

**ORGANIZATION OF  
AFRICAN UNITY**

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ADDIS ABABA

**ORGANISATION DE L'UNITE  
AFRICAIN**

SECRETARIAT  
B. P. 3243

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COUNCIL OF MINISTERS  
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CONCLUSION OF EXTRADITION TREATIES OR  
CONVENTIONS AMONG AFRICAN COUNTRIES



CM 0167

MICROFICHE

CONCLUSION OF EXTRADITION TREATIES OR  
CONVENTIONS AMONG AFRICAN COUNTRIES

Proposed by Ethiopia.

Explanatory Note

The Imperial Ethiopian Government submitted two memoranda on this subject.

The first Memorandum concerning Extradition Problems between African States was circulated to Member States on 13th January 1967. - CM/167 (1)

The Second Memorandum concerning "the Signing of Extradition Treaties or Convention by African Countries" is being circulated for the first time in this document.  
- CM/167 (2)

Both Memoranda are reproduced herein.

COPY

M E M O R A N D U M

On the Extradition Problems between the African countries

1. General

On several Interpol conferences the subject of extradition was raised and our delegation had to face some questions and enquiries not always being in an easy position. Having realized the seriousness of the problems the Secretary General of the International Criminal Police Organization requested us to submit the case to the African Heads of the State conference.

2. The problem generally concerned those fugitive offenders who were taking advantage of modern means of communication, which were increasingly rapid and managed to escape from justice by flying to countries, where there was no treaty of extradition or where there was not extradition machinery to implement the provisions of an extradition treaty.

THE CENTRAL POINTS WERE :

- a) international co-operation in arresting criminals.
- b) criminal record of foreigners travelling from country to country in order to recognize the habitual criminal.

3. There is no doubt that the existence of an extradition treaty tends to hold back criminals and potential criminals. Of course, where extradition treaties do not exist, means of helping the Police Forces of other countries - and Interpol member countries in particular, must be found in order to discover the whereabouts of persons suspected of crimes for one reason or another.

4. There are states where, although no extradition law or extradition exists, criminals are extradited by simply expelling wanted criminals without any mention of extradition, but this is not a satisfactory solution of the problem.

5. ~~Another problem arises from the very fact that in different~~ countries, different law and procedure on extradition exist, which very often contradict the law and procedure in other countries thus unabling extradition.

6. In some countries, although treaties had been in force for many years (INDIA) at praotical level it was difficult if not im-possible to have fugitive offenders extradited. There were no dif-ficulties as far as police cooperation is concerned, but there were legal or may be political obstacles, which were difficult to overcome. Very often Ministers of Foreign Affairs, were accepting or rejaecting every request for extradition on its own merits.

### Conclusion

7. In order to find proper ways to meet the problem of extra-dition, if not generally for African States, at least an extradition law and procedure has to be promulgated, which will go beyond existing multi-lateral and bilateral extradition treaties and will be based on the principle of reciprocity having force for articles of the Penal Code specifically mentioned in the extradition law.

8. Summing up this memorandum it is suggested as follows :

- a) An extradition Ordinance should be drafted and promulgated,
- b) Extradition treaties with other states should be signed,
- c) Ways and means to be established for effective co-operation, concerning fugitive offenders escaping from justice in cases where there are no extradition treaties.

C O P Y

MEMORANDUM CONCERNING THE SIGNING OF EXTRADITION  
TREATIES OR CONVENTION BY AFRICAN COUNTRIES.

Repeatedly, delegates from African countries at General Assemblies of the I.C.P.O. - Interpol have commented on the difficulties they encounter in combatting international crime on their continent on account of the inadequate number of extradition agreements which have been concluded among the countries there.

The situation was described at the 33rd General Assembly session (Caracas - 1964), at the 2nd African Regional Conference (Lagos - 1965) and at the 35th General Assembly session (Berne-1966).

The International Criminal Police Organization feels that in order to provide a remedy for this problem the African countries should sign bilateral treaties or - preferably - adopt a multilateral convention binding (as its name implies) a number of countries.

The aims of the present memorandum are: explaining why O.A.U. member countries are strongly advised to subscribe to a multilateral convention and planning a general approach designed to achieve this result.

I. The reasons why a multilateral extradition convention is preferable.

In order to bring out the reasons for this preference clearly, it is necessary to review some of the main features of extradition and then to examine the respective merits of the various legal sources of extradition.

I, 1 General features of extradition.

Extradition is a practice born of necessity - the necessity for seeing that an individual who has been charged with or convicted of a serious crime in country A and who has fled to country, B can be handed over by the authorities of the second country to the authorities of the first to stand trial or to serve a sentence.

