



**Inter Governmental Authority on Development**

**(IGAD)**

**Convention on Extradition**

# IGAD CONVENTION ON EXTRADITION

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## **PREAMBLE**

We, the Representatives of the Governments of:

The Republic of Djibouti

The State of Eritrea

The Federal Democratic Republic of Ethiopia

The Republic of Kenya

The Somali Republic

The Republic of the Sudan

The Republic of Uganda

Being members of the Inter Governmental Authority on Development (IGAD) and

**DESIRING** to make our co-operation in the prevention and suppression of crime more effective by concluding an agreement on extradition;

**RECOGNIZING** that regional and international co-operation is necessary to prevent and combat crime;

**MINDFUL** of our responsibility to guarantee the security and stability of our peoples in order to minimize the vulnerability of our States;

**INSPIRED** by the noble purpose of promoting peace, security and stability, and eliminating the sources of conflict as well as preventing and resolving conflicts in the sub-region;

**RECALLING** the Ministers of Justice statement of 21<sup>st</sup> of September 2007 in Kampala, Uganda on the vital need for an IGAD wide instrument on extradition;

**HEREBY AGREE AS FOLLOWS:**

## **PART I**

### **DEFINITIONS**

**Extradition** means the surrender of a person accused or convicted of an extradition offence from a requested State Party to a requesting State Party.

**Requested State Party** means the State Party that is requested to extradite under the terms of this Convention.

**Requesting State Party** means the State Party that is requesting extradition under the terms of this Convention.

**Third State** means a State other than the requesting State Party or requested State Party.

**PART II**  
**GENERAL PROVISIONS**

**Article 1: Obligation to extradite**

Each State Party agrees to extradite upon request, in accordance with the provisions of this Convention and its respective domestic law, any person within its jurisdiction who is wanted for prosecution or the imposition or enforcement of a sentence in the requesting State Party for an extradition offence.

**Article 2: Extradite or prosecute principle**

A State Party in whose territory an alleged offender is found, if it does not extradite a person on the grounds of refusal contained in Article 5, Article 6.1(a), (b), (f) and (g) and Article 6.2(b) and (d), shall, at the request of the requesting State Party be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a similar nature under the domestic law of that State Party.

**Article 3: Extradition offence**

1. For the purpose of this Convention, an extradition offence is an offence that is punishable under the laws of both the requesting and requested State Party by imprisonment or other deprivation of liberty for a period of at least one year, or by a more severe penalty. Where the request for extradition relates to a person wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition may be refused if a period of less than six months of such sentence remains to be served.
2. For the purposes of this Article, in determining what constitutes an offence against the laws of the Requested State Party it shall not matter whether:
  - a) the laws of the requesting and requested State Party each place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology; and
  - b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, as between the laws of the requesting and requested State Party, the constituent elements of the offence differ.
3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State Party does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State Party.

4. Extradition may be granted pursuant to the provisions of this Convention in respect of any extradition offence provided that:
  - a) it was an offence in the requesting State Party at the time of the conduct constituting the offence; and
  - b) the conduct alleged would, if it had taken place in the requested State Party at the time of making the request for extradition, have constituted an offence against the law of the requested State Party.
  
5. If the request for extradition relates to several separate offences, each of which is punishable under the laws of both the requesting and requested State Parties, but some of which do not meet the other requirements of paragraph 1, the requested State Party may grant extradition for such offences provided that the person is to be extradited for at least one extradition offence.

**Article 4: Applicable law**

The requested State Party shall deal with the request in accordance with its laws.

**Article 5: Extradition of nationals**

1.
  - a) A State Party shall have the right to refuse extradition of its nationals.
  - b) Each State Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term “nationals” within the meaning of this Convention.
  
2. If the requested State Party does not extradite its national, it shall at the request of the requesting State Party submit the case to its competent authorities in order that proceedings may be taken, if they are considered appropriate.

**Article 6: Grounds for refusal to extradite**

1. Extradition shall be refused in any one of the following circumstances:
  - a) if the offence for which extradition is requested is of a political nature. An offence of a political nature shall not include any offence in respect of which the States Parties have assumed an obligation, pursuