



PROTOCOL

ON

THE INTER-STATE TRANSFER OF

SENTENCED OFFENDERS

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Preamble

We, the Heads of State or Government of:

The Republic of Angola

The Republic of Botswana

The Union of Comoros

The Democratic Republic of Congo

The Kingdom of Eswatini

The Kingdom of Lesotho

The Republic of Madagascar

The Republic of Malawi

The Republic of Mauritius

The Republic of Mozambique

The Republic of Namibia

The Republic of Seychelles

The Republic of South Africa

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

CONSIDERING that the aim of the Southern African Development Community (SADC) is to further socio-economic cooperation and integration, as well as cooperation in the field of justice and law;

CONSIDERING that such co-operation should contribute towards the social reintegration of citizens who are sentenced offenders as a result of criminal offences they committed in foreign countries;

CONVINCED that this aim can best be achieved by allowing for the transfer of sentenced offenders to serve their sentences in their home countries;

BEARING IN MIND the need to observe fully the respect for human rights, as laid down in universally recognised principles;

ALSO BEARING IN MIND the sovereignty, independence and jurisdiction of each Member State; and

ACTING on recommendations of SADC Council of Ministers,

HEREBY AGREE AS FOLLOWS:

**Article 1
Definitions**

In this Protocol, unless the context otherwise indicates otherwise, a word defined in the SADC Treaty bears the same meaning, and:

“administering state” means the State Party to which the sentenced offender may be or has been transferred to in order to serve his or her sentence;

“duly appointed representative” means a person or entity who, in accordance with the laws of the State Party of nationality of the sentenced offender or an international treaty entered into by the State Parties, is authorised to act on behalf of the sentenced offender;

“judgment” means a decision or order of a court or tribunal imposing a sentence;

“Ministerial Committee of the Organ” means the Committee of Ministers established under Article 10 (A) 4 of the Treaty;

“SADC Tribunal” means the Tribunal established under Article 16 of the Treaty, as amended;

“sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate or indeterminate period of time in the exercise of its criminal jurisdiction;

“sentenced offender” means a person who is serving a sentence in the sentencing state or, after his or her transfer, in the administering state;

“sentencing state” means the State Party in whose court or tribunal the sentence was imposed on the sentenced offender who may be, or has been, transferred to the other Party;

“signatory state” means a State that has signed this Protocol;

“State Party” means a Member State that has ratified or acceded to this Protocol;

“transfer” means the act of transferring a sentenced offender from a sentencing state to an administering state; and

“Treaty” means the Treaty establishing the Southern African Development Community of 1992, as amended.

Article 2
General Principles

1. The State Parties undertake to afford each other co-operation in respect of the transfer of sentenced offenders in accordance with the provisions of this Protocol.
2. A person sentenced to imprisonment in the territory of one State Party may be transferred, in accordance with the provisions of this Protocol, to the territory of another State Party in order to serve the remainder of that sentence in the territory of that other State Party.
3. A transfer may be requested by any State Party, the sentenced offender or his or her duly appointed representative.

Article 3
Requests and Replies

1. Requests, applications, replies and any other communication under this Protocol shall be made in writing and, unless the language of communication between the involved State Parties is the same, accompanied by a translation into the language of the State Parties involved in the transfer.
2. Requests, applications, replies and any other communication under this Protocol shall be communicated through diplomatic or other previously agreed channels.
3. The administering state shall, within a reasonable time of no longer than ninety (90) working days, inform the other party of its decision to grant or refuse a request for transfer.
4. The administering state may request additional information about the request, where the information furnished is considered insufficient to make a decision.

Article 4
Obligation to Furnish Information

1. A sentenced offender to whom this Protocol is applicable shall be informed of its contents, as well as the legal effects of his or her possible transfer, and shall be provided with an application form as prescribed in domestic laws of the sentencing state.

2. Where a request for transfer is submitted to the sentencing state, the latter shall, within reasonable time, notify the administering state of such request from the date on which the sentence has become enforceable.
3. For the purpose of enabling a decision to be made, the sentencing state shall send the following information to the administering state:
 - (a) the name, date and place of birth of the sentenced offender;
 - (b) his or her address, if any, in the administering state;
 - (c) certified copy of the judgement;
 - (d) the nature, duration and date of commencement of the sentence; and
 - (e) whenever appropriate, any medical or social reports on the sentenced offender, information about his or her medical or other treatment in the sentencing state and any recommendation for his or her further treatment in the administering state.
4. The sentenced offender shall be informed, in writing, of all steps taken and the decision made in respect of his or her transfer.

