign Countries) Act, it is hereby declared that Part II of the said Act shall apply in the case of the Kingdom of Greece.

SCHEDULE

ARTICLE 1

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who being accused or convicted of any of the crimes or offences enumerated in Article 2, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE 2

Extradition shall be granted for the following crimes or offences when provided for by the laws of the requisitioning State and of the State applied to—

1. Murder (including parricide, infanticide, poisoning), or attempt or conspiracy to murder, manslaughter.
2. Kidnapping and false imprisonment.
3. Abandoning or exposing children below the age of seven years.
4. Abortion.
5. Abduction of person under age.
6. Bigamy.
7. Malicious wounding or inflicting grievous bodily harm with premeditation, when such acts cause death (without the intention of killing) or disease or incapacity for personal labour lasting for more than three months, or serious mutilation, or the loss or disablement of a member or organ, or other permanent infirmity.
8. Threats by letter or otherwise with intent to extort.
9. Perjury.
10. Arson.
11. Burglary, housebreaking, larceny, embezzlement, fraudulent misappropriation of property, obtaining property by false pretences.
12. Fraud and embezzlement by public official; bribery of public officials.
13. Receiving any chattel, money, valuable security, or other property, knowing the same to have been embezzled, stolen or feloniously obtained.

Extradition (Contiguous and Foreign Countries)

[Subsidiary]

14. Counterfeiting or altering money, or knowingly bringing into circulation counterfeited or altered money.
15. Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.
16. Forgery by writing, or uttering what is forged.
17. Fraudulent bankruptcy.
18. Malicious injury to any house or building calculated to cause danger to life or property.
19. Rape.

Participation in the aforesaid crimes is also included, provided that such participation is punishable by the laws of the demanding State and of the State applied to.

ARTICLE 3

No Greek subject shall be surrendered by the Government of His Majesty the King of the Hellenes to the Government of Kenya, and no subject of Kenya shall be surrendered by his Government to the Government of His Majesty the King of the Hellenes.

ARTICLE 4

Extradition shall not take place if the person claimed on the part of the Government of Kenya, or of the Government of His Majesty the King of the Hellenes, has already been tried, discharged, or punished, or is waiting trial in the territory of Kenya or in Greece, respectively, for the crime or offence for which his extradition is demanded.

If the person claimed on the part of the Government of His Majesty the King of the Hellenes, or of the Government of Kenya, should be awaiting trial or undergoing sentence for any other crime or offence in the territory of Greece or in Kenya, respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of sentence.

ARTICLE 5

Extradition shall not be granted if exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

Neither shall it be granted in the case of persons convicted by default, or otherwise, unless the sentence inflicted be at least one year's imprisonment.

ARTICLE 6

The person claimed shall not be surrendered if the crime in respect of which extradition is applied for be deemed by the party to whom application is made to be a political offence, or connected with such an offence, or if the person claimed proves that the application for extradition has in fact been made with a view to try or to punish him for an offence of this character.

ARTICLE 7

A person whose surrender has been granted shall in no case be detained or tried in the State to which the surrender has been made for any other crime, or on account of any other matters than those for which the extradition shall have taken place.

This stipulation does not apply to crimes committed after the extradition.

The person who has been claimed, and whose extradition shall have been granted, shall not be tried or punished for any political offence committed prior to his extradition nor for any matter connected with such an offence, nor for any crimes or offences not provided for in the present Treaty.

ARTICLE 8

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent judicial authority setting forth clearly the nature of the crime or offence with which the person claimed is charged. The said warrant shall also be accompanied by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by a copy of the judgment passed on the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

In the event of any doubt arising as to whether the crime or offence, in respect of which the prosecution has been instituted, comes within the stipulations of the present Treaty, the Government applied to shall be at liberty to require all such further information as it may consider necessary or of assistance in order to form an opinion, after which it shall decide what action shall be taken on the demand for extradition.

The requisitioning Government, in furnishing such further information to the Government applied to, shall, at the same time, place at the disposal of the latter all such documents as may be necessary or useful in enabling it to form an opinion.

ARTICLE 9

In cases of urgency provisional arrest may be effected upon notice being given, by post or telegraph, through the diplomatic channel that one of the documents enumerated in Article 8 has been issued, provided, however, that such notice shall always be given to the Ministry for Foreign Affairs of the State applied to.

Provisional arrest shall be effected in the manner and in accordance with the rules laid down by the Laws of the State applied to. It shall not be maintained if, within a period of one month from the date on which it has been effected, the State applied to has not been furnished with one of the documents specified in Article 8 of the present Treaty.

ARTICLE 10

All papers and documents issued by the authorities of the Contracting States which may be produced in virtue of Articles 8 and 13 of the present Treaty must be accompanied by an authenticated translation in the French language.

ARTICLE 11

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime has been committed in the territory of the same State, or if extradition is claimed in respect of an offence of which the fugitive has been already convicted, to prove that the prisoner is the person convicted, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to.

