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CONVENTION A/P.1/8/94 ON EXTRADITION

PREAMBLE

The Governments of the Member States of the Economic Community of West African States;

CONSIDERING that speedy integration between Member States in every area of activity can best be achieved by seeking to create and sustain within the Community, such conditions as shall eliminate any threat to the security of their peoples;

CONVINCED that security can best be maintained if offenders are denied shelter from legal proceedings or penalties;

DESIROUS of working together to curb crime throughout the territory of the Community;

DETERMINED therefore to endow national courts of law with an effective instrument for the arrest, judgment and enforcement of penalties against offenders fleeing the territory of one Member State to seek shelter in the territory of another;

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

For the purpose of this Convention, the following definitions shall apply;

"Community" means the Economic Community of West African States, referred to under Article 2 of the Treaty;

"Executive Secretary" means the Executive Secretary of the Community, appointed under Article 18 paragraph 1 of the Treaty;

"Member State" or "Member States" means a Member State or Member States of the Community;

"Non-Member State" or "Non-Member States" means a State or States not a member of the Community which has acceded to this Convention;

"Offence" or "Offences" means the fact or facts which constitute a criminal offence or criminal offences under the laws of the Member States;

"Requested State" means a State to which a request for extradition under this Convention has been made;

"Requesting State" means a State which has made a request for extradition under this Convention;

"Sentence" means all penalties or measures incurred or pronounced as a result of a criminal offence and includes a sentence of imprisonment;

"Treaty" means the Revised Treaty of the Economic Community of West African States signed in Cotonou on 24 July, 1993;

Article 2

Principles of Extradition

- 1 States undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons within the territory of the requested State who are wanted for prosecution for an offence or who are wanted by the legal authorities of the requesting State for the carrying out of a sentence.
- 2 In the case of a minor aged under 18 at the time of the request for extradition, the competent authorities of the requesting and requested States shall take into consideration the interests of the minor and, where they think that extradition is likely to impair social rehabilitation, shall endeavour to reach an agreement on the most appropriate measures.

Article 3

Conditions for Extradition

- 1 Extradition shall be granted under certain circumstances in respect of offences punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a minimum period of two years. Where there has been a conviction and a prison sentence has been imposed in the territory of the requesting State, extradition shall be granted only if a period of at least 6 months remains to be served.
- 2 If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting State and the requested State by deprivation of liberty but of which some do not meet the penalty requirements set out in paragraph 1 of this Article the requested State shall have the right to grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 4

Political Offences

- 1 Extradition shall not be granted if the offence in respect of which is requested is regarded as a political offence or as an offence connected with a political offence.

- 2 The same rule shall apply if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of race, tribe, religion, nationality, political opinion, sex, or status.
- 3 Implementation of this Article shall not affect any prior or future obligations assumed by States under the provisions of the Geneva Convention of 12 August, 1949 and its additional Protocols and other multilateral International Conventions.

Article 5

Inhuman or Degrading Treatment or Punishment

Extradition shall not be granted if the person whose extradition is requested has been, or would be, subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting State or if that person has not received, or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and People's Rights.

Article 6

Humanitarian Consideration

The requested State may refuse to extradite a person if extradition would be incompatible with humanitarian considerations in view of age or health.

Article 7

Military Offences

Extradition for offences under military law which are not offences under ordinary criminal law shall not be granted under this Convention.

Article 8

***Ad Hoc* Court or Tribunal**

Extradition may be refused if the person whose extradition is requested has been sentenced, or would be liable to be tried, in the requesting State by an extraordinary or *ad hoc* court or tribunal.

Article 9

Fiscal Offences

For offences in connection with taxes, duties and customs extradition shall take place

between the States in accordance with the provisions of this Convention if the offence under the law of the requested State, corresponds to an offence of the same nature even if the law of that State does not contain the same type of tax, duty or custom regulation.

Article 10

Nationals

- 1 Extradition of a national of the requested State shall be a matter of discretion for that State. Nationality shall be determined at the time of the offence for which extradition is being requested.
- 2 The requested State which does not extradite its nationals, shall at the request of the requesting State submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted, without charge, through the diplomatic channel or by such other means as shall be agreed upon by the States concerned. The requesting State shall be informed of the result of its request.