Article 5 Supporting Documents

1. The State Parties undertake to provide each other with documents or information, upon request, in support of an application or request for a transfer, unless either State has already indicated that it does not agree to the transfer.
2. The administering state shall provide to the sentencing state:
 - (a) a document or statement indicating whether the sentenced offender is a citizen of that State;
 - (b) a certified copy of the relevant law of the administering state which provides that the act or omission on account of which the sentence has been imposed constitute a criminal offence, or would constitute a criminal offence if committed on its territory;
3. The sentencing state shall provide to the administering state:
 - (a) a certified copy of the judgment;
 - (b) a statement indicating how much of the sentence has already been served, including information on remission of the sentence and any other factor relevant to the enforcement of the sentence; and

- (c) a statement by the sentenced offender or his or her duly appointed representative giving the consent to the transfer.
4. Either State Party may ask to be provided with any of the documents or statements referred to in paragraph 2 or 3 above before making a request or taking a decision on whether or not to agree to a transfer.

Article 6

Grounds for Transfer

1. A transfer may take place:
- (a) if the sentenced offender is a national of the administering state;
 - (b) if the sentence has become enforceable in the sentencing state and is no more subject to appeal or review;
 - (c) if not less than six (6) months of the sentence have still to be served on the date of receipt of the request for transfer, unless otherwise agreed under exceptional circumstances;
 - (d) if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering state or would constitute a criminal offence if committed on its territory, regardless of any terminological differences;
 - (e) if there are no legal barriers which include pending cases, that bar the sentenced offender from serving the remainder of the sentence, including under the statute of limitations;
 - (f) if the sentencing state and the administering state unambiguously consent to the transfer; and
 - (g) if written consent has been given by the sentenced offender or his or her duly appointed representative.
2. The sentencing state shall afford an opportunity to the administering state to verify, through a designated official, that the consent is given voluntarily and in writing with full knowledge of the legal consequences thereof, in accordance with the law of the sentencing state.

Article 7
Transfer of a Sentenced Offender

1. The administering state shall endeavour to incarcerate the sentenced offender under similar conditions as were applicable to the offender at the time of transfer by the sentencing state.
2. The commitment warrant of prisoners, record and any correspondence related to sentence shall be transferred with the sentenced offender.

Article 8
Non Bis In Idem

Once transferred, the sentenced offender shall not be tried or convicted for the same acts resulting in the sentence being imposed on him or her.

Article 9
Implications of transfer on Sentencing State

1. The handing over of a sentenced offender for purposes of a transfer from the authorities of the sentencing state to the authorities of the administering state shall take place at a place agreed to between themselves.
2. Taking into charge of the sentenced offender by the authorities of the administering state shall have the effect of suspending the enforcement of the sentence in the sentencing state.
3. Notwithstanding the provision of paragraph 2 above and unless otherwise agreed between the sentencing state and the administering state, the laws of the sentencing state shall continue to be applicable to the transferred sentenced offender while such offender is still in the territory of the sentencing state.

Article 10
Enforcement

1. The sentenced offender shall complete the sentence imposed on him or her by the sentencing state, in accordance with the legal provisions of the administering state.
2. In so far as the administering state is concerned, the type and length of the penalty must be consistent with those stated in the sentence such that the sentenced offender may not be subjected to a worse off sentence than that imposed by the sentencing state.

Article 11
Pardon, Amnesty, Commutation and Parole

The administering state may grant a pardon, amnesty, parole or commutation of the sentence, pursuant to its constitution or other laws.

Article 12
Information on enforcement

1. The administering state shall provide information to the sentencing state concerning:
 - (a) the completion of the sentence by the sentenced offender;
 - (b) the release of the sentenced offender as a result of pardon, amnesty or commutation of the sentence; or
 - (c) the escape of the sentenced offender from custody.
2. The sentencing state may, at any time, request a special report from the administering state concerning the enforcement of the sentence.

Article 13
Transit

1. Where two State Parties agree to the transfer of a sentenced offender, all State Parties shall afford co-operation in facilitating the transit of the sentenced offender through their territories.
2. A request for transit shall be made by the State Party intending to make the transfer.
3. A State Party, which has received a request for transit may keep the sentenced offender in custody only during the period required for the transit through its territory.
4. A request for transit may be dispensed with when the sentenced offender is transported by air and a stopover is not envisaged.

Article 14
Costs

The cost of transfer of a sentenced offender, including all expenses connected with the transit, shall be negotiated between the concerned States Parties.

Article 15
Bilateral Agreements

State Parties may to enter into bilateral agreements amongst themselves for the effective implementation of this Protocol.

Article 16
Relations with other States, Regional and International Organisations

1. This Protocol shall not derogate from existing agreements between a State Party and another State Party or a non-State Party or an international organisation, other than SADC, provided that such agreements are not in conflict with the spirit and provisions of this Protocol.
2. Where a State Party is a Party to an agreement which conflicts with this Protocol, it shall endeavour to take necessary steps to amend such agreement in order to ensure the continuity of its implementation.

Article 17
Confidentiality

1. State Parties undertake to keep strictly confidential in perpetuity any information obtained under this Protocol, and not to use it to the detriment of or against the interests of any Member State.
2. The confidentiality shall remain in force even after withdrawal of any State Party to the Protocol.

Article 18
Settlement of Disputes

1. State Parties shall strive to resolve any dispute arising between or among them regarding the application, interpretation or implementation of this Protocol amicably.
2. Any dispute arising between State Parties for the application, interpretation or implementation of this Protocol which cannot be settled amicably shall be referred to the Ministerial Committee of the Organ.
3. Any dispute arising from the application, interpretation or implementation of this Protocol which cannot be settled by the Ministerial Committee of the Organ shall be referred to the SADC Tribunal.
4. The Decision of the SADC Tribunal shall be final and binding.

Article 19

Signature

This Protocol shall be signed by the Heads of State or Governments of Member States or their duly authorised representatives.

Article 20

Ratification

This Protocol shall be ratified by the Member States in accordance with their respective constitutional procedures.

Article 21

Depositary

1. The original texts of this Protocol, and all instruments of ratification and accession, shall be deposited with the Executive Secretary, who shall transmit certified copies to all Member States in English, French and Portuguese.
2. The Executive Secretary shall register this Protocol with the Secretariat of the United Nations and the African Union Commission.
3. The Executive Secretary shall notify the Member States of any other act, declaration, notification or communication relating to this Protocol.

Article 22

Entry into force

This Protocol shall enter into force thirty (30) days after the deposit of the Instruments of Ratification by two-thirds of Member States.

Article 23

Accession

This Protocol shall remain open to accession by any Member State.

Article 24

Withdrawal

1. Any State Party may at any time withdraw from this Protocol by means of a written notice to that effect to the Executive Secretary.
2. This Protocol shall cease to have legal effect on a State Party twelve (12) months from the date of the notice to the Executive Secretary under paragraph 1.

3. A withdrawal from this Protocol shall not affect any transfer process already initiated nor the enforcement of the sentence of any sentenced offenders who may have been transferred under this Protocol.

Article 25
Amendments

1. Any State Party may propose an amendment to this Protocol.
2. Proposals for any amendment to this Protocol shall be made to the Executive Secretary who shall duly notify all State Parties of the proposed amendments, at least thirty (30) days in advance, for consideration by State Parties to this Protocol.
3. An amendment to this Protocol shall be adopted by decision of three-quarters of all the State Parties.

IN WITNESS WHEREOF, WE, the Heads of State or Government, or our duly authorised representatives, of Member States, have signed this Protocol.

Done at DAR ES SAALAM, on the 18TH day of AUGUST 2019,
in three (3) original texts, in the English, French and Portuguese languages, all texts
being equally authentic.


REPUBLIC OF ANGOLA

REPUBLIC OF BOTSWANA


UNION OF COMOROS

DEMOCRATIC REPUBLIC OF CONGO


KINGDOM OF ESWATINI


KINGDOM OF LESOTHO


REPUBLIC OF MADAGASCAR


REPUBLIC OF MALAWI


REPUBLIC OF MAURITIUS


REPUBLIC OF MOZAMBIQUE


REPUBLIC OF NAMIBIA

REPUBLIC OF SEYCHELLES

REPUBLIC OF SOUTH AFRICA


UNITED REPUBLIC OF TANZANIA

REPUBLIC OF ZAMBIA


REPUBLIC OF ZIMBABWE