



Western Samoa

Analysis

Title	11. Surrender of offender
1. Short title and commencement	12. Discharge of offender if not removed within two months
2. Interpretation	EXTRADITION FROM A FOREIGN COUNTRY
APPLICATION OF ACT TO FOREIGN COUNTRIES	13. Extradition from a foreign country
3. Application of this Act	14. Offender not triable for previous offence
EXTRADITION FROM WESTERN SAMOA	GENERAL PROVISIONS
4. Liability of offenders to surrender	15. Depositions and official documents
5. Restrictions on surrender	16. Authentication of documents
6. Request for surrender	17. Regulations
7. Issue of warrant	18. Other Acts not affected
8. Hearing	19. Repeals and revocations
9. Evidence on behalf of offender	Schedules
10. Detention or discharge of offender	

1971, No. 4

**AN ACT to make provision in respect of the extradition of offenders.**  
[15 July 1971]

BE IT ENACTED by the Legislative Assembly of Western Samoa in Parliament assembled as follows:—

**1. Short title and commencement**—(1) This Act may be cited as the Extradition Act 1971.

(2) This Act shall come into force on the day on which this Act is assented to by the Head of State.

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Accused person” includes a person convicted under foreign law for contumacy;

“Conviction” and “convicted” do not include a conviction which under foreign law is a conviction for contumacy, except in the definition of “accused person”;

“Court” means a Magistrate’s Court presided over by a Magistrate;

"Deposition" includes any affidavit or statement made on oath; and also includes any statement made before any Court or judicial officer, if under the law of the country in which it is made a person making such a statement falsely is liable to punishment:

"Extradition treaty", or "treaty", means any treaty or agreement for the time being in force between Western Samoa and any foreign country or countries for the surrender of offenders:

"Extradition offence", in relation to any foreign country, means any act or omission which, if it occurred in Western Samoa, would be one of the crimes described in the First Schedule to this Act, and which amounts to one of the offences described in the extradition treaty with that country and is punishable in that country:

"Foreign country" includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty with that country extends:

"Head of State" means the Head of State acting on the advice of Cabinet:

"Minister" means the Minister of Justice:

"Oath, in relation to any country, includes affirmation, where affirmation is allowed by the law of that country:

"Offender" means a person accused or convicted of an extradition offence committed within the jurisdiction of a foreign country; and references to an offender of any country have a corresponding meaning:

"Warrant", in relation to any country, includes any judicial document authorising the arrest of a person accused or convicted of an offence.

(2) For the purposes of this Act, any vessel or aircraft recognised by the law of any country as belonging to that country shall be deemed to be within the jurisdiction of and to be part of that country.

Cf. 1965, No. 44, s. 2 (N.Z.).

#### APPLICATION OF ACT TO FOREIGN COUNTRIES

**3. Application of this Act—**(1) Where a treaty has been concluded (whether before or after the commencement of this Act) on behalf of or between Western Samoa and any foreign country in respect of the surrender of offenders, the

Head of State may by Order apply this Act to that foreign country.

(2) Every such Order shall recite the terms of the treaty, and shall cease to have effect when the treaty ceases to be in force.

(3) Where by virtue of any such Order this Act applies to any foreign country, the treaty shall be read subject to section 5 of this Act.

(4) Except as provided in subsection (3) of this section, this Act shall be read subject to the terms of the treaty and shall be so construed as to give effect to the treaty.

(5) While any such Order continues to have effect it shall be conclusive evidence of the terms of the treaty and of the fact that this Act applies to the foreign country which is a party to the treaty.

Cf. 1965, No. 44, s. 3 (N.Z.).

#### EXTRADITION FROM WESTERN SAMOA

**4. Liability of offenders to surrender**—Subject to the provisions of this Act, where this Act applies to any foreign country, every offender of that country who is in Western Samoa shall be liable to be arrested and surrendered in the manner provided by this Act, whether the act or omission in respect of which the surrender is sought occurred before or after the commencement of this Act or, as the case may be, before or after its application to that country, and whether or not any Court in Western Samoa has jurisdiction in respect of that act or omission.

Cf. 1965, No. 44, s. 4 (N.Z.).

**5. Restrictions on surrender**—(1) An offender shall not be surrendered to a foreign country—

- (a) If the offence in respect of which his surrender is requested is one of a political character; or
- (b) If he proves to the satisfaction of the Court or of the Minister, or, where he is brought before the Supreme Court or a Judge on habeas corpus, to the satisfaction of the Supreme Court or Judge, that the request for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

(2) An offender shall not be surrendered to a foreign country unless provision is made by the law of that country, or by the extradition treaty, that the offender will not, until he has left or has had an opportunity of leaving the foreign country, be detained or tried in that country for any offence committed before his surrender other than an extradition offence disclosed by the facts on which the surrender is grounded.

(3) An offender who has been acquitted, on account of his insanity, of any offence within the jurisdiction of Western Samoa, and who, consequent on such acquittal, is detained in prison or in some other place of security under section 12 of the Mental Health Ordinance 1961, shall not be surrendered until in accordance with law he ceases to be so detained.

(4) An offender who has been convicted of any offence within the jurisdiction of Western Samoa, and who, consequent on his conviction, is detained in a prison or in some other place of security, shall not be surrendered until in accordance with law he ceases to be so detained.

(5) Where, in any case to which subsection (3) or subsection (4) of this section does not apply, an offender has been accused of an offence within the jurisdiction of Western Samoa, not being the offence for which his surrender is requested, he shall not be surrendered until the proceedings against him have been disposed of.

(6) An offender shall not be surrendered until after the expiration of fifteen days from the date of his being committed to custody to await his surrender or, in any case where a writ of habeas corpus is issued, until after the Supreme Court has decided, on the return to the writ, that he is not to be discharged from custody whichever event later happens.

(7) The Minister may in his discretion refuse to surrender an offender who is a Western Samoan citizen.

Cf. 1965, No. 44, s. 5 (N.Z.).

6. Request for surrender—(1) Every request for the surrender of an offender who is in or suspected of being in Western Samoa shall be made to the Minister of External Affairs, for transmission to the Minister of Justice,—

- (a) By a diplomatic or consular representative, or a Minister, of the country which seeks his surrender;  
or
- (b) By such other means as is prescribed in the treaty.

(2) Where a request is so made, the Minister of Justice may, by writing, notify a Magistrate that it has been made and request him to issue a warrant for the arrest of the offender.

(3) If the Minister of Justice is of the opinion that the offence to which any request under subsection (1) of this section relates is one of a political character, he may if he thinks fit refuse to notify a Magistrate as aforesaid, and may also at any time order an offender accused or convicted of the offence to be discharged from custody.

Cf. 1965, No. 44, s. 6 (N.Z.).

**7. Issue of warrant—**(1) A warrant for the arrest of an offender who is in or suspected of being in Western Samoa may be issued—

(a) By a Magistrate on receipt of a request from the Minister as aforesaid and on such evidence as in his opinion shows that there is reasonable ground to believe that the offender has been accused or convicted of an extradition offence; or

(b) In any case, by a Magistrate on the production to him of a foreign warrant or on such other evidence as in his opinion shows that there is reasonable ground to believe that the offender has been accused or convicted of an extradition offence.

(2) Any Magistrate who issues a warrant under this section without a request from the Minister to do so shall forthwith report the issue of it to the Minister and send to him a certified copy of any foreign warrant or other documentary evidence so produced and a note of any other evidence so produced.

(3) On receipt of the report the Minister may if he thinks fit order the cancellation of the warrant and the discharge of the person arrested thereon.

(4) Every offender arrested on a warrant issued under this section shall, unless he is sooner discharged, be brought before a Court as soon as practicable.

Cf. 1965, No. 44, s. 7 (N.Z.).

**8. Hearing—**(1) Subject to the provisions of this Act, when an offender is brought before a Court under this Act, the Court shall hear the case in the same manner, and have the same jurisdiction and powers, as if the proceedings were the

hearing of an information for an offence (as that term is defined in section 2 of the Crimes Ordinance 1961) triable in a Magistrate's Court.

(2) Where the offender has been arrested on a warrant issued by a Magistrate without a request from the Minister, the following provisions shall apply:

- (a) The hearing of the case shall not proceed until the Court receives from the Minister a notice in writing stating that a request has been transmitted to him under section 6 of this Act for the surrender of the offender;
- (b) Pending the receipt of such a notice the Court shall from time to time adjourn the hearing;
- (c) If such a notice is not received by the Court within such time as may be prescribed in that behalf in the extradition treaty or, where no time is so prescribed, within such reasonable time as the Court may fix, the Court shall discharge the offender. The Court may from time to time in its discretion extend any time fixed by it under this paragraph.