Article 11

Place of Commission

- 1 The requested State may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.
- 2 When the offence for which extradition is requested has been committed outside the territory of the requesting State extradition may only be refused if the law of the requested State does not allow prosecution for the same category of offence when committed outside the territory of the latter or does not allow extradition for the offence concerned.

Article 12

Pending Proceedings for the Same Offences

The requested State may refuse to extradite the person claimed if the competent authorities of such State are proceeding against that person in respect of the offence or offences for which extradition is requested.

Article 13

Double Jeopardy

- 1 Extradition shall not be granted if final judgement has been passed by the competent

authorities of the requested State upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested State have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

- 2 If new proceedings are instituted by the requesting State against the person in respect of whom the requested State has terminated proceedings for the offence for which extradition was granted, any period passed in remand or in custody in the requested State shall be taken into consideration when deciding the penalty involving deprivation of liberty in the requesting State.

Article 14

Judgement in Absentia

- 1 When a request is made for the extradition of a person for the purpose of carrying out a sentence imposed by a decision rendered in absentia, the requested State may refuse to extradite if, in its opinion, the proceeding leading to the judgement did not satisfy the minimum rights of defence recognised as due to every one charged with criminal offence. However, extradition shall be granted if the requesting state gives an assurance considered sufficient to guarantee to the person claimed the right to a re-trial which safeguards the rights of defence. This decision will authorise the requesting State either to enforce the judgement in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.
- 2 When the requested State informs the person whose extradition has been requested of the judgement rendered against him in absentia the requesting State shall not regard this communication as a formal notification for the purpose of the criminal procedure in that State.

Article 15

Lapse of Time

- 1 Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested State become immune by reason of lapse of time from prosecution or punishment at the time of receipt of the request for extradition by the requested State.
- 2 When determining whether, according to the law of the requested State the person claimed has become immune by reason of lapse of time from prosecution or punishment, the competent authority of the said State shall take into consideration any acts of interruption and any events suspending time limitation occurring in the requesting State in so far as acts or events of the same nature have an identical effect in the requested State.

Article 16

Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law.

Article 17

Capital Punishment

If the offence for which extradition is requested is punishable by death under the law of the requesting State, and if in respect of such offence the death penalty is not provided for by the law of the requested State, extradition may not be granted.

Article 18

The Request and Supporting Documents

1. The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. However, use of the Diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more States.
2. The request shall be supported by:
 - (a) the original or an authenticated copy of the conviction and sentence immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting State;
 - (b) a statement of the offences for which extradition is requested. The time and place of their commission; their legal descriptions; and a reference to the relevant legal provision shall be set out as accurately as possible; and
 - (c) an authenticated copy of the relevant law indicating the sentence which may be or has been imposed for the offence and as accurate a description as possible of the person claimed together with any other information which will help to establish his identity, nationality and whereabouts.

Article 19

Supplementary Information

If the information communicated by the requesting State is found to be insufficient to allow the requested State to make a decision in pursuant of this Convention the later State shall request the necessary supplementary information and may fix a reasonable time-limit for the receipt thereof.

Article 20

Rule of Specialty

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to his surrender other than that for which he was extradited nor shall he be for any other reason restricted in his personal freedom except in the following cases:
 - (a) When the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 18 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provision of this Convention.
 - (b) When that person having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
2. When the description of the offence charged is altered in the course of proceedings; the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 21

Re-extradition to a Third State

Except as provided in Article 20, Paragraph 1 (b), the requesting State shall not without the consent of the requested State surrender to another State or to a third State a person surrendered to a requesting State and sought by the said other State or third State in respect of offences committed before his surrender. The requested State may request the production of the documents mentioned in Article 18.