ARTICLE 12

Extradition shall be granted in accordance with the rules laid down by the law of the State applied to.

ARTICLE 13

Warrants, depositions, and affirmations, issued or taken in the dominions of one of the High Contracting Parties, and copies of such documents as well as certificates or judicial documents stating the fact of a conviction shall be admitted as valid evidence in

[Subsidiary]

the proceedings taken in the dominions of the other party, if they bear the signature or are accompanied by the certificate of a Judge, Magistrate, or officer of the State in which they have been issued or taken, provided that such warrants, depositions, affirmations, copies, certificates, or judicial documents are authenticated, either by the oath of some witness, or by being sealed with the seal of the Minister of Justice, or some other Minister of State.

ARTICLE 14

If the accused or sentenced person be not a subject of one of the Contracting Parties, the Government to whom application for extradition is made shall be at liberty to take such action in respect of the application, as it may think fit, and to surrender the person claimed to be tried in the State in which the crime or offence has been committed.

Nevertheless, the Government of His Majesty the King of the Hellenes reserves to itself the option of surrendering the person claimed to the State to which he belongs, instead of surrendering him to the State in which the crime or offence has been committed.

ARTICLE 15

If a fugitive criminal who has been arrested has not been surrendered and conveyed away within three months after his arrest, or within three months after the decision of the Court upon the return to a writ of *habeas corpus* in Kenya, he shall be set at liberty.

ARTICLE 16

When extradition is granted all articles connected with the crime or offence, or which may serve as proofs of the crime, which are found in the possession of the person claimed at the time of his arrest, or which may be afterwards discovered, shall, if the competent authority of the State applied to so direct, be seized and restored to the requisitioning State.

Such restoration shall be carried out, even if extradition be not carried out owing to the escape or death of the person claimed.

The rights, however, which third persons, not involved in the prosecution, may have acquired over the said articles are reserved, and the latter shall, should the case arise, be restored to them, free of charge, at the termination of the proceedings.

ARTICLE 17

All expenses arising out of an application for extradition, also the costs of the arrest, maintenance, and transport of the person whose extradition shall have been granted, as well as of the dispatch and forwarding of the articles which, by the provisions of Article 16, are to be returned or restored, shall be borne by the requisitioning State and by the State applied to within the limits of their respective territories.

The cost of transport or other expenses outside the territory of the State applied to shall be borne by the demanding State.

ORDER APPLYING PART II TO THE POLISH PEOPLE'S REPUBLIC, 1969

[L.N. 211/1969.]

WHEREAS an agreement has been made between the Government of Kenya and the Government of the Polish People's Republic that, pending the conclusion of a new Agreement between the two Governments, the Extradition Treaty concluded on 11th January, 1932, between Poland and the United Kingdom, should continue to be applied between Kenya and the Polish People's Republic;

AND WHEREAS the terms of the said Extradition Treaty are set forth in the Schedule to this Order;

NOW THEREFORE in exercise of the powers conferred upon the Attorney-General by section 3 of the Extradition (Contiguous and Foreign Countries) Act, it is hereby declared that Part II of the said Act shall apply in the case of the Polish People's Republic.

SCHEDULE

ARTICLE 1

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 3, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

ARTICLE 2

(Not applicable.)

ARTICLE 3

Extradition shall be reciprocally granted for the following crimes or offences when they are punishable in accordance with the laws of both the High Contracting Parties (that is to say, in Poland, in accordance with the laws of at least one of the Provinces of Poland)—

1. Murder (including assassination, parricide, murder of relations, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age.
6. Indecent assault.
7. Kidnapping or false imprisonment.
8. Child stealing, including abandoning, exposing or unlawfully detaining.
9. Abduction.
10. Procuration; that is to say, the offences enumerated in Articles 1 and 2 of the International Convention for the Suppression of the White Slave Traffic concluded at Paris on the 4th May, 1910.
11. Bigamy.

*Extradition (Contiguous and Foreign Countries)***[Subsidiary]**

12. Maliciously wounding or inflicting grievous bodily harm.
13. Threats, by letter or otherwise, with intent to extort money or other things of value.
14. Perjury, or subornation of perjury.
15. Arson.
16. Burglary or housebreaking.
17. Robbery with violence or menaces.
18. Larceny or embezzlement.
19. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.
20. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
21.
 - (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
 - (b) Knowingly and without lawful authority making or having in possession any instrument, tool or engine adapted and intended for the counterfeiting or alteration of coin.
22. Forgery or counterfeiting or altering, or uttering what is forged or counterfeited or altered; comprehending all crimes designated in the Polish laws as counterfeiting or falsification of paper money, bank-notes or other securities, forgery or falsification of other public or private documents likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged or falsified papers.
23. Crimes against bankruptcy law.
24. Any malicious act done with intent to endanger the safety of any persons travelling upon a railway or being upon a railway.
25. Piracy.
26. Wrongfully sinking or destroying a vessel at sea or attempting to do so.
27. Assault on a person on board a ship on the high seas with intent to inflict death or do grievous bodily harm.
28. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.
29. Dealing in slaves in such manner as to constitute a crime or offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes or offences, before, during or after the crime is committed: provided that such participation is punishable by the laws of both the High Contracting Parties (that is to say, in Poland, in accordance with the laws of at least one of the Provinces).