(3) The offender shall not in any case be bailable as of right or allowed to go at large without bail.

(4) The provisions of section 11 of the Mental Health Ordinance 1961 shall apply, so far as they are applicable and with all necessary modifications.

(5) A warrant issued in the foreign country and authorising the arrest of the offender, or a copy of the warrant, shall be produced at the hearing.

Cf. 1965, No. 44, s. 8 (N.Z.).

**9. Evidence on behalf of offender—**(1) At the hearing the Court shall receive any evidence tendered by or on behalf of the offender to show—

- (a) That he did not do or omit the act alleged to have been done or omitted by him; or
- (b) That he is not the person against whom the foreign warrant was issued; or
- (c) That the alleged act or omission is not an extradition offence in relation to the country which seeks his surrender; or
- (d) That the offence is of a political character, or that the

proceedings are being taken with a view to try or punish him for an offence of a political character; or

- (e) That his surrender would not be in accordance with the provisions of the treaty between Western Samoa and the country which seeks his surrender; or
- (f) That he has been previously convicted or acquitted in Western Samoa in respect of the alleged act or omission.

(2) For the purposes of paragraph (d) of subsection (1) of this section, the Court may receive such evidence as in its opinion may assist it in determining the truth, whether or not such evidence is otherwise legally admissible in a Court of law.

(3) Nothing in this section shall limit the power of the Court to receive any other evidence that may be tendered to show that the offender should not be surrendered.

Cf. 1965, No. 44, s. 9 (N.Z.).

**10. Detention or discharge of offender—**(1) On hearing the case the Court shall order the committal of the offender to a prison, to remain there until he is surrendered to the foreign country or discharged according to law, if—

- (a) In the case of a person alleged to have been convicted of an extradition offence, such evidence is produced as would according to the law of Western Samoa, subject to the provisions of this Act, prove that he was so convicted;
- (b) In the case of a person accused of an extradition offence, the foreign warrant authorising his arrest, or the copy of that warrant, is duly authenticated, and such evidence is produced as would according to the law of Western Samoa, subject to the provisions of this Act, justify his trial if the alleged act or omission had occurred in Western Samoa.

(2) If such evidence as aforesaid is not produced the Court shall discharge the offender.

(3) Where the Court commits the offender to a prison as aforesaid, it shall—

- (a) Inform him that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus; and

(b) Send to the Minister a certificate of the committal, together with a copy of all the evidence taken before it that has not already been sent to the Minister, and such report on the case as it thinks fit.

(4) Notwithstanding anything in subsection (1) of this section, where the Court commits the offender to a prison a Judge of the Supreme Court may in his discretion, on application and on such terms and subject to such conditions as he thinks fit, grant bail to the offender.

Cf. 1965, No. 44, s. 10 (N.Z.).

**11. Surrender of offender—**(1) Subject to the provisions of this Act, after the expiration of fifteen days from the date of the committal to a prison of the offender as aforesaid, or, in any case where a writ of habeas corpus is issued, after the Supreme Court has decided, on the return to the writ, that he is not to be discharged from custody (whichever event later happens), the Minister may order that the offender be surrendered to the person who in the opinion of the Minister is duly authorised to receive him in the name and on behalf of the foreign country seeking his surrender, for the purpose of his being taken to that country.

(2) Any person to whom any such order is directed may take the offender into custody and deliver him to the person specified in the order, and the person so specified may receive the offender, hold him in custody, and convey him to the foreign country, to be dealt with there according to law.

(3) Until the offender is conveyed out of Western Samoa, he shall be deemed for the purposes of section 40 of the Crimes Ordinance 1961 to be a person in lawful custody.

Cf. 1965, No. 44, s. 11 (N.Z.).

**12. Discharge of offender if not removed within two months—**If an offender who has been committed to a prison under section 10 of this Act is not surrendered and conveyed out of Western Samoa within two months—

(a) After the committal; or

(b) If a writ of habeas corpus is issued, after the decision of the Supreme Court upon the return to the writ—whichever period later expires, a Judge of the Supreme Court may, on application and on proof that reasonable notice of



the intention to make the application has been given to the Minister, order the offender to be discharged, unless sufficient cause is shown against such discharge.

