

Extradition Treaty with Namibia, 2021

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

1. This Treaty may be cited as the Extradition Treaty with Namibia, 2021.

2. This Extradition Treaty was entered into with the Republic of Namibia on the 20th of July, 2006, and shall come into effect from the day 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 BETWEEN THE REPUBLIC OF ZIMBABWE AND THE  
REPUBLIC OF NAMIBIA ON EXTRADITION

PREAMBLE

The Republic of Namibia and the Republic of Zimbabwe (hereafter referred to as “the Parties”);

**RECOGNISING** the principles of sovereignty equality and territorial integrity of all States;

**DESIRING** to make more effective their cooperation in the prevention and suppression of crime by concluding the Treaty on Extradition;

**AFFIRMING** their respect for each other’s legal system and judicial institutions;

Have agreed as follows—

ARTICLE 1

Obligation to Extradite

The Parties agree to extradite to each other, upon request and in accordance with the provisions of Part 1 of this Treaty and subject to their respective laws relating to extradition, any person who is wanted in the territory of the requesting Party for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of a person who fled after he or she was sentenced by a competent court of law.

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### ARTICLE 2

#### Extraditable Offence

1. For the purpose of this Treaty, extraditable offences are offences, which are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least one 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 by a court of the requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six months of the 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 terminology;
  - (b) under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the conduct as presented by the requesting Party shall be taken into account.
4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, customs duty, or exchange regulation of the same kind as the law of the requesting Party.
5. 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 paragraphs 1 and 2 of this Article, the requested Party may grant extradition for latter offences provided that the person is to be extradited for at least one extraditable offence.

### ARTICLE 3

#### Mandatory Refusal of Extradition

1. Extradition shall not be granted in any of the following circumstances—
  - (a) if the offence for which extradition is requested is regarded by the executive authority in the Requested State as an offence of a political character;
  - (b) if there has been a final judgment rendered against the person claimed in the Requested State in respect of the offence or offences for which the person's extradition is requested;

- (c) if the competent authorities of the Requested State have decided either not to institute or to terminate proceedings against the person for the offence or offences in respect of which extradition is requested;
  - (d) if the person whose extradition is requested has, under the law of either Party, become immune for any reason from prosecution or punishment for the offence or offences for which his or her extradition is sought, including lapse of time or amnesty;
  - (e) if the Requested State had 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, political opinion, sex or status, or that person's position may be prejudiced for any of those reasons;
  - (f) if the offence for which extradition is requested is an offence under military law, which is not also an offence under criminal law;
  - (g) if there is insufficient proof, according to the evidentiary standards of the Requested State, that the person whose extradition is requested is a party to the offence;
  - (h) if the person whose extradition is requested has been or would be subjected in the Requesting State to torture or cruel, inhuman or degrading punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights; unless the Requesting State guarantees that the fugitive shall be afforded the aforesaid guarantees;
  - (i) if the person will be or may be liable to a death penalty or any other type of punishment that is not applied in the Requested State if he or she is so returned, unless the Requesting State guarantees that the death penalty or such other type of punishment will not be imposed or, if imposed, will not be carried out.
2. For the purpose of the application of paragraph 1(a) of this Article, reference to a political offence shall not include the following—
- (a) conduct that constitutes an offence mentioned in a multilateral agreement or scheme to which the Republic of Zimbabwe and the Republic of Namibia are parties and are obliged to extradite the person or submit the matter to appropriate authorities for prosecution;
  - (b) murder;
  - (c) rape or sexual assault;
  - (d) inflicting serious bodily harm or causing substantial property damage;
  - (e) kidnapping, abduction, hostage taking or extortion;

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- (f) unlawfully using or possessing explosives, firearms, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused;
- (g) an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any subparagraphs (a) to (f); and
- (h) an offence against terrorism whether under international or domestic laws of the Parties.

### ARTICLE 4

#### Discretionary Refusal of Extradition

Extradition may be refused in any of the following circumstances—

- (a) if the person whose extradition is requested is a citizen of the requested State. Where extradition is refused on this ground the requested State shall, if the Requesting State so requests, submit the case to its competent authorities to take appropriate action against the person in respect of the offence for which extradition had been requested;
- (b) if the competent authorities of the Requested State have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;
- (c) if a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose extradition is requested;
- (d) if the offence for which the extradition is requested has been committed outside the territory of either party and the law of the Requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;
- (e) if the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in whole or in part within that state, e.g. where the offence was committed on a vessel under its flag or on an aircraft registered under its laws at the time of the commission of the offence. Where extradition is refused on this ground, the Requested State shall, if the Requesting State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for which extradition had been requested;
- (f) if the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the Requesting State, 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

Presentation of Requests

1. Request for provisional arrest or extradition shall be made—
  - (a) in the case of the Republic of Zimbabwe as the Requested State, to the Minister of Home Affairs;
  - (b) in the case of the Republic of Namibia as the Requested State, to the Minister of Justice.
2. —
  - (a) requests for extradition shall be made in writing and communicated directly between the departments responsible for Justice and Home Affairs or the Parties, but nothing prevents either Party from using diplomatic channels;
  - (b) requests for provisional arrest shall be communicated as outlined in subparagraph (a) or through the facilities of the International Criminal Police Organisation (INTERPOL).

