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REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 364

2018

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 19 of 2018: Extradition Amendment Act, 2018.

Act No. 19, 2018**EXTRADITION AMENDMENT ACT, 2018****EXPLANATORY NOTE:**

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Extradition Act, 1996, so as to provide for the extradition of persons from Namibia to any country on the basis of a multilateral agreement to which Namibia is also a party to; to make it permissible for Namibian citizens to be prosecuted and punished in Namibia in accordance with the laws of Namibia for any extraditable offence which such Namibian citizen may have committed or is accused of having committed within the jurisdiction of a country other than Namibia; to provide for the required evidence to be considered by a magistrate at an enquiry and the discharge of a person at an enquiry when there is no evidence to extradite the person; to provide for a proper method of authentication of documents; to provide the person with an opportunity to apply for bail; to provide for appeals to the Supreme Court; and to provide for incidental matters.

(Signed by the President on 21 December 2018)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:

Amendment of section 4 of Act No. 11 of 1996

1. Section 4 of the Extradition Act, 1996 (hereafter referred to as the “principal Act”) is amended in subsection (1) by the -

(a) substitution for paragraph (b) of the following paragraph:

“(b) any other country, including a Commonwealth country, which has been specified by the President by proclamation in the *Gazette* for purposes of this Act[.] ;and”;

(b) addition after paragraph (b) of the following paragraph:

“(c) any country which is party to a multilateral agreement, provided that -

(i) such agreement provides for it to be used as a basis for extradition; and

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

Amendment of section 6 of Act No. 11 of 1996

2. Section 6 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

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“(1) A Namibian citizen [**may**] shall be prosecuted and punished in Namibia in accordance with the laws of Namibia for any extraditable offence which such Namibian citizen may have committed or is accused of having committed within the jurisdiction of a country contemplated in section 4(1), but no such prosecution shall be instituted unless -”.

Amendment of section 8 of Act No. 11 of 1996

3. Section 8 of the principal Act is amended in subsection (1) by the substitution for paragraph (c) of the following paragraph:

“(c) by a certificate issued by the appropriate authority in charge of the prosecution in the foreign state concerned, stating that it has sufficient evidence at its disposal to warrant the prosecution of the person concerned;”.

Amendment of section 12 of Act No. 11 of 1996

4. Section 12 of the principal Act is amended by the -

(a) substitution for subsection (3) of the following subsection:

“(3) The Prosecutor-General or any person delegated by him or her [**may**] shall appear -

(a) at any enquiry; or

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

(b) deletion of subsection (4); and

(c) substitution for subsection (7) of the following subsection:

“(7) If at an enquiry the magistrate concerned is not satisfied that all the requirements set out in subsection (5) have been complied with, [**or if the evidence requested in terms of subsection (4) is not forthcoming within a period of two months from the date of the first adjournment of the hearing under that subsection,**] the magistrate shall order the discharge of the person concerned whose return was requested, and shall forthwith notify the Minister in writing of such order and his or her reasons therefor.”.

Amendment of section 14 of Act No. 11 of 1996

5. Section 14 of the principal Act is amended by the addition after subsection (2) of the following subsections:

“(3) Any person or the government of the requesting country concerned may, within 14 days from the date of an order made by the High Court in terms of subsection (1) or (2), apply for leave to appeal against that order, and the provisions of Sections 316 and 316A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) shall *mutatis*

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mutandis apply to the appeal so lodged, and the Supreme Court may, upon such appeal make such order in the matter as it thinks fit.

(4) In considering an appeal under subsection (3), the Supreme Court may order the discharge of the person who has been committed to prison under section 12(5) if it is of the opinion that having regard to all the circumstances of the case it would be unjust to return such person by reason of the -

- (a) violation of any of the provisions of Part II;
- (b) trivial nature of the offence concerned;
- (c) lapse of time since the commission of the offence concerned or since the person concerned became unlawfully at large, as the case may be; or
- (d) accusation against the person concerned not having been made in good faith or in the interest of justice.”.

Amendment of section 16 of Act No. 11 of 1996

6. Section 16 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), whenever a person has been committed to prison under section 12(5) or 15(2) for return to a requesting country, and, in the case of a person having been so committed under section 12(5), an appeal is not pending under section 14 or the High Court has not in terms of the said section discharged such person, the Minister shall within **[a reasonable time]** 30 days, if he or she is satisfied that the return of such person is not prohibited under this Act or any other law, issue a written order for the return of that person to the requesting country concerned.”.

Amendment of section 18 of Act No. 11 of 1996

7. Section 18 of the principal Act is amended in subsection (1) by the -

(a) substitution for paragraph (b) of the following paragraph:

“(b) has been certified as the original or as true copies or translations thereof by a judge or magistrate, or by an officer authorized thereto by one of them, of the requesting country concerned [.] ;and”

(b) addition after paragraph (b) of the following paragraph:

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

Act No. 19, 2018**EXTRADITION AMENDMENT ACT, 2018****Substitution of section 21 of Act No. 11 of 1996**

8. The principal Act is amended by the substitution for section 21 of the following section:

“Bail

21. (1) [No] A person -

- (a) committed to prison under section 12(5) or 15(2) to await the Minister’s decision in terms of section 16;
- (b) committed to prison under section 12(5) to await the Minister’s decision in terms of section 16 and who has appealed against the committal order in question in terms of section 14; or
- (c) whose return to a designated country has been ordered by the Minister under section 16,

[shall be entitled to bail] may apply to be released on bail in an amount of money as determined by the magistrate that such person deposits with the clerk of court or any police station.

(2) If the magistrate orders that the applicant be released on bail in terms of subsection (1), the provisions of sections 66, 67, 68 and 307(3), (4) and (5) of the Criminal Procedure Act, 1977(Act No. 51 of 1977) shall *mutatis mutandis* apply to bail so granted, and any reference in those sections to the -

- (a) prosecutor who may act under those sections, shall be deemed to be a reference to the person who may appear at an enquiry held under this Act;
- (b) accused, shall be deemed to be a reference to the person released on bail under this subsection;
- (c) court, shall be deemed to be a reference to the magistrate who released such person on bail; and
- (d) trial or sentence, shall be deemed to be a reference to the magistrate’s order given under section 12.”.

Amendment of section 26 of Act No. 11 of 1996

9. Section 26 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The laws specified in **[the Schedule]** Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule.”.

Act No. 19, 2018 EXTRADITION AMENDMENT ACT, 2018**Amendment of Schedule to Act No. 11 of 1996**

10. The principal Act is amended by the substitution for the title “Schedule” of the title “Schedule 1”.

Addition of Schedule 2 to Act No. 11 of 1996

11. The principal Act is amended by the addition after Schedule 1 of the following Schedule:

“SCHEDULE 2

Apostille
(Convention de la Haye du 5 Octobre 1961)

(Section 18)

- | | |
|----|---------------------------------|
| 1. | Country |
| | This public document |
| 2. | Has been signed by |
| 3. | Acting in the capacity of |
| 4. | Bears the seal/stamp of |
| | Certified |
| 5. | at..... |
| 6. | the (date) |
| 7. | by |
| 8. | No. |
| 9. | Seal/stamp: |
| | 10. Signature”. |

Short title and commencement

12. This Act is called the Extradition Amendment Act, 2018 and comes into operation on a date determined by the Minister by notice in the *Gazette*.