Cf. 1965, No. 44, s. 12 (N.Z.).

#### EXTRADITION FROM A FOREIGN COUNTRY

**13. Extradition from a foreign country**—Where a person accused or convicted of an offence in Western Samoa is in or suspected of being in any foreign country with which there is an extradition treaty applicable to that offence, a request for his surrender may be made by the Minister and shall be transmitted by the Minister of External Affairs to a diplomatic or consular representative, or a Minister, of that country, or to such other authority as is prescribed in the treaty.

Cf. 1965, No. 44, s. 13 (N.Z.).

**14. Offender not triable for previous offence**—Where pursuant to any extradition treaty any person accused or convicted of an offence in Western Samoa is surrendered by a foreign country, that person shall not, until he has left or has had an opportunity of leaving Western Samoa, be detained or tried for any offence committed within the jurisdiction of Western Samoa before his surrender other than an offence disclosed by the facts on which the surrender is grounded.

Cf. 1965, No. 44, s. 14 (N.Z.).

#### GENERAL PROVISIONS

**15. Depositions and official documents**—(1) Depositions taken outside Western Samoa, whether taken in the absence of the offender or otherwise, and copies thereof, and official certificates of or judicial documents stating the fact of conviction or other facts, given or made out of Western Samoa, may, if duly authenticated, be received in evidence in any proceedings under this Act.

(2) For the purposes of section 13 of this Act, a Magistrate may, in the absence of the person accused of an offence to which that section relates, take depositions in the same manner, so far as applicable, as if that person were present and the proceedings were the hearing of an information for an offence (as that term is defined in section 2 of the Crimes Ordinance 1961) triable in a Magistrate's Court; and for the

purpose of taking any such depositions the Magistrate shall have the same jurisdiction and powers as if the proceedings were such a hearing as aforesaid.

(3) Nothing in this Act shall authorise the reception of any such depositions, copies, certificates or documents in evidence against any person on his trial for any offence.

Cf. 1965, No. 44, s. 15 (N.Z.).

**16. Authentication of documents—**(1) For the purposes of this Act, any warrant, deposition, official certificate or judicial document issued, taken, given or made outside Western Samoa, and any copy thereof, shall be deemed to be duly authenticated if it is authenticated in the manner for the time being provided by the law of Western Samoa in respect of documents executed out of Western Samoa, or if it purports—

- (a) In the case of a warrant, to be signed by a Judge, Magistrate or official of the country where it was issued;
- (b) In the case of a deposition, to be certified, under the hand of a Judge, Magistrate or official of the country where the deposition was taken, to be the original deposition or, as the case may require, to be a true copy thereof;
- (c) In the case of a certificate of or judicial document stating the fact of conviction or other facts, to be certified by a Judge, Magistrate or official of the country where it was made—

and is authenticated by the oath of some witness or by being signed by or sealed with the official seal of the Minister of Justice or some other Minister of the country in which it is issued, taken or made.

(2) Every Court shall take judicial notice of every such signature or seal as aforesaid.

Cf. 1965, No. 44, s. 16 (N.Z.).

**17. Regulations—**The Head of State may from time to time make regulations for all or any of the following purposes:

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

Cf. 1965, No. 44, s. 17 (N.Z.).

18. **Other Acts not affected**—Nothing in this Act shall be constructed to limit or affected the operation of any of the provisions of the Immigration Act 1966 relating to deportation.

Cf. 1965, No. 44, s. 19 (N.Z.).

19. **Repeals and revocations**—(1) As from the commencement of this Act, the enactments of the United Kingdom Parliament specified in the Second Schedule to this Act shall cease to have effect and are hereby repealed as part of the law of Western Samoa.

(2) As from the commencement of this Act, the following shall cease to have effect and are hereby repealed and revoked as part of the law of Western Samoa, namely:

- (a) The Western Samoa (Fugitive Offenders) Order in Council, 1920, made on the thirteenth day of October 1920, by His Majesty the King of England in Council under an enactment of the United Kingdom Parliament, namely the Fugitive Offenders Act 1881;
- (b) The Samoa Extradition Order, 1924, made on the twenty-sixth day of May 1924, by His Excellency the Governor-General of New Zealand by Order in Council under the Samoa Act 1921;
- (c) The Order in Council made on the twelfth day of October 1925 by His Majesty the King of England in Council under an enactment of the United Kingdom Parliament, namely the Fugitive Offenders Act 1881 extending the application of Part II of that Act to Western Samoa.