ARTICLE 4

Each Party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Party.

ARTICLE 5

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the State applied to, for the crime or

[Subsidiary]

offence for which his extradition is demanded: provided that the discharge of the accused on the ground that the crime or offence was committed abroad shall constitute no hindrance to his subsequent extradition.

If the person claimed should be under examination or under punishment in the State applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE 6

Extradition shall not be granted if the accused has by lapse of time, in accordance with the laws of that part of the territories of the High Contracting Parties in which he is found, acquired exemption from prosecution or punishment with respect to the crime or offence for which his surrender is claimed.

ARTICLE 7

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE 8

A person surrendered can in no case be kept in custody or be brought to trial in the State to which the surrender has been made for any other crime or offence, or on account of any other matters, than those for which extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered (whether he has made use of this opportunity or not) or else until having returned there he reappears in the country to which he has been previously surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

ARTICLE 9

Subject to the provisions of Articles 19 and 20, the requisition for extradition shall be presented by the diplomatic agent of the High Contracting Party requiring the extradition to the Secretary of State or Minister for Foreign Affairs of the High Contracting Party applied to.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence, as, according to the laws of the place where the accused is found, would justify his arrest if the crime or offence had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE 10

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE 11

In urgent cases a criminal fugitive may be apprehended under a warrant issued by any police magistrate, justice of the peace, or other competent authority in either State, on

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[Subsidiary]

such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime or offence had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the magistrate, justice of the peace, or other competent authority exercises jurisdiction. He shall, in accordance with this Article, be discharged if within the term of thirty days a requisition for extradition shall not have been made by the diplomatic agent of the other State in accordance with the stipulations of this Treaty.

ARTICLE 12

Extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, (a) either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of the same State, or (b) to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to.

No criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE 13

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows—

1. A warrant, or copy thereof, must purport to be signed by a judge, magistrate, or officer of the other State, or purport to be certified under the hand of a judge, magistrate or officer of the other State to be a true copy thereof, as the case may require.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a judge, magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating the fact of a conviction must purport to be certified by a judge, magistrate, or officer of the other State.

In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State, or by any other mode of authentication for the time being permitted by the law of the State to which the application for extradition is made.

ARTICLE 14

If the extradition of an individual is claimed by one of the High Contracting Parties in pursuance of the present Treaty and his extradition is also claimed by one or more other States, the State applied to shall in its absolute discretion determine to which State the extradition shall be granted.

ARTICLE 15

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE 16

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the State granting the extradition.

ARTICLE 17

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present Treaty.

ORDER APPLYING PART II TO THE REPUBLIC OF LIBERIA

[L.N. 220/1969.]

WHEREAS an agreement has been made between the Government of Kenya and the Government of the Republic of Liberia that, pending the conclusion of a new Agreement between the two Governments, the Extradition Treaty signed in London on 16th December, 1892, between the Republic of Liberia and the United Kingdom, should continue to be applied between Kenya and the Republic of Liberia:

AND WHEREAS the terms of the said Extradition Treaty are set forth in the Schedule to this Order;

NOW THEREFORE, in exercise of the powers conferred upon the Attorney-General by section 3 of the Extradition (Contiguous and Foreign Countries) Act, it is hereby declared that Part II of the said Act shall apply in the case of the Republic of Liberia.

SCHEDULE

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other, under the circumstances and conditions stated in the present Treaty.

ARTICLE II

The crimes or offences for which the extradition is to be granted are the following—

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Assault occasioning actual bodily harm.
4. Maliciously wounding or inflicting grievous bodily harm.
5. Counterfeiting or altering money, or uttering counterfeit or altered money.
6. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.
7. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited or altered.
8. Embezzlement or larceny.
9. Malicious injury to property if the offence be indictable.
10. Obtaining money, goods, or valuable securities by false pretences.
11. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
12. Crimes against bankruptcy law.
13. Fraud by a bailee, banker, agent, factor, trustee, or director or member or public officer of any company, made criminal by any law for the time being in force.
14. Perjury, or subornation of perjury.
15. Rape.

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[Subsidiary]

16. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.
17. Indecent assault.
18. Administering drugs, or using instruments, with intent to procure the miscarriage of a woman.
19. Abduction.
20. Child stealing.
21. Abandoning children, exposing or unlawfully detaining them.
22. Kidnapping and false imprisonment.
23. Burglary or housebreaking.
24. Arson.
25. Robbery with violence.
26. Any malicious act done with intent to endanger the safety of any person in a railway train.
27. Threats by letter or otherwise, with intent to extort.
28. Piracy by law of nations.
29. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
30. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.
31. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the master.
32. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III

Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the Government of Kenya, or the person claimed on the part of the Liberian Government, has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of Kenya, or if the person claimed on the part of the Liberian Government, should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered.

The stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made in the following manner—

Application on behalf of the Government of Kenya for the surrender of a fugitive criminal in Liberia shall be made by the Kenya Consul at Monrovia.

Application on behalf of the Liberian Government for the surrender of a fugitive criminal in Kenya shall be made by the diplomatic representative of Liberia in Nairobi, or in the absence of such representative, by the Consul-General for Liberia in Nairobi.

The requisition for the extradition of the accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

If the fugitive has been arrested in Kenya he shall forthwith be brought before a competent magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in Kenya.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of Kenya shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in Liberia, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows—

1. A warrant must purport to be signed by a judge, magistrate, or officer of Liberia.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a judge, magistrate, or officer of Liberia, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.

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3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a judge, magistrate, or officer of Liberia.
4. In every case such warrant, deposition, affirmation, copy certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of Liberia; but any other mode of authentication for the time being permitted by the law in Kenya may be substituted for the foregoing.

ARTICLE XI

If the fugitive has been arrested in Liberia his surrender shall be granted if, upon examination by a competent authority, it appears that the documents furnished by the Government of Kenya contain sufficient *prima facie* evidence to justify the extradition.

The authorities of Liberia shall admit as valid evidence records drawn up by the Kenyan authorities of the depositions of witnesses, or copies thereof, and records of conviction or other judicial documents, or copies thereof, provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of the Kenya Government.

ARTICLE XII

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoners for trial, in case the crime has been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XIII

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within three months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

All expenses connected with extradition shall be borne by the demanding State.

ORDER APPLYING PART II TO THE STATE OF SPAIN, 1969

[L.N. 257/1969.]

WHEREAS an agreement has been made between the Government of Kenya and the Government of the State of Spain that, pending the conclusion of a new Agreement between the two Governments, the Extradition Treaty concluded on 4th June, 1878, between the State of Spain and Great Britain, as amended by a declaration concluded on 19th February, 1889, should continue to be applied between Kenya and the State of Spain;

AND WHEREAS the term of the said Extradition Treaty are set forth in the Schedule to this Order;

NOW THEREFORE, in exercise of the powers conferred upon the Attorney-General by section 3 of the Extradition (Contiguous and Foreign Countries) Act, it is hereby declared that Part II of the said Act shall apply in the case of the State of Spain.

SCHEDULE

ARTICLE I

The Government of Kenya engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and the Government of Spain engages to deliver up, under the like circumstances and conditions, all persons, excepting their own subjects, who, having been charged with, or convicted by the Tribunals of one of the two High Contracting Parties of the crimes or offences enumerated in Article II, committed in the territory of the one party, and who shall be found within the territory of the other.

ARTICLE II

The extradition shall be reciprocally granted for the following crimes or offences—

1. Murder (including assassination, parricide, infanticide, poisoning, or attempt to murder).
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Unlawful carnal knowledge or any attempt to have unlawful carnal knowledge of a girl under sixteen years of age. Indecent assault.
6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.
7. Abduction of minors.
8. Bigamy.
9. Wounding or inflicting grievous bodily harm.
10. Assaulting a magistrate, or peace or public officer.
11. Threats by letter or otherwise with intent to extort money or other things of value.
12. Perjury or subornation of perjury.
13. Arson.

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14. Burglary or house-breaking, robbery with violence, larceny or embezzlement.
15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company made criminal by any law for the time being in force.
16. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been unlawfully obtained.
17.
 - (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
 - (b) Forgery, or counterfeiting or altering or uttering what is forged, counterfeited, or altered.
 - (c) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.
18. Crimes against Bankruptcy Law.
19. Any malicious act done with intent to endanger persons in a rail train.
20. Malicious injury to property, if such offence be indictable.
21. Crimes committed at sea—
 - (a) piracy by the law of nations;
 - (b) sinking or destroying a vessel at sea, or attempting or conspiring to do so;
 - (c) revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master;
 - (d) assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.
22. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted.

ARTICLE IV

No person shall be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves to the satisfaction of the competent authority of the State in which he is that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of political character.

ARTICLE V

In the States of Spain, excepting the provinces or possessions beyond sea, the proceedings for demanding and obtaining the extradition shall be as follows—

The Diplomatic Representative of Kenya shall send to the Minister for Foreign Affairs (Ministro de Estado) with the demand for extradition, an authenticated and legalized copy of the sentence or of the warrant of arrest against the person accused, clearly showing the crime or offence for which proceedings are taken against the fugitive. This judicial document shall be accompanied, if possible, by a description of the person claimed, and any other information or particulars that may serve to identify him.