The preceding statement implies that:

- Extradition is an international procedure involving two sovereign states;
- 
- Extradition can involve arresting an individual and handing him over to another state for either of two quite separate reasons: to stand trial or to serve a sentence already handed down.

In essence, extradition can be defined as the act whereby one state hands over a charged or convicted individual to another state which is competent to try him or to make him serve a sentence.

In form, extradition is the procedure by which it is possible for this act to be accomplished.

I, 2 The main sources of extradition law : their relative merits.

The best-known statutory sources for extradition are national extradition laws, bilateral extradition treaties and multilateral extradition agreements or conventions.

I, 3 National extradition laws:

The term " national extradition laws" includes any legislative measure by which a country independently defines the circumstances and procedural requirements governing extradition of person discovered

on its territory, in the even of ~~that person's extradition~~ being requested by a country with which it has no extradition agreement. In this situation, the country requesting extradition must comply with the conditions set out in the national laws of the requested country. These national laws sometimes involve rather stringent requirements because they are unilateral declarations; however, they are worthwhile in that they codify traditions and practices, and sometimes, fill a legal vacuum.

#### I,4 Extradition treaties.

Extradition requests are much more likely to be satisfied when the two countries involved - requesting and requested - have signed a treaty setting out the terms of an agreement in this field.

Extradition treaties establish the conditions and the procedure governing extradition between two, or among several, countries and propose solutions for the main complications which are liable to arise in connection with extradition under the terms of the agreement. When a treaty has been signed and ratified, it becomes the rule binding all parties.

There are important differences between bilateral treaties and multilateral treaties (or conventions).

#### I,5 Pilateral treaties.

Any two countries, and not necessarily neighbouring ones, can sign a treaty setting out the terms under which extradition will be reciprocally granted. Bilateral treaties have the advantage of being adapted to the legal and practical situation existing between the two Contracting Parties.

But it is easy to see how much time and work a country would have to devote to reaching bilateral agreements with all the other countries in which persons might seek refuge after committing a serious crime or crimes on its territory. In addition, there will be differences in the various bilateral treaties and, as a result, there will be as many sets of regulations governing extradition as there are countries with which extradition treaties have been signed.



These drawbacks lend force to arguments in favour of multilateral treaties.

I, 6 Multilateral treaties (conventions).

Groups of states in the same geographical or cultural community or with common spheres of activity find that these factors provide a favourable basis for agreeing on a common set of rules governing extradition among them; extradition laws are then incorporated in a multilateral treaty (convention).

Negotiation of an extradition convention naturally requires more time and work than does preparation of a bilateral treaty because more different points of view have to be taken into consideration. But a convention has a much broader aim: establishing an identical extradition system for an entire group of countries. Moreover, the amount of time and work taken are still far less than would be required to obtain a series of bilateral agreements. Finally, any country which is a party to the convention can refer to the single treaty instrument and there find uniform conditions governing extradition from any other country which is a party to the convention; this makes application of the treaty very simple.

For these reasons, a multilateral extradition convention can be strongly recommended.

The Organization of African Unity seems to be a suitable body to call a conference and launch the discussions which could lead to an extradition convention being signed by its member countries.

II. The procedure to be followed in drawing up an Extradition Convention.

A number of conditions must be satisfied in order to prepare a convention successfully. First of all, there must be genuine desire on the part of the negotiating countries to reach an agreement. There are two other prerequisites for fruitful negotiations: preliminary meetings and adequate documentation to provide a basis for discussions at these meetings.



## II. 1 Preliminary meetings.

The object of these meetings is to reach a draft text of the extradition convention and to make sure that the text is acceptable to all the participating countries.

The first step in this direction would probably be to call a Conference of representatives of interested countries; this Conference could then set up a committee of 6 - 8 legal experts to prepare a proposal for a draft Convention. This committee could meet as many times was necessary. Once the proposed draft text was ready, it would be submitted to the plenary session of the Conference of interested countries. The Conference would discuss the proposed text, comment on it and instruct the Expert Committee to make any necessary changes. The proposed draft convention could be sent back to the Committee as many times as necessary until it emerged in a form which was acceptable to all, or at least a great majority of, the countries represented at the Conference.

At this stage, the text becomes a "Draft", which is submitted to the Governments (usually, the Ministries of Justice and of Foreign Affairs) of the countries involved for study.

When every Government has communicated its approval and any reservations (on points which have been treated in a way which that Government cannot accept), plenipotentiaries of the countries involved can be convened for a signatory meeting. Any reservations formulated by a country are set out above the signature of its plenipotentiary. Naturally, such reservations should be avoided wherever possible because they weaken the force of the treaty and limit its scope.