Cf. 1965, No. 44, s. 20 (N.Z.).

## SCHEDULES

Section 2:

### FIRST SCHEDULE

#### EXTRADITION OFFENCES

##### Part I — Crimes Under the Crimes Ordinance 1961

Section of Act	Offence
<b>PART V — CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE AND PUBLIC ADMINISTRATION</b>	
<b>Official corruption</b>	

36	Perjury
37	Fabricating evidence
38	Conspiring to defeat justice
39	Breaking prison
40	Escape

PART VI — CRIMES AGAINST RELIGION,  
MORALITY AND PUBLIC WELFARE

47	Rape
48	Attempt to commit rape
49	Incest
50	Sexual intercourse by man with young related girl living in his family
51	Sexual intercourse with girl under twelve
52	Indecency with girl under twelve
53	Sexual intercourse or indecency with girl between twelve and sixteen
54	Indecent assault on woman or girl
55	Conspiracy to induce sexual intercourse
56	Inducing sexual intercourse under pretence of marriage
57	Sexual intercourse with idiot or imbecile woman or girl
58B	Indecent act between woman and girl
58C, 58D	Indecency between males
58E	Sodomy
58J	Keeping place of resort for homosexual acts
58K	Brothel-keeping
58L	Living on earnings of prostitution
58M	Procuring sexual intercourse

PART VII — CRIMES AGAINST PERSON AND  
REPUTATION

63, 64	Murder
65	Manslaughter
68	Attempted murder
69	Conspiracy and inciting to murder
72	Infanticide
73	Killing unborn child
73A	Procuring abortion
73C	Supplying means or procuring abortion
74A	Bigamy
75	Counselling suicide
76, 77	Neglect of duty to provide the necessities of life
78	Common assault
79	Grievous bodily harm
80	Actual bodily harm
83	Abduction of woman or girl
83A	Kidnapping
83B	Abduction of child under sixteen

## PART VIII — CRIMES AGAINST RIGHTS OF PROPERTY

85, 86, 87, 88	Theft
89	Obtaining by false pretence
90	Receiving stolen property
91	Conversion of vehicles or vessels, etc.
92	Robbery
93	Breach of trust
97	Conspiracy to defraud
98	Falsifying accounts relating to public funds
99	False accounting by employee
101	Accusation of criminal offences
102	Burglary
103	Unlawful entry of building by night
104	Intimidation by breaking house or discharge of firearms
105	Being armed with intent to commit a crime
106	Having in possession instruments of house-breaking, or being disguised with intent to commit a crime
107	Forgery
108	Uttering forged documents
109	Making counterfeit coin
110	Impairing coin
111	Uttering counterfeit coin
112	Arson
113	Wilful damage
114 Restricted to:	Attempt to commit any extradition offence, or incite, counsel or attempt to procure any person to commit any extradition offence that is not committed
115 Restricted to:	Accessory after the fact to any extradition offence

## PART II — CRIMES UNDER OTHER ENACTMENTS

Short Title of Act	Section of Act	Offence
The Bankruptcy Act 1908 (New Zealand)	138	Crimes by bankrupt
Narcotics Act 1967	17	Illegal import or export of narcotics
	18	Unlawful supply or possession of narcotics
	19	Abetting offence against correspondence law in another country

Section 19(1):

## SECOND SCHEDULE

UNITED KINGDOM ENACTMENTS CEASING TO HAVE EFFECT IN  
WESTERN SAMOA

33 and 34 Vict., ch. 52	—	The Extradition Act 1870
36 and 37 Vict. ch. 60	—	The Extradition Act 1873
44 and 45 Vict., ch. 69	—	The Fugitive Offenders Act 1881
58 and 59 Vict. ch. 33	—	The Extradition Act 1895
6 Edw. 7 ch. 15	—	The Extradition Act 1906
22 and 23 Geo. 5, ch. 39	—	The Extradition Act 1932



BY AUTHORITY:

J. W. MEREDITH, GOVERNMENT PRINTER, APIA, WESTERN SAMOA—1972