[Subsidiary]

These documents shall be communicated by the Minister for Foreign Affairs to the Minister of Grace and Justice, by whose Department, after examining the documents and finding that there is reason for the extradition, an order will be issued granting it, and directing the arrest of the person claimed and his delivery to the Kenya authorities.

In virtue of the said Order the Minister of the Interior (Ministro de la Gobernacion) will adopt the fitting measures for the arrest of the fugitive, and when this has taken place, the person claimed shall be placed at the disposal of the Diplomatic Representative who has demanded his extradition, and he shall be taken to the part of the frontier or to the seaport where the Agent appointed for the purpose by the Government of Kenya is ready to take charge of him.

In case the documents furnished by the said Government for the identification of the person claimed, or the information obtained by the Spanish authorities for the same purpose, should be considered insufficient, immediate notice thereof shall be given to the Diplomatic Representative of Kenya, and the person under arrest shall be detained until the Government of Kenya shall have furnished fresh evidence to prove his identity or to clear up any other difficulty relative to the examination and decision of the affair.

ARTICLE VI

In Kenya the manner of proceeding, in order to demand and obtain extradition, shall be as follows—

(a) In the case of a person accused—

The requisition for the surrender shall be made to the Kenya Minister for Foreign Affairs by the Diplomatic Representative of Spain. The said demand shall be accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorised to take cognisance of the acts charged against the accused in Spain, and duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Minister shall transmit such documents to the Attorney-General, who shall then, by order under his hand and seal, signify to some Magistrate that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. On the receipt of such order from the Attorney-General and on the production of such evidence as would, in the opinion of the magistrate, justify the issue of the warrant if the crime had been committed in Kenya, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the magistrate who issued the warrant, or some other Magistrate. If the evidence to be then produced shall be such as to justify, according to the law of Kenya, the committal for trial of the prisoner, if the crime of which he is accused had been committed in the United Kingdom, the Magistrate shall commit him to prison to await the warrant of the Attorney-General for his surrender; sending immediately to the Attorney-General a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Attorney-General shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Spanish Government.

[Subsidiary]

- (b) In the case of a person convicted—

The course of proceeding shall be the same as above indicated, except that the warrant to be transmitted by the Diplomatic Representative of Spain in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced before the magistrate shall be such as would, according to the law of Kenya, prove that the prisoner was convicted of the crime charged.

- (c) Persons convicted by judgment in default or *arret de contumace*, shall be, in the matter of extradition, considered as persons accused, and, as such, be surrendered.
- (d) After the magistrate shall have committed the accused or convicted person to prison to await the order of the Attorney-General for his surrender, such person shall have the right to apply for a writ of *habeas corpus*, if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of the Attorney-General for his surrender, or commit him to prison to await such order.

ARTICLE VII

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties and copies thereof, and certificates of or judicial documents stating the facts of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken, provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.

ARTICLE VIII

A fugitive criminal may be apprehended under a warrant issued by any Magistrate, Justice of the Peace, or other competent authority, in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the magistrate, Justice of the Peace, or other competent authority exercising jurisdiction; provided, however, that, in Kenya, the accused shall, in such case, be sent as speedily as possible before a magistrate. He shall in accordance with this Article be discharged, as well in Spain as in Kenya, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes of offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE IX

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal, or within two months after the adverse decision of the Court upon the return to a writ of *habeas corpus* in Kenya, he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE X

In the provinces beyond sea, colonies and other possessions beyond sea of the two High Contracting Parties, the manner of proceeding shall be as follows—

The requisition for extradition of the fugitive criminal who has taken refuge in an over-sea province, colony, or possession of either of the two Contracting Parties, shall be made to the Governor or chief authority of such province, colony or possession by the chief Consular Officer of the other State in such province, colony or possession; or, if the fugitive has escaped from an over-sea province, colony, or possession of the State on whose behalf the extradition is demanded, by the Governor or chief authority of such province, colony or possession.

In these cases the provisions of this Treaty shall be observed as far as possible by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the extradition or to refer the decision of the matter to the Governments of their respective countries.

ARTICLE XI

In cases where it may be necessary, the Spanish Government shall be represented at the Kenya courts by the Attorney-General, and the Kenya Government in the Spanish Courts by the Public Prosecutor (Ministerio Fiscal).

The respective Governments will give assistance to the Diplomatic Representative who claim their intervention for the custody and security of the persons subject to extradition.

ARTICLE XII

The claim for extradition shall not be complied with if the individual claimed has already been tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of that country.

ARTICLE XIII

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date; unless any other arrangement should exist between the different Governments to determine the preference, either on account of the gravity of the crime or offence, or for any other reason.

ARTICLE XIV

If the individual claimed should be under prosecution, or have been condemned for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, the extradition shall nevertheless take place.

ARTICLE XV

Every article found in the possession of the individual claimed at the time of his arrest, shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the extradition takes place. Such delivery shall not be

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limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime or offence, and shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property or articles are nevertheless reserved.

ARTICLE XVI

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance as far as the frontier; they reciprocally agree to bear such expenses themselves.