After the Convention is signed, the text must be ratified by each signatory country. Only when the minimum necessary number of ratifications has been received (the number is fixed in the text of the Convention) does the Convention go into effect - first, in the countries which have ratified, then in other countries as they ratify it.

II, 2 Bases for ; discussion.

All countries interested in the drawing up of the convention could present their own draft texts. These texts, would then be handed over to the drafting Committee as a basis for its discussions.

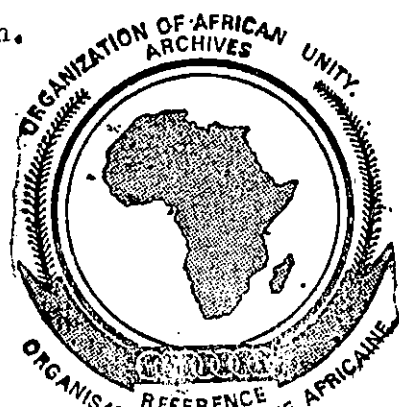
In addition, the drafting Committee could obtain the texts of various multilateral conventions currently in force and study them in order to see which articles - modified, of course, according to the needs and special features common to the member countries of the Organization for African Unity - could be adopted.

We would suggest as an example the European Extradition Convention drafted under the auspices of the Council of Europe; the articles follow each other in a perfectly rational order and the text itself is very clearly written. This could be a very useful basis for the drafting Committee to work on and we enclose a copy. If you find you would like more, you can write directly to the Department de la documentation - siege du Conseil de l'Europe - STRASBOURG (Bas Rhin) - France.

In another connection quite apart from the drafting of the convention, we should like to draw your attention to the importance of national extradition laws for determining the conditions under which an extradition request may be granted when the country to which, the request is sent has no treaty of any kind with the requesting country. We have already indicated the point of a need for extradition laws.

In our opinion, the O.A.U. Conference should invite all those members whose legislation does not include an extradition law to adopt one as soon as possible

A fair number of countries have such laws governing extradition when requests are received from countries with which no treaty has been signed. Of these national extradition laws, the most useful for reference purposes are probably those of Argentina, Belgium, France, Federal Germany, Japan and Sweden.



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COUNCIL OF MINISTERS  
Eleventh Ordinary Session  
Algiers, September 1968.

CM/167/6/Add.1

GENERAL CONVENTION ON LEGAL CO-OPERATION

GENERAL CONVENTION ON LEGAL CO-OPERATION

The Government of the Republic of Cameroon  
The Government of the Central African Republic  
The Government of the Republic of Chad  
The Government of the Republic of the Congo  
The Government of the Republic of Dahomey  
The Government of the Republic of Gabon  
The Government of the Republic of the Ivory Coast  
The Government of the Malagasy Republic  
The Government of the Islamic Republic of Mauritania  
The Government of the Republic of Niger  
The Government of the Republic of Senegal  
The Government of the Republic of Upper Volta

Considering the similarity of the general principles upon which are founded the laws and legal systems of the High Contracting Parties, which pursue the same ideals of justice and freedom;

Considering their mutual desire to maintain and consolidate the bonds between them, particularly in legal matters,

Have agreed as follows:

GENERAL PROVISIONS

Article 1 The High Contracting Parties hereby institute a regular exchange of information on legal organization, legislation and jurisprudence.

Article 2 The High Contracting Parties undertake to take all measures necessary for the harmonization of their respective trade laws as far as is compatible with the needs that may arise from circumstances peculiar to each High Contracting Party.

Article 3 Disputes on the sole question as to whether a person has the nationality of a state fall within the competence of the law courts of that State.

PART ONE  
ACCESS TO COURTS

Article 4, The nationals of each of the High Contracting Parties shall have, on the territory of the others, free and unhampered access to administrative and law courts, to take proceedings and defend their rights. No security or deposit of any description shall be levied upon them either because of their foreign nationality or because they have no domicile or residence in the country.

The preceding paragraph applies to juristic persons incorporated or authorized under the laws of one of the signatory countries, without prejudice to the provisions of public order in the country where the action is filed.

Article 5 Barristers called to the bar in one of the States signatories to the present convention may plead in the courts of the other States in a given case on condition that they conform to the legislation of the State in which is established the court before which the case is laid.

Article 6 The nationals of each of the High Contracting Parties shall enjoy, on the territory of the others, the benefit of legal aid in the same way as nationals of that State, on condition that they abide by the law of the country in which the aid is requested.

Article 7 A certificate of poverty shall be delivered to the applicant by the authorities of his place of habitual residence if he resides in one of the countries parties to the present convention.