Article 22

Provisional Arrest

- 1 In case of urgency, the competent authorities of the requesting State may request the provisional arrest of the person sought. The competent authorities of the requested State shall decide the matter in accordance with its law pending the request for extradition.
- 2 The request for provisional arrest shall state that one of the documents mentioned in Article 18 Paragraph 2 (a) exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested, when and where such offence was committed, the penalty incurred or provided for or the sentence pronounced. The request shall also, if possible, indicate the whereabouts of the person sought and as far as possible provide the description of the person.
- 3 A request for provisional arrest shall be sent to the competent authorities of the requested State either through the diplomatic channel or direct by post or telegraph or through the international Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested State. The requesting State shall be informed without delay of the result of its request.
- 4 Provisional arrest may be terminated if, within a period of twenty (20) days after arrest, the requested State has not received a request for extradition and the documents mentioned in Article 18. The possibility of provisional release at anytime is not excluded but the requested State shall take any measure which it considers necessary to prevent the escape of the person sought.
- 5 Release shall not prejudice re-arrest and extradition, if a request for extradition is received subsequently.
- 6 The time spent in detention by an individual solely for the purpose of the extradition in the territory of the requested States or of a State of transit shall be taken into consideration when deciding the penalty involving deprivation of liberty or detention which he has to serve for the offence for which he was extradited.

Article 23

Conflicting Requests

If extradition is requested concurrently by more than one State either for the same offence or for different offences, the requested State shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 24

Surrender of the Person to be Extradited

1. The requested State shall inform the requesting State by the means mentioned in Article 18 paragraph 1 of its decision with regard to the extradition.
2. Reasons shall be given for any complete or partial rejection.
3. If the request is agreed to the requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been removed on the appointed date, he may be released after the expiry of 30 days. The requested State may refuse to extradite him for the same offence.
5. If circumstances beyond its control prevent a State from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree on a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

Article 25

Postponed or Conditional Surrender

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against or, if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.
2. The requested State may, instead of postponing surrender, temporarily surrender the person claimed to the requesting State in accordance with conditions to be determined by mutual agreement between the States.

Article 26

Handing over of Property

1. The requested State shall, in so far as its law permits and at the request of the requesting State, seize and hand over property:
 - (a) which may be required as evidence or
 - (b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
2. The property mentioned in paragraph 1 of this Article shall be handed over even if

extradition, having been agreed to cannot be carried out owing to the death or escape of the person claimed.

3. When the said property is liable to seizure or confiscation in the territory of the requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
4. Any rights which the requested State or bona fide third parties may have acquired in the said property shall be preserved. Where these rights exist the property shall be returned without charge to the requested State as soon as possible after the trial.

Article 27

Transit

1. Transit through the territory of one of the States shall be granted on submission of a request by the means mentioned in Article 18 paragraph 1, provided that the offence concerned is not considered by the State requested to grant transit as an offence of a political or military character having regard to Articles 4 and 7 of this Convention.
2. Transit of a national of the country requested to grant transit may be refused.
3. Subject to the provisions of paragraph 4 of this Article, it shall be necessary to produce the documents mentioned in Article 18 paragraph 2.
4. If air transport is used, the following provisions shall apply:
 - (a) when it is not intended to land, the requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 18 paragraph 2 (a) exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 22 and the requesting State shall submit a formal request for transit;
 - (b) When it is intended to land, the requesting State shall submit a formal request for transit.
5. A State may, however, at the time of signature or of the deposit of its instrument of ratification of this Convention, declare that it will only grant transit of persons on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied.
6. Transit of the extradited person shall not be carried out through any territory where there is a reason to believe that his life or his freedom may be threatened by reason of his race, tribe, religion, nationality, political opinion or sex.

Article 28

Procedure

- 1 Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested State.
- 2 States, whilst providing for a speedy extradition procedure, shall ensure that the person whose extradition has been requested has the right to be heard by a judicial authority and to be assisted by the lawyer of his own choice and shall submit to a judicial authority the control of his custody for the purpose of extradition as well as the conditions of his extradition.

Article 29

Language to be Used

The documents to be produced shall be in the language of the requesting or requested States. The requested State may require a translation into one of the official languages of ECOWAS to be chosen by it.

Article 30

Expenses

- 1 Expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State.
- 2 Expenses incurred in conveying the person from the territory of the requested State shall be borne by the requesting State.
- 3 Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the requesting State.

