

Extradition Treaty with Botswana, 2022

IT is hereby notified that the Minister of Home Affairs and Cultural Heritage has, in terms of section 3(3) of the Extradition Act [*Chapter 9:08*], made the following Treaty:—

1. This Treaty may be cited as the Extradition Treaty with Botswana, 2022.

2. This Extradition Treaty was entered into with the Republic of Botswana on the 28th of February, 2019, and shall come into effect from the date of its publication.

3. The extradition treaty set out in the Schedule shall have force of law subject to the provisions of the Act.

SCHEDULE

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF
ZIMBABWE AND THE REPUBLIC OF BOTSWANA

Preamble

The Government of the Republic of Zimbabwe and the Government of the Republic of Botswana (hereinafter jointly referred as (“the Parties”) and in the singular as (“the Party”));

RECOGNISING the bilateral Treaty establishing the Joint Commission for Cooperation between the Parties signed at Zimbabwe on the 30th October, 1982;

DESIROUS of establishing and facilitating exchange and cooperation in the area of criminal matters including investigations, prosecutions, and the exchange of information, documents and exhibits on the basis of reciprocity of advantages and mutual interest between the two countries by concluding this Treaty on Extradition (“hereinafter referred to as “the Treaty”).

Have agreed as follows:

ARTICLE 1

Definitions

“Requesting Party” means the Party requesting extradition in terms of the present Treaty;

“Requested Party” means the Party which is requested to extradite in terms of the present Treaty;

“Competent Authority” means any person or organisation that has the legally delegated or invested authority, capacity, or power to perform a designated function.

ARTICLE 2

Obligation to Extradite

Each Party agrees to extradite to the other, upon request in accordance with the national laws of the Requested Party and subject to the provisions of the present Treaty, any person who is wanted in the Requesting Party for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.

ARTICLE 3

Extraditable Offences

1. For purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a minimum period of at least one (1) year, or by a more severe penalty.

2. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least six (6) months of such sentence remains to be served.

3. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

- (a) the laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same legal terminology; and
- (b) under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the Requesting Party shall be taken into account.

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraph 1 of the present Article, the Requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

ARTICLE 4

Mandatory Grounds for Refusal to Extradite

Extradition shall not be granted in any of the following circumstances:

2. Unless otherwise jointly decided by the Parties, termination of the present Treaty shall not affect any extradition requests that are ongoing prior to termination. Such requests process shall continue until they are completed.

ARTICLE 23

Entry into Force

The present Treaty shall enter into force thirty (30) days after the date on which the Parties have notified each other in writing, through diplomatic channel that their respective constitutional requirements for the entry into force of the present Treaty have been complied with.

IN WITNESS WHEREOF the Parties hereto have caused the present Treaty to be executed on their behalf at Harare, Zimbabwe in two originals in the English language, both originals being equally authentic, this twenty-eighth day of February, in the year of our Lord, twenty-nineteen.

.....
**MINISTER OF HOME AFFAIRS,
JUSTICE AND CULTURAL HERITAGE**
FOR AND ON BEHALF OF
THE GOVERNMENT OF THE
REPUBLIC OF ZIMBABWE

.....
**MINISTER OF DEFENCE,
JUSTICE AND SECURITY**
FOR AND ON BEHALF OF
THE GOVERNMENT OF THE
REPUBLIC OF BOTSWANA

ARTICLE 20

Notices

1. Any notice or communication concerning the present Treaty shall be sent by registered mail, telex or fax to the address, telex or fax number of the Party to receive it as detailed below or to such other address as may from time to time be duly notified by either party to the other in writing through diplomatic channel.

2. The effective date of such notice or communication shall be thirty (30) days after the date of postage, registration or for telex or fax, on the date of receipt.

For the Republic of Zimbabwe

The Permanent Secretary
Ministry of Home Affairs and Cultural Heritage
Private Bag CY 7703
Causeway
Harare
Zimbabwe
Tel: (+263) 242 703641-4
Fax: (+263) 242 707231

For the Republic of Botswana

The Permanent Secretary
Ministry of Defence, Justice and Security
Private Bag 001
Gaborone
Botswana
Tel: (+267) 3950900
Fax: (+267) 3191786

ARTICLE 21

Amendment

1. Any amendment to the present Treaty shall be mutually agreed upon between the Parties.

2. Amendments decided upon by the Parties shall be reflected in writing through exchange of notes between the Parties and shall enter into force upon receipt of the last note.