If the applicant resides in another country, the certificate shall be delivered by the consular authorities of his country in the country of his residence. When the applicant resides in the country in which the request is made, information may be requested from the authorities of the country of which he is a national.

PART II  
TRANSMISSION AND DELIVERY OF LEGAL AND  
EXTRA-JUDICIAL DOCUMENTS

Article 8 Legal and extra-judicial documents concerning civil, commercial, criminal and administrative matters intended for persons residing on the territory of one of the High Contracting Parties, shall be transmitted direct by the competent authority to the Director of Public Prosecutions

under whose jurisdiction the addressee of the document falls.

The provisions of the present article do not exclude the right of the Contracting Parties to arrange for their representatives or delegates to remit directly any legal and extra-judicial documents intended for their nationals.

Article 9. The document shall contain the following details:

Name of the authority issuing the document;  
Type of document involved;  
Name and standing of the parties;  
Name and address of addressee  
and, in criminal cases:  
Designation of the offense.

Article 10. If the requested authority is not competent it shall automatically transmit the document to the competent authority and shall so inform the requesting authority immediately.

Article 11. The requested authority shall confine itself to remitting the document to the addressee.

If the latter accepts it willingly, proof of delivery shall either be by receipt dated and signed by the addressee, or by a certificate issued by the requested authority, recording the fact, method and date of delivery. One or other of these documents shall be sent direct to the requesting authority.

If the addressee refuses to take delivery of the document, the requested authority shall return it immediately to the requesting authority, indicating the reason why it could not be delivered.

The certificate recording the addressee's refusal shall be considered as equivalent to delivery of the document.

Article 12. Delivery of legal and extra-judicial documents shall not give rise to reimbursement of any costs.

Article 13. The provisions of the preceding articles shall not preclude, in civil and commercial matters:

- 1) The right to send documents directly by post to parties concerned who are living abroad;

- 2) The right of parties concerned residing in the territory of one of the High Contracting Parties, to have documents served or delivered by notaries public, to persons residing in one of the States.

### PART III

#### TRANSMISSION AND EXECUTION OF ROGATORY COMMISSIONS

Article 14. Rogatory Commission concerning civil, commercial, criminal and administrative affairs, for execution on the territory of one of the High Contracting Parties, shall be executed by the judiciary authorities.

They shall be sent directly to the competent public prosecutor's office. If the requested authority is incompetent it shall automatically transmit the rogatory commission to the competent authority and shall so inform the requesting authority immediately.

The provisions of the present article shall not preclude the right of the Contracting Parties to have rogatory commissions concerning the hearing of their ~~nationals~~ executed directly by their representatives or delegates.

Article 15. The authority requested may refuse to execute a rogatory commission if, under the law of the State, it is not within its competence or if it is of such a nature as to prejudice the sovereignty, security or public order of the State in which it is to be executed.

Article 16. Persons who are required as witnesses shall be invited to appear by ordinary administrative notification. If they refuse to accede to this request, the authority requested shall resort to the coercive measures provided for in the law of its country.

Article 17. At the express request of the requesting authority, the requested authority shall:

- 1) Execute the rogatory commission in a special form if such is not contrary to the laws of the State where the rogatory commission is executive;
- 2) Within the prescribed time, inform the requesting authority of the date and place where the rogatory commission shall be executed, so that all the parties concerned may attend, within the framework of the legislation of the State of the requested authority.

Article 18.

Execution of rogatory commissions shall not give rise to reimbursement of any costs except expert's fees.

PART IV

APPEARANCE OF WITNESSES IN CRIMINAL CASES

Article 19. In a criminal case if the personal appearance of a witness is necessary, the Government of the State where the witness resides shall oblige the witness to comply with the summons to appear. In such cases, the travel and subsistence expenses from the witness's residence shall be at least equal to those granted under the rules and regulations of the State where the hearing is to take place. The witness shall be advanced all or part of his travel expenses upon request by the consular authorities of the State of the requesting authority. No action shall be taken against any witness summoned in one of the States and appearing voluntarily before the magistrates of another State, nor shall he be imprisoned because of acts or convictions that took place before his departure from the territory of the State of the requested authority. Such immunity shall cease thirty days from the date which the evidence ends and on which the witness shall be free to return.

Article 20. Requests for detainees to be sent as witnesses shall be sent directly to the competent prosecutor's office.

The request shall be complied with unless there are special reasons against it and on condition that the said detainees are returned in the shortest possible time.

PART V

CRIMINAL RECORDS

Article 21. The High Contracting Parties shall notify each other of the entries made in criminal records as a result of sentences passed by their respective jurisdictions on nationals of the other parties and on persons born in the territory of the other States.