ORDER APPLYING PART II TO THE REPUBLIC OF FINLAND, 1970

[L.N. 51/1970.]

WHEREAS an agreement has been made between the Government of Kenya and Government of the Republic of Finland that, pending the conclusion of a new Agreement between the two Governments, the Extradition Treaty concluded on 30th May, 1924, between Finland and the United Kingdom, should continue to be applied between Kenya and the Republic of Finland;

AND WHEREAS the terms of the said Extradition Treaty are set forth in the Schedule to this Order;

NOW THEREFORE, in exercise of the powers conferred upon Attorney-General by section 3 of the Extradition (Contiguous and Foreign Countries) Act, it is hereby declared that Part II of the said Act shall apply in the case of the Republic of Finland.

SCHEDULE

ARTICLE I

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present treaty, those persons who, being accused or convicted of any of the crimes of offences enumerated in Article II, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

ARTICLE II

Extradition shall be reciprocally granted for the following crimes of offences—

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 15 years of age.
6. Kidnapping and false imprisonment.
7. Child stealing, including abandoning, exposing or unlawfully detaining.
8. Abduction.
9. Procuration.
10. Bigamy.
11. Maliciously wounding or inflicting grievous bodily harm.
12. Assault occasioning actual bodily harm.
13. Threats, by letter or otherwise, with intent to extort money or other things of value.
14. Perjury, or subornation of perjury.
15. Arson.
16. Burglary or housebreaking, robbery with violence, larceny or embezzlement.

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17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion, if such crimes or offences, according to the laws of the High Contracting Parties, are extradition crimes or offences.
18. Obtaining money, valuable security, or goods by false pretences, receiving any money, valuable security or other property, knowing the same to have been stolen or feloniously obtained, if such crimes or offences, according to the laws of the High Contracting Parties, are extradition crimes or offences.
19. Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
20. Forgery, or uttering what is forged.
21. Crimes against bankruptcy law, which, according to the laws of the High Contracting Parties are extradition crimes.
22. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
23. Malicious injury to property, if such offence be indictable.
24. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition crimes or offences.
25. Dealing in slaves in such manner as to constitute a crime or offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes or offences, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime or offence for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

In no case nor on any consideration whatever shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalization.

ARTICLE IV

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the State applied to, for the crime or offence for which his extradition is demanded.

If the person claimed should be under examination or under punishment in the State applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in custody or be brought to trial in the State to which the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the State by which he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the diplomatic agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime or offence had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent court of the State that makes the requisition for extradition, provided that a sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

A criminal fugitive may be apprehended under a warrant issued by any police magistrate, justice of the peace, or other competent authority in either State, on such information or complaint and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime or offence had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the magistrate, justice of the peace, or other competent authority, exercises jurisdiction. He shall, in accordance with this article, be discharged, if within the term of thirty days a requisition for extradition shall not have been made by the diplomatic agent of the State claiming his extradition in accordance with the stipulations of this treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this treaty, and committed on the high seas on board any vessel of either State which may come into a port of the other.

ARTICLE XI

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the courts of the State which makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn

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depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows—

1. A warrant, or copy thereof, must purport to be signed by a judge, magistrate, or officer of the other State, or purport to be certified under the hand of a judge, magistrate or officer the other State to be a true copy thereof, as the case may require.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a judge, magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating the fact of a conviction must purport to be certified by a judge, magistrate, or officer of the other State.

In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of the other State, or by any other mode of authentication for the time being permitted by the law of the State to which the application for extradition is made.

ARTICLE XIII

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the State whose claim is earliest in date, unless such claim is waived.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the State granting the extradition.

ARTICLE XVI

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present Treaty.

**EXTRADITION (CONTIGUOUS AND FOREIGN COUNTRIES) (RWANDA)
ORDER, 1991**

[L.N. 300/1991.]

1. This Order may be cited as the Extradition (Contiguous and Foreign Countries) (Rwanda) Order, 1991.
 2. It is hereby declared that Part III of the Act shall apply to Rwanda.
-

ORDER APPLYING PART II TO RWANDA, 1991

[L.N. 306/1991.]

SCHEDULE

EXTRADITION TREATY BETWEEN THE REPUBLIC OF KENYA AND THE
REPUBLIC OF RWANDA

THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE
GOVERNMENT OF THE REPUBLIC OF RWANDA

DESIRING to improve the effectiveness of both countries in combating crime through
co-operation and mutual assistance in extradition matters,

HAVE AGREED AS FOLLOWS—

ARTICLE 1

Scope of Application

The contracting parties engage to deliver up to each other those persons who, being
accused or convicted of a crime committed in the territory of one party, shall be found
within the territory of the other party under the circumstances and conditions stated in the
present Treaty.