ARTICLE 22

Termination

1. The present Treaty may be terminated by either Party giving six (6) months prior written notice of termination to the other Party through the diplomatic channel.

1. If the offence for which extradition is requested is regarded by the Requested Party as an offence of a political nature;

2. If the Requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

3. If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

4. If there has been final judgement rendered against the person in the Requested Party in respect of the offence for which the person's extradition is requested;

5. If the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

6. If that person whose extradition is requested has been or would be subjected in the Requesting Party to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the laws of the Requested Party;

7. If the offence is punishable by death under the law of the Requesting Party but is of a category for which the death penalty is not provided for by the law of the Requested Party or is not generally carried out unless the Competent Authority of the Requesting Party gives such assurances as may satisfy the Requested Party that the death penalty will not be carried out:

Where extradition is refused on this ground, and assurance not provided, the Requested Party shall be obliged, without exception whatsoever, if the other Party so requests, to submit the case to its Competent Authorities for the purpose of prosecuting the fugitive in respect of the offence for which extradition had been requested;

8. If the offence for which extradition is requested is regarded under the law of the Requested Party as having been committed in whole or in part within that Requested Party:

Where extradition is refused on this ground, the Requested Party shall, if the other Party so requests, submit the case to its Competent Authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

9. If a prosecution is pending in the Requested Party against the person claimed for the offence for which extradition is requested;

10. If the Competent Authorities of the Requested Party have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested; and

11. If the Requested Party, while also taking into account the nature of the offence and the interests of the Requesting Party, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

ARTICLE 5

Channels of Communication and Required Documents

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through the diplomatic channel.

2. A request for extradition shall be accompanied by the following:

- (a) in all cases —
 - (i) as accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;
 - (ii) the text of the relevant provision of the law creating the offence, or where necessary, statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;
- (b) if the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the date and place of its commission;
- (c) if the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;
- (d) if the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (c) of the present Article, by a statement as to the legal means available to the person

4. Where a person is being held in custody pursuant to paragraph 2 of this Article, the Party in whose territory the person is being held may direct that the person be released if such transfer is not continued within a reasonable time.

ARTICLE 16

Concurrent Requests

If a Party receives requests for extradition for the same person from both the other Party and a third party it shall, at its discretion, determine to which of those States the person is to be extradited.

ARTICLE 17

Costs

1. The Requested Party shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The Requested Party shall also bear the costs incurred in its territory in connection with the seizure and handing over the property, or the arrest and detention of the person whose extradition is sought.

3. The Requesting Party shall bear the costs incurred in conveying the person from the territory of the Requested Party, including transit costs.

4. If, however, during the execution of the request, it becomes apparent that fulfilment of the request will entail expenses of an extraordinary nature, the Requested Party and the Requesting Party shall consult to determine the terms and conditions under which execution may continue.

ARTICLE 18

Application

The present Treaty shall apply to requests made after its entry into force, even if the relevant offences committed or sentences imposed occurred prior to that date.

ARTICLE 19

Disputes

Any dispute between the Parties arising from the interpretation, application and implementation of the present Treaty shall be resolved through mutual consultation, failure to which the dispute shall be resolved through diplomatic channel.

4. Where the law of the Requested Party or the protection of the rights of third parties so require, any property so surrendered shall be returned to the Requested Party free of charge after the completion of the proceedings, if that Party so requests.

ARTICLE 14

Rule of Speciality

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third Party, or subjected to any other restriction of personal liberty in the territory of the Requesting Party for any offence committed before surrender other than—

- (a) an offence for which extradition was granted; and
- (b) any other offence in respect of which the Requested Party consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty.