Extracts from criminal records shall be sent directly from one public prosecutor's office to the other.



Article 22. In the case of proceedings in the courts of one of the High Contracting Parties, the public prosecutor's office under the jurisdiction of the said courts shall obtain direct from the competent authorities of the other parties an extract from the criminal record of the person against whom the proceedings are taken.

Article 23. Apart from the case of proceedings, when the legal or administrative authorities of one of the High Contracting Parties wish to have an extract from the criminal records of another party, they shall obtain it direct from the competent authorities in the cases and within the limits provided for in the latter's legislation.

## PART VI

### CIVIL STATUS AND LEGISLATION

Article 24. Records of civil status drawn up by the consular authorities of any of the High Contracting Parties on the territory of another High Contracting Party shall be communicated to the national authorities of the country in which they are drawn up. In the same way, when the national registry offices of any of the High Contracting Parties enter a record of civil status concerning a national of one of the other contracting Parties, they shall communicate it to the consular authorities of the aforesaid State.

Article 25. Each Government shall issue to the Governments of the other Contracting Parties certified copies of the records of civil status concerning their nationals drawn up on its territory.

Upon examination of such copies and extracts, the Government of the State of which the person mentioned in the record is a national shall make the appropriate entries in the margins of the birth or marriage certificates of the persons concerned in its civil status registers. Entries concerning sentences and arrests shall, in the absence of an extension of judgement be made for information purposes only.

Article 26. The competent authorities of the High Contracting Parties shall issue free of charge certified copies of civil status records drawn up in the respective territories of each state whenever so requested for duly specified administrative purposes or for their indigent nationals.

They shall also issue free of charge when so requested for specified administrative purposes certified copies of civil status records concerning foreigners of a third nationality, drawn up in the territories of the respective States.

Civil status records drawn up or transcribed in diplomatic or consular offices shall be assimilated to civil status records drawn up on the territories of the respective States.

Issuance of a certified copy of a civil status record shall in no way prejudice the nationality of the persons concerned in the eyes of the States.

Article 27. Requests from the authorities of the requesting State shall be transmitted to the authorities of the requested State by the representatives of the High Contracting Parties or their delegates locally empowered.

A summary description of the grounds for the request shall be given.

Article 28. Civil status records "within the meaning of Articles 24, 25, 26 and 27 above, include the following:

Birth Certificates

Certificates of the birth of still born children

Affiliation certificates drawn up by

Civil status officers;

Certificates of legitimation;

Marriage certificates;

Death certificates;

Transcripts of divorce and separation decrees

Transcripts of rulings, sentences and decrees concerning personal status.

Article 29. The following documents shall be admissible without authentication in the territories of the High Contracting Parties:

Certified copies of decisions, rulings, judgements decreed and other legal acts of the courts of the contracting States;

Affidavits, written statements or other legal documents registered or deposited with such courts;

Deeds executed and authenticated by a notary;

Life certificates for annuitants,

The above-mentioned documents must bear the signature and official seal of the authority authorized to issue them, and, in the case of certified copies, they must be certified as true copies of the original by the said authority. In any case they shall be drawn up so as to make their authenticity apparent.

## PART VII

### EXTENSION OF JUDGEMENTS AND LOCAL JURISDICTION

Article 30. In civil and commercial matters, disputed and undisputed decisions by the courts of one of the High Contracting Parties have the authority, ipso jure of res judicata on the territory of the other States on the following conditions:

- 1) The decision must originate from a competent jurisdiction in accordance with the rules set out in Article 38.
- 2) The decision has applied the law applicable to litigation under rules for the solution of legal conflicts admissible in the State in which execution of the decision is requested;
- 3) The decision has under the law of the State where it was handed down, become absolute and subject to execution.
- 4) The parties have been regularly summoned, represented or declared defaulting.
- 5) The decision contains nothing contrary to public order in the State where it is invoked and is not contrary to any legal decision delivered in that State and possessing in its regard the authority of a final decision

Article 31. The decisions referred to in the preceding article cannot give rise to distraint on property, constraint on persons or publicly on the territory of a State other than the one in which they are pronounced until they have been declared enforceable there.

Article 32. Whatever the type of case involved, extension of judgement is granted by the presiding judge of the court of first instance or the court corresponding to the place where the sentence is to be carried out.

The matter is referred to the presiding judge of the court by petition.

Appeal against the decision of the presiding judge of the court can only be through the supreme court.

Article 33. The presiding judge confines himself to checking that the decision on which extension of judgement is requested fulfils the conditions laid down in Article 30.

He makes this examination automatically and must mention the result of it in his decision.