ARTICLE 6

Documents to be submitted

1. The following documents shall be submitted in support of a request for extradition—
  - (a) in all cases, whether the person is sought for prosecution or the imposition or enforcement of sentence—
    - (i) information about the description, identity, location and nationality of the person sought;
    - (ii) a statement prepared by a public official, including a judicial, prosecuting or corrections official, which describes briefly the conduct constituting the offence for which the extradition is requested, indicating the place and the date of the commission of the offence and which provides a description or a copy of the text of the legal provisions describing the offence and the applicable penalty. This statement shall also indicate—
      - (aa) that these legal provisions were in force both at the time of the commission of the offence and at the time of the extradition request;
      - (bb) whether or not the prosecution of the offence, the imposition or the enforcement of any applicable penalty is barred by reason of prescription; and
      - (cc) where the offence occurred outside the territory of the Requesting State, the legal provisions establishing its jurisdiction; and

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- (b) in the case of a person sought for an offence:
    - (i) the original or a certified copy of order of arrest or any document having the same force and effect, issued in the Requesting State;
    - (ii) a copy of the indictment, charge sheet or other charging document;
    - (iii) in the case of a request submitted by the Republic of Zimbabwe, by a statement or statements containing information which set out *prima facie* evidence of the commission of the offence in question;
    - (iv) in the case of a request submitted by the Republic of Namibia, by a statement or statements containing information which set out *prima facie* evidence of the commission of the offence in question;
    - (v) a judicial or prosecutorial authority shall certify that the evidence contained in the request is available for trial and is sufficient under the laws of the Requesting State to justify prosecution;
  - (c) in the case of a person sought for the imposition or enforcement of a sentence:
    - (i) a statement by a judicial, prosecuting or corrections official describing the conduct for which the person was convicted and attaching a copy of the document that records the conviction and, where applicable, sentence of the person. This statement shall be certified by the judicial, prosecuting or corrections official to be accurate; and
    - (ii) if a portion of the sentence has already been served, a statement by a public official specifying the portion of the sentence which remains to be served.
2. Any translation produced in the Requesting State of documents submitted in support of a request for extradition shall be admitted for all purposes in extradition proceedings.

### ARTICLE 7

#### Waiver

Extradition of a person may be granted pursuant to the provisions of this Treaty notwithstanding that the requirements of Article 6 have not been complied with provided that the person sought consents to being extradited.

### ARTICLE 8

#### Authentication of Supporting Documents

Where authentication of documents is required such authentication shall be governed by The Hague Convention Abolishing the Requirements of Legalisation for Foreign Public Documents of 5th October, 1961 or by any other manner prescribed by the law of the Requested State.

ARTICLE 9

Additional Information

1. If the Requested State considers that the information furnished in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.
2. If a person whose extradition is requested is in custody and the additional information furnished is not sufficient or if such information is not received within the period specified by the Requested State, the person shall be released from custody. However, such release shall not preclude the requesting State from submitting another request for the extradition of the person in respect of the same or any other offence.

ARTICLE 10

Provisional Arrest and Detention

1. In case of urgency, the competent authorities of the Requesting State may apply by any means that allows for a written record for the provisional arrest and detention of the person sought.
2. An application for provisional arrest and detention shall include the following—
  - (a) information about the description, identity, location and nationality of the person sought;
  - (b) a statement that a request for extradition will follow;
  - (c) a description of the nature of the offence and applicable penalty, with a brief summary of the offence;
  - (d) a statement attesting to the existence of a warrant of arrest or a conviction to which this Treaty applies and details thereof; and
  - (e) any other information that would justify provisional arrest in the Requested State.
3. The Requested State shall promptly inform the Requesting State of the measures taken pursuant to the application for provisional arrest.
4. Provisional arrest shall be terminated if the Requested State has not received the request for extradition and supporting documents through the channel provided for in Article 5 within sixty (60) days after the arrest. The competent authorities of the Requested State, insofar as that is permitted by the laws of that state, may extend that delay with regards to the reception of the documents referred to in Article 6. However, the person sought may be granted bail at any time, subject to the conditions deemed necessary to ensure that the person does not leave the country.