2. A request for the consent of the Requested Party under the present Article shall be accompanied by the documents mentioned in paragraph 2 of Article 5 of the present Treaty and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of the present Article shall not apply if the person has had an opportunity to leave the Requesting Party and has not done so within forty-five (45) days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the Requesting Party after leaving it.

ARTICLE 15

Transit

1. When either of the Parties is to extradite a person from a third party through the territory of the other Party, the former Party should request permission for such transit from the latter. The request shall contain a description of the person being transferred, including his/her nationality, and a brief statement of the facts of the case. The Party on transit shall detain the person to be transferred until the transfer is continued provided that the request is received within ninety-six (96) hours of the unscheduled landing.

2. Authorisation for transit shall include authorisation for accompanying officials to obtain assistance from the authorities in the Party on transit in maintaining custody of the person so transferred.

3. Authorisation for transit shall not be required when air transfer is used and no landing occurs in the territory of that Party.

to prepare his or her defence or to have the case retried in his or her presence; and

- (e) if the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

3. The documents submitted in support of a request for extradition and the request itself shall be in the English language.

ARTICLE 6

Extradition by Consent

The Requested Party, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a Competent Authority.

ARTICLE 7

Certificate and Authentication

1. A request for extradition and the documents in support thereof, as well as documents or other materials supplied in response to such a request require certification or authentication.

2. A document is authenticated for the purpose of any request made by the Requesting Party for purposes of being admitted in evidence in proceedings—

- (a) in the case of a document that purports to be a deposition or statement on oath or affirmation given, declared or affirmed by a person in proceedings in the Requesting Party, the document shall to be certified by a Competent Authority of that Party to be the original document recording that testimony or a true copy of that original document;
- (b) in the case of a document that purports to have been received in evidence, or to be a copy of a document that has been received in evidence, in proceedings in the Party concerned, the document shall be certified by a Competent Authority of that Party to have been, or to be a true copy of, a document that has been, so received in evidence;
- (c) in the case of a document that certifies or states as a fact that a person has been convicted of an offence in the Party concerned, the document shall be certified by a Competent Authority of that country;
- (d) in the case of a document that purports to be an external warrant, the document shall be signed or be certified by a Competent Authority of the Party in which the document was issued; and

- (e) the document shall be authenticated by the oath of a witness or be sealed with an official seal of a Competent Authority.

ARTICLE 8

Additional Information

If the Requested Party considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such time as it specifies.

ARTICLE 9

Provisional Arrest

1. In case of urgency the Requesting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organisation, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 5 of the present Treaty, authorising the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The Requested Party shall decide on the application in accordance with its law and communicate its decision to the Requesting Party without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of the duration as set out in each Party's national laws from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of Article 5 of the present Treaty, has not been received.

5. The release of the person pursuant to paragraph 4 of the present Article shall not prevent re-arrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

ARTICLE 10

Conduct of Proceedings

1. The Requested Party shall deal with the request for extradition in accordance with the procedures provided by its own laws and shall promptly communicate its decision to the Requesting Party.

2. Reasons shall be given for any complete or partial refusal of the request.

ARTICLE 11

Surrender of the Person

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought. The Requested Party shall inform the Requesting Party of the length of time for which the person sought was detained with a view to surrender.

2. The Person shall be removed from the territory of the Requested Party within such reasonable period as may be agreed between the Parties and, if the person is not removed within the period, the Requested Party may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present Article shall apply.

ARTICLE 1

Postponed or Conditional Surrender

1. The Requested Party may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the Requested Party shall advise the Requesting Party accordingly.

2. The Requested Party may, instead of postponing surrender, temporarily surrender the person sought to the Requesting Party in accordance with conditions to be determined by the Parties.

ARTICLE 13

Surrender of Property

1. To the extent permitted under the law of the Requested Party and subject to the rights of third parties, which may be duly respected, all property found in the Requested Party that has been acquired as a result of the offence or that may be required as evidence shall, if the Requesting Party so requests, be surrendered if extradition is granted.

2. The said property may, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition agreed to cannot be carried out.

3. Where the said property is liable to seizure or confiscation in the Requested Party, the Requested Party may retain the property or temporarily hand it over to the Requesting Party.