If he grants the extension of judgement, he orders the necessary measures to be taken for the decision to receive the publicity provided for decisions of the same nature pronounced in the State where it is enforceable.

The extension of judgement may be granted partially for one count or another of the decision involved.

Article 34. The decision concerning extension of judgement enables the enforceable decision to produce, from the date when extension of judgement is obtained, the same effects concerning measures of enforcement as if it had been pronounced by the court that granted the extension of judgement.

Article 35. The party invoking the authority of a legal decision or requesting its enforcement must produce:

- 1) An authentic copy of the decision which meets the necessary conditions of authenticity;
- 2) The original of the formal notice of the decision or any other document in lieu of such notice;
- 3) A certificate from the clerk of the court declaring that there is no stay of execution or appeal against the decision.
- 4) Where necessary, a copy of the writ or summons to the party that failed to appear before the court, certified true by the clerk of the court that delivered the decision, together with all other documents that prove that the writ or summons reached the party in the prescribed time-limit.

Article 36. Settlements by arbitration awarded in one of the two States are recognized and enforced in the other state, in accordance with the provisions of the Convention of New York of 10 June, 1958 on recognition and enforcement of foreign arbitration awards.

Article 37. Authentic documents, including deeds executed before a notary, enforceable in one of the States signatories to the present convention, are declared to be enforceable in the others by the competent authorities in accordance with the law of the State where the decision is to be enforced.

This authority merely checks whether the documents fulfil the conditions necessary for their authenticity in the State in which they are received and that the provisions of the decision to be carried out are in no way

contrary to the public order of the State where the extension of judgement is requested, or to the principles of public law applicable in that State.

Article 38. The following are considered as competent to decide cases within the meaning of Article 30 paragraph 1 above.

In civil status, personal and movable property cases: the courts of the State where the defendant is domiciled or has his residence;

In contract cases: the court which the two parties have duly recognized by mutual consent, expressly or separately for each contract; in the absence of such an agreement, the courts of the State where the contract was concluded and, in commercial contracts, the State where the contract is to be executed as well.

In offences or technical offences: the courts of the State where the act giving rise to damages took place.

In maintenance matters: the courts of the State where the succession was opened.

In matters of real estate: the courts of the State in which the property is situated.

Article 39. The rules under which the legislation of one of the States signatories to the present Convention declares its courts competent by sole reason of the nationality of the plaintiff without any other claim to competence, as regards disputes concerning liabilities arising from a contract or implied contract or from an offence or technical offence, shall not apply to the nationals of the other signatory States in the following cases:

- 1) When the defendant has his domicile or residence in the State of which he is a national;
- 2) When the liability arises or must be discharged in the State of which the defendant is a national.

ARTICLE 40: Decisions on Administrative matters shall be enforced as stated in the present part, except that the presiding judge of the court competent to hear disputed cases shall, if necessary, replace the presiding judge of the court of first instance.

## PART VII

### SIMPLIFIED EXTRADITION

ARTICLE 41: The high contracting parties undertake to hand over to each other in accordance with the rules and conditions laid down in the present convention, persons who, being on the territory of one of the signatory states, are prosecuted or sentenced by the judicial authorities of another state.

ARTICLE 42: The high contracting parties shall not extradite their respective nationals; the nationality shall be appraised as at the time of the offence for which extradition is requested.

However, the requested State undertakes, insofar as it is competent to judge them, to take proceedings against its own nationals who have committed on the territory of another State, offences punishable as crimes or unlawful acts under its own laws, when the other State sends it a request for proceedings accompanied by the records, documents, objects and information in its possession. The requesting State shall be kept informed of the way in which its request is carried out.

ARTICLE 43: The following shall be subject to extradition:-

- 1) persons against whom proceedings are taken for crimes or offences punishable by the laws of the requested State by at least 2 years imprisonment;
- 2) persons who for crimes or offences punishable by the law of the requested State are sentenced after trial or by default by the courts of the requesting State to at least two months imprisonment.

ARTICLE 44: Extradition may be refused if the offence for which it is requested is considered by the requested State as a political offence or related to such an offence.

ARTICLE 45: Unless otherwise provided for in defence agreements, extradition may not be granted if the offence for which it is requested consists solely in the violation of military obligations.

ARTICLE 46: The crimes of wilful murder and imprisonment shall not be considered as political offences.

ARTICLE 47: As regards taxes, customs and exchange matters, extradition shall be granted on the conditions laid down in the present convention insofar as it is so decided by ordinary exchange of letters, for each offence or category of offence especially designated.