ARTICLE 2

Extraditable Crimes

The crimes for which extradition is to be granted are the following—

1. Murder and attempt and conspiracy to murder.
2. Manslaughter and other offences relating to causing death.
3. Wounding or inflicting grievous bodily harm.
4. Assault occasioning actual bodily harm and other aggravated assaults
punishable by imprisonment of five years or more.
5. Rape, defilement and unlawful carnal knowledge.
6. Indecent assault.
7. Abortion and offences related thereto.
8. Child-stealing.
9. Kidnapping and false imprisonment.
10. Procuration.
11. Escape from lawful custody or confinement.
12. Offences relating to narcotics.
13. Offences relating to traffic in dangerous drugs.
14. Malicious damages to property.

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15. Arson.
16. Counter-feiting and altering money and offences related thereto.
17. Forgery, counter-feiting, altering and uttering what is forged or counter-feited or altered.
18. Theft and other offences relating to stealing.
19. Fraudulent conversion.
20. Burglary and housebreaking, robbery and robbery with violence.
21. Threats by letter or otherwise with intent to extort.
22. Obtaining money or goods by false pretences.
23. Perjury and subordination of perjury.
24. Bribery and corruption.
25. Fraudulent misappropriation and fraud.
26. Handling stolen property.
27. Conspiracy to commit a felony.
28. Piracy by law of nations.
29. Sinking or destroying a vessel at sea or an aircraft in the air or attempting or conspiring to do so.
30. Assault on board of a ship on the high seas or an aircraft in the air with intent to destroy life or to do grievous harm.
31. Hijacking and offences committed in relation thereto.
32. Offences relating to foreign exchange transactions.
33. Offences relating to customs and excise transactions.
34. Unlawful killing of wildlife, poaching and related offences.
35. Counselling, procuring, aiding and abetting or being an accessory before or after the fact to any of the foregoing.

For avoidance of doubt extradition is also to take place for attempting or participating in any of the aforesaid crimes, provided such participation is punishable by the laws of both the contracting parties.

ARTICLE 3

Grounds of Refusal

Extradition may not be granted—

- (a) if the offence in respect of which it is requested is regarded by the requested party as a political offence;
- (b) if the person wanted has been previously convicted or acquitted in the territory of a third State in respect of the offence for which extradition is requested;
- (c) if the wanted person has, according to the law of either the requested or the requesting contracting party, become immune because of lapse of time from prosecution or punishment for the offence for which extradition is requested.

ARTICLE 4

Extradition of Own Subject

Each contracting party reserves the right to *refuse to grant the surrender of its own subjects to the other party*, in which case the requested party will, on the request of the requesting party, submit that matter to competent authorities for appropriate legal proceedings.

The requesting party will be informed of the reserved implementation of this request.

ARTICLE 5

The Request and Supporting Documents

1. The request for extradition shall be communicated through diplomatic channels.
2. If the person is charged, the request shall be supported by—
 - (a) the original or an authenticated copy of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting party;
 - (b) a statement of the offence(s) for which extradition is requested, the time and place of their commission, their legal description and a reference to the relevant legal provisions;
 - (c) a copy of the relevant legal provisions applicable to the offence(s);
 - (d) a description of the wanted person, together with any other available information such as his photograph, and fingerprints, which will help to establish his identity and nationality.
3. If the person is convicted, the procedure shall be as in the case of a charged person, but the request shall be supported by the original or authenticated copy of the sentence or order of conviction.
4. If the information communicated by the requesting party is found to be insufficient to allow the requested party to make a decision, the requested party may request the necessary supplementary information, which shall be supplied by the requesting party within three months. This time limit may, by mutual consent, be extended by another month for valid reasons.

ARTICLE 6

Provisional Arrest

1. In case of urgency, the competent authorities of the requesting party may request the provisional arrest of the persons sought before sending the extradition documents.
2. The request for provisional arrest shall state that one of the documents mentioned in paragraph 2(a) of Article 5 exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.
3. The request shall be communicated to the competent authorities of the requested party either through diplomatic channels or direct by post or telegraph or through the International Criminal Police Organization (INTERPOL) or by any other means affording evidence in writing or accepted by the requesting party.
4. The requesting party shall be informed without delay of the result of its request.
5. Provisional arrest may be terminated if the extradition documents are not received by the requested party within forty days of the arrest. The period of provisional arrest may be extended by at least twenty days if the requesting party so requests.
6. If the extradition documents are received within the time limit prescribed, the provisional arrest shall continue until the competent authorities of the requested party decide on the request for extradition and if the request is accepted, until the surrender of the person sought.
7. Release of the wanted person shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

[Subsidiary]

ARTICLE 7

Arrest

1. On receipt of the extradition documents, the person named in the documents shall be arrested and detained until the competent authorities of the requested party decide on the extradition and, if the extradition is granted, until the time of his being surrendered.

2. Extradition shall be granted in the case of an indicated person, only if the commission of the offence is established in such a way that according to the laws of the country where the fugitive is found his arrest or imprisonment would be justified if the offence had been committed in that country, and in the case of a condemned person, if sufficient proof is given according to the laws of the country where the fugitive is found to establish that he was convicted.