Article 31

Reservations

- 1 Any State may, when signing this Convention or when depositing its instrument of ratification make a reservation in respect of any provision or provisions of the Convention.
- 2 Any State which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Executive Secretary of ECOWAS.
- 3 A State which has made a reservation in respect of a provision of the Convention

may not claim application of the said provision by another State save in so far as it has itself accepted the provision.

Article 32

Relations between this Convention and other Bilateral Agreements

- 1 This Convention shall supersede the provisions of any Treaties, Conventions or Agreements on extradition concluded between two or several States except as provided under paragraph 3 Article 4 of this Convention.
- 2 States may conclude between themselves bilateral or multilateral agreements with one another only on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Article 33

Accession

- 1 After entry into force of this Convention, the Council of Ministers may invite, by unanimous decision, non-Member States of the Community to accede to this Convention.
- 2 When a non-Member State of the Community requests to be invited to accede to this Convention, it shall submit this request to the Executive Secretary who shall immediately notify all other Member States.
- 3 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Executive Secretariat.

Article 34

Amendment and Review

- 1 Any State may submit proposals for the amendment or review of this Convention.
- 2 All proposals shall be submitted to the Executive Secretary, who shall forward them to Member States within thirty (30) days of receipt. Proposed amendments or reviews shall be considered by the Authority upon expiry of the thirty (30) days notice period given to Member States.

Article 35

Denunciation

Any State may denounce this Convention in so far as it is concerned by giving notice to the Executive Secretary of the Community. Denunciation shall take effect six months after the date when the Executive Secretary received such notification

Article 36

Entry into Force and Deposit

1. This Convention shall enter into force upon ratification by at least nine (9) signatory States, in conformity with the constitutional provisions of each signatory State.
2. This Convention and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States, notify them of the dates of deposit of the instruments of ratification and register this Convention with the Organisation of African Unity, the United Nations and any other organisation as may be determined by the Council of Ministers of the Community.

IN WITNESS WHEREOF, WE THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES HAVE SIGNED THIS CONVENTION.

DONE AT ABUJA THIS 6TH DAY OF AUGUST 1994 IN A SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE LANGUAGES ALL TEXTS BEING EQUALLY AUTHENTIC

signed

Hon. Hermann YAMEOGO

Minister of State for African Integration and Solidarity for and on behalf of the President of BURKINA FASO

signed

Hon. Joao Higinio do Rosario SILVA

Minister of Tourism, Industry and Commerce, for and on behalf of the Prime Minister of the Republic of CAPE VERDE

signed

Hon. Amara ESSY

Minister of Foreign Affairs for and on behalf of the President of the Republic of COTE D'IVOIRE

signed

H.E. Nicephore Dieudonne SOGLO

President of the Republic of BENIN

signed

H.E. Lt. Sana B. SABALLY

Vice Chairman of the Armed Forces Provisional Ruling Council of The GAMBIA

signed

H.E. Flt. Lt. Jerry John Rawlings

President of the Republic of GHANA

signed

H.E. General Lansana CONTE

Head of State, President of the Republic of GUINEA

signed

H.E. Ahmed Ould ZEIN

Minister, General Secretary of the Presidency for and on behalf of the President of the Islamic Republic of MAURITANIA

signed

H.E. Mahamane OUSMANE

President of the Republic of NIGER

signed

H.E. General Sani ABACHA

Head of State, Commander-in-Chief of the Armed Forces of the Federal Republic of NIGERIA

H.E. General Bemardo VIEIRA

President of the Council of State of the Republic of GUINEA-BISSAU

signed

H.E. David KPOMAKPOR

Chairman of the Council of State, Liberian National Transitional Government (LNTG) Republic of LIBERIA

signed

H.E. Captain Valentine E. M. Strasser

Chairman, National Provisional Ruling Council and Head of State of the Republic of SIERRA LEONE

Signed

Hon. Mrs. Sy Kadiatou SOW

Minister of Foreign Affairs, of Malians Resident Abroad and of African Integration, for and on behalf of the President of the Republic of MALI

signed

H.E. Edem KODJO

Prime Minister of the Republic of TOGO for and on behalf of the President of the Togolese Republic