ARTICLE 48: Extradition shall be refused:--

- 1) if the offences for which it is requested were committed in the requested State;
- 2) if the offences were judged finally in the requested State;
- 3) if the action or penalty is barred by limitation in accordance with the laws of the requesting or the requested State at the time when the request is received by the requested State;
- 4) if the offences were committed outside the territory of the requesting State by a person foreign to that State, and the laws of the requested State do not authorise prosecution for the same offences committed outside its territory by a foreigner;
- 5) if an amnesty has been granted in the requesting State or if an amnesty has been granted in the requested State, on condition that, in the latter case, the offence is among those for which an action can be brought when committed outside its territory by a foreigner.

Extradition may be refused if an action is being brought for the offences in the requested State or if they have been judged in a third State.

ARTICLE 49: The request for extradition shall be sent direct to the competent Director of Public Prosecutions in the requested State.

It shall be accompanied by the original or an authenticated copy of an enforceable sentence or warrant for arrest or by any other document of the same force, issued by the judiciary power, bearing exact details of the time, place, circumstances and designation of the acts constituting the offence, and the applicable laws.

A copy of these laws shall be attached together with a description

of the wanted person whenever possible, and all necessary details for establishing his identity and nationality.

ARTICLE 50: The requested State when it finds that further information is indispensable to ensure that the conditions laid down in the present convention are fulfilled, shall, when it considers that the commission can be made good, shall so advise the requesting State before rejecting the request. A time-limit may be fixed by the requested State for obtaining this information.

ARTICLE 51: In case of urgency, at the request of the competent authorities of the requesting State, provisional arrest shall be effected pending the arrival of the request for extradition and the documents mentioned in Article 49, paragraphs 2 and 3.

The request for provisional arrest shall be transmitted to direct to the competent authorities of the requested State by post or telegraph. In the latter case confirmation shall be sent to the Director of Public Prosecutions at the same time.

The request shall mention the existence of one of the documents listed in Article 49, paragraphs 2, and shall State the requesting authorities intention of sending a request for extradition. It shall specify the offence for which extradition is requested, the time and place where it was committed and provide, when possible, a description of the wanted person.

The requesting authority shall be informed without delay of the action taken concerning its request.

ARTICLE 52: The provisional arrest may be ended if, within twenty days after the arrest, the requested authority has not received one of the documents mentioned in Article 49, paragraph 2.

This period is extended to thirty days between countries that are not neighbours.

Release shall not prejudice later arrest if the request for extradition arrives subsequently.

ARTICLE 53: If extradition is requested concurrently by several States, either for the same offences or for different offences, the requested State shall freely choose the State to which the wanted person shall be handed over, having regard to the possibility of subsequent extradition among the requesting States, the respective dates of the requests, the seriousness of, and place where the offences were committed.



ARTICLE 54: When there is ~~cause for extradition~~, all the ~~objects~~ that can be produced in evidence or which result from the offence and are found in the possession of the wanted person upon his arrest, or discovered later on, shall be seized, and, delivered to the authorities of the requesting State at their request.

Such delivery shall be effected even if extradition cannot take place because the wanted person escapes or dies.

However, any rights acquired by third parties to the said objects shall be reserved if such rights exist, the objects shall be returned as soon as possible without cost to the requested State, at the close of the proceedings taken in the requesting State.

The authorities of the requested State may keep the objects seized provisionally if they consider them necessary in criminal proceedings.

In delivering the objects the authorities of the requested State may reserve the right to request their return for the same reasons and shall undertake to return them as soon as possible.

ARTICLE 55: The requested State shall inform the requesting State of its decision concerning extradition.

Grounds shall be given for full or partial rejection.

If the request is accepted, the requesting State shall be informed of the place and date when the wanted person is to be handed over. In the absence of agreement, the extradited person shall be taken by the requested State to the place appointed by the requesting State.

Without prejudice to the case mentioned in the last paragraph of the present article, the officials of the requesting State should receive the person to be extradited within a month from the date laid down in accordance with the provisions of the preceding paragraph. Once this time limit has expired, the person shall be freed and can no longer be claimed for the same offence.

Should exceptional circumstances prevent the wanted person for extradition from being handed over or taken over, the State that argues these circumstances shall inform the other State before expiry of the time-limit. The two States shall decide upon another date for handing over and the provisions of the preceding paragraph shall apply.

ARTICLE 56: If the wanted person is prosecuted or sentenced in the requested State for an offence other than the one for which the request for extradition is made, the requested State shall nevertheless rule on the request and inform the requesting State of its decision concerning the extradition.

If extradition is accepted, the handing over of the wanted person shall nevertheless be deferred until satisfaction is given to the justice of the requested State.

The wanted person shall be handed over in accordance with the provisions of Article 55.