3. If the produced documents or the supplied information are insufficient or incomplete, the necessary additional information will be requested by the competent authority in charge of the matter in the requested party in accordance with the procedure laid down in paragraph 2. If the additional information sought has not been supplied in two months from the date of receipt, the fugitive will be released.

ARTICLE 8

Authentication of Supporting Documents

The warrants, statements, testimonies and exhibits issued or acquired on the territory of one of the contracting parties, authenticated copies of these documents, the certificates and other judicial documents proving the perpetration of the offence or the conviction will be received as valid evidence in the proceedings of the other party, if they are signed or accompanied by an authenticity certificate issued by the prosecutor, a magistrate or any other competent authority from the State where they were issued or obtained.

ARTICLE 9

Conflicting Requests

If extradition is requested concurrently by more than one State and by one of the contracting parties, for the same offence or for different offences, the requested party shall make its decision according to its laws having regard to all circumstances and especially the nationality of the person wanted, the place of commission and the relative seriousness of the offences, the respective dates of the requests and the possibility of subsequent extradition to a third State.

ARTICLE 10

Postponed or Conditional Surrender

1. If the wanted person is being prosecuted or has already been convicted in the territory of the requested party for an offence other than that for which extradition is requested, the requested party may, after making its decision on the request for extradition, postpone the surrender of the wanted person until the proceedings come to an end or until the sentence is served, remitted or the wanted person is pardoned.

2. If the postponement of surrender may hinder greatly the proceedings or in special circumstances make it necessary, the requested party may temporarily surrender the wanted person to the requesting party in order that the prosecution may be completed and an eventual sentence awarded.

The person thus surrendered shall be kept under arrest in the territory of the requesting party and shall be sent back to the requested party at the latest within three months of the provisional surrender.

ARTICLE 11

Special Provisions

A person who has been extradited shall not be prosecuted for any political offence committed in the requesting State prior to his extradition.

ARTICLE 12

Translation of Documents

Each of the contracting parties shall draw up documents relating to extradition according to their laws and regulations. Such documents shall be accompanied by a translation made in the official language of the requested party.

ARTICLE 13

Surrender of the Indicated or Convicted Person

1. The requested party shall inform the requesting party of its decision on the request for extradition.

2. If the request is accepted, the requested party shall inform the requesting party of the place and date of surrender and of the length of time during which the person wanted has been kept under arrest with a view to surrender. The interval between the date of notification and that of surrender shall be at least ten days except when the contracting parties agree otherwise.

3. The person to be extradited shall be released if he has not been taken over on the appointed date if the requesting party has not, within ten days of the appointed date, requested a postponement which shall not exceed fifteen days.

4. If the extradited person surrendered escapes and returns to the territory of the requested party, his extradition may be requested again without the necessity of presenting the documents mentioned in Article 6 of this Treaty.

ARTICLE 14

Handing over of Property

1. The requested party shall seize and hand over, in so far as its law permits, the articles and valuables—

- (a) which have been used in committing the offence or which may be used as evidence;
- (b) which have been acquired as a result of the offence and which, at the time of arrest, are found in the possession of the proceeds claimed or are discovered subsequently; or
- (c) which have been obtained in exchange for the property or proceeds thereof acquired as a result of the offence.

The articles and valuables in question shall be handed over with the person surrendered or, if this is not possible afterwards.

2. The articles and valuables mentioned in paragraph 1 of this Article shall be handed over even if extradition once accepted cannot be carried out owing to the death or escape of the person wanted.

3. The requested party may postpone handing over of the articles or valuables mentioned in paragraph 1 of this Article, by reason of bringing criminal proceedings or may hand them over on condition that they will be returned.

4. Any rights which the requested party or third parties in the territory of the requested party may have acquired in the said articles or valuables shall be preserved.

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ARTICLE 15

Expenses

1. Expenses incurred up to the moment of surrendering the person extradited shall be borne by the requested party and the expenses incurred after that period shall be borne by the requesting party.

2. All expenses relating to the handing over of articles and valuables shall be borne by the requesting party.

ARTICLE 16

Consultation

The contracting States shall promptly, at the request of either party, consult each other concerning the interpretation or the application of any provision of this Treaty to a particular case.

ARTICLE 17

Disapplication of 1923 Treaty

The Extradition Treaty concluded on 8th August, 1923, between the Governments of Great Britain and Belgium shall cease to have effect, upon the coming into force of this Treaty.

ARTICLE 18

Transitional

All on going proceedings commenced pursuant to the disappplied Treaty shall continue as proceedings under that Treaty.

ARTICLE 19

Entry into Force

This Treaty shall enter into force thirty days after the date on which the contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

ARTICLE 20

Amendment

This Treaty may be amended by mutual agreement of the contracting parties.

ARTICLE 21

Termination

Either party may terminate this Treaty by giving written notice to the other party at any time. Termination shall become effective six months after receipt of such notice.