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5. The expiry of the sixty-day period does not preclude subsequent arrest and extradition if a request of extradition is subsequently received.

### ARTICLE 11

#### Decision on the Request

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate through the diplomatic channel its decision to the Requesting Party.
2. Reasons shall be given for any complete or partial refusal of the request.

### ARTICLE 12

#### Competing Requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or different offences, the Requested State shall determine to which of those States the person is to be extradited and shall notify those States of its decision.
2. In determining to which State a person is to be extradited, the Requested State shall have regard to all the relevant circumstances and, in particular, to—
  - (a) if the request relates to different offences, the relative seriousness of those offences;
  - (b) the time and place of commission of each offence;
  - (c) the respective dates of the requests;
  - (d) the nationality of the person sought;
  - (e) the ordinary place of residence of the person;
  - (f) whether the requests were made pursuant to an extradition Treaty;
  - (g) the interests of the respective States; and
  - (h) the nationality of the victim.

### ARTICLE 13

#### Postponement and Temporary Surrender

1. Where the person sought is being proceeded against or is serving a sentence in the Requested State for an offence other than that for which extradition is requested, the Requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested State shall inform the Requesting State of any postponement.

2. To the extent permitted by its laws, where a person referred to in paragraph 1 of this Article has been found extraditable, the Requested State may temporarily surrender the person sought for the purposes of prosecution to the Requesting State in accordance with conditions to be determined between the Parties. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against him or her. A person who is returned to the Requested State following a temporary surrender shall be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of the Treaty.

#### ARTICLE 14

##### Surrender of Property

1. To the extent permitted under the laws of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.
2. The property mentioned in paragraph 1 of this Article shall be surrendered even if extradition having been granted, cannot be carried out owing to the death or escape of the person sought.
3. When the said property is liable to seizure or confiscation in the Requested State, it may retain it or temporarily hand it over.
4. Where the law of the Requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the Requested State free of charge after the completion of the proceedings, if that Party so requests.

#### ARTICLE 15

##### Rule of Specialty

1. A person who has been extradited under this Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restrictions of personal liberty in the territory of the Requesting State for any offence committed before surrender other than—
  - (a) an offence for which extradition was granted;
  - (b) an offence in respect of which the Requested State consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with this Treaty;
  - (c) any other offence in respect of which the person consents.

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2. A request for the consent of the Requested State under paragraph 1 of this Article shall, if required by the requested State, be accompanied by the relevance documents mentioned in Article 6 as well as a record of any statement made by the extradited person with respect to the offence concerned.
3. Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the Requesting State and has not done so within forty-five 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 State after leaving it.

### ARTICLE 16

#### Transit

1. Where the person is to be extradited from the Requested State through the territory of another State (hereinafter called the “State of transit”) the Requesting State shall request the other State of transit to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other state is scheduled.
2. Upon receipt of such request, which shall contain relevant information, the state of transit shall deal with this request pursuant to its own laws.
3. The state of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.
4. In the event of an unscheduled landing, the state of transit may, at the request of the escorting officer, hold the person in custody for 72 hours, pending receipt of the transit request to be made in accordance with paragraph 1 of this Article.

### ARTICLE 17

#### Costs

1. The Requesting State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.
2. The Requested State shall also bear the costs incurred in its territory in connection with the seizure and surrender of property, or the arrest and detention of the person whose extradition is sought until surrender.
3. The Requesting State shall bear the costs incurred in conveying the person from the territory of the Requested State, including transit costs and costs of transfer of property.

S.I. 226 of 2021

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ARTICLE 18

Entry into Force

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged as soon as possible.
2. The Treaty shall enter into force on the thirtieth day after the day on which the instruments of the ratification are exchanged.

ARTICLE 19

Application

This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

ARTICLE 20

Consultation

The Minister of Home Affairs of Zimbabwe and the Minister of Justice of Namibia or persons designated by them may consult with each other directly or through the facilities of the International Criminal Police Organisation (INTERPOL) in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

ARTICLE 21

Termination

Either party may denounce the Treaty by giving notice in writing to the other party. Such denunciation shall take effect six months following the date on which such notice is received by the other party.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised by their respective Governments, have signed this Treaty.

**DONE** in duplicate in the English language at Harare on this 20th day of July, 2006.

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Acting Minister of Home Affairs  
and Cultural Heritage  
for the Republic of Zimbabwe

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Minister of Justice  
for the Republic of Namibia