The provisions of the present article shall not constitute an impediment to the transfer of the person in question to appear before the courts of the requesting State on the express condition that he shall be sent back as soon as those courts have made their ruling.

ARTICLE 57: The person handed over shall not be prosecuted, sentenced after trial or detained for execution of a sentence for an offence committed prior to being handed over other than the offence for which extradition was requested, except in the following cases:-

- 1) when having been free to do so the extradited person has not left the territory of the State to which he was handed over, or has returned there after having left it, within thirty days after being finally released;
- 2) when the State which handed him over agrees, a request to this effect shall be submitted, together with the documents listed in Article 49, paragraph 2, and a legal report recording the extradited person's statements on the extension of the extradition and mentioning that he has been given an opportunity to submit a statement of case to the authorities of the requested State.

When the designation of the offence is modified during the proceedings, the extradited person shall not be proceeded against or sentenced except insofar as the elements constituting the newly designated offence would allow of extradition.

ARTICLE 58: Except when the person in question has remained in or returned to the territory of the requesting State under the conditions laid down in the preceding article, the agreement of the requested State is necessary to enable the requesting State to hand over to a third state the person who has been delivered to it.

ARTICLE 59: Extradition by transit through the territory of one of the High Contracting Parties of a person handed over to another party shall be granted upon the request of the requesting State. The necessary documents

providing that the offence is one giving rise to extradition shall be supplied in support of such a request. No account shall be taken of the conditions laid down in Article 43 concerning the length of punishment.

If transport is by air, the following provisions shall apply:-

- 1) there is to be a stop over, the requesting State shall send a transit request for the person concerned to the State upon whose territory the stopover is to be effected. When the transit State has also requested extradition of the person concerned, the transit may be postponed until satisfaction is given to the justice of that State.
- 2) when there is to be no stop over, the requesting State shall advise the State over whose territory the plane is to fly and shall certify the existence of one of the documents listed in Article 49, paragraph 2. In case of unforeseen landing, this notification shall produce the effects of the request for provisional arrest mentioned in Article 51 and the requesting State shall send a transit request under the conditions laid down in paragraph 1 of the present article.

#### PART IX

##### EXECUTION OF SENTENCES

ARTICLE 60: The High Contracting Parties undertake to have executed in their penitentiaries, at the request of the courts of the requesting State, sentences of imprisonment passed by the courts of the requesting State upon any person of whatever nationality found upon the territory of the requested State.

Without prejudice to the proceeding provisions, the execution of these sentences is subject to the rules and conditions of form and substance concerning extradition laid down in Articles 43 and 49.

ARTICLE 61: Any national of the State of one of the High Contracting Parties sentenced to imprisonment must at the request of one of the governments and with the condemned person's express consent, be handed over to the authorities of the State of which he is a national.

ARTICLE 62:- Any decision concerning release on probation shall be taken by the State where the sentence is served, after consultation with the State in which the court passing the sentence is situated.

ARTICLE 63: Pardon and amnesty fall within the competence of the State in which the court passing the sentence is situated.

ARTICLE 64: When a sentence of capital punishment is passed by the court of one State on the national of another State, a petition for reprieve shall always be made automatically and the diplomatic representatives of the latter shall be advised of it at once.

ARTICLE 65: Decisions concerning sentences to pay fines shall be carried out on request submitted by the financial services of the requesting State. Such requests must be supported by authentic copies of the decisions and must reproduce the laws applied and the laws relative to the prescription of the penalty.

The financial services of the requested State, shall, after written permission has been granted by the Director of Public Prosecutions, proceed to collect for account of the requesting State.

The legislation of the requested State regarding execution of sentences of the same nature shall apply.

ARTICLE 66: Costs resulting from application of the provisions of the present convention, apart from the costs of procedure and detention, shall be borne by the requesting State.

Costs resulting from the application of the provisions concerning execution of sentences shall be borne by the requesting State.

PART X:  
FINAL PROVISIONS

ARTICLE 67: The present convention shall be ratified and the instruments of ratification shall be deposited with the Government of the Republic of Dahomey as soon as the High Contracting Parties are able to do so.

An official record of deposit of instruments of ratification shall be drawn up, of which a certified true copy shall be sent by diplomatic channels to each of the Contracting States.

The convention shall enter into force between the States which have ratified it thirty days after each of them has deposited the instruments of ratification mentioned in paragraph 1 of the present article, and at the latest by 31 January, 1962.

ARTICLE 68: The duration of the present convention shall be for five years as from January, 1962, whatever the date of deposit of the instruments of ratification.

The convention shall be tacitly extended for periods of five years unless it is denounced.

1967-09

# Conclusion of extradition treaties or conventions among African countries

Organization of African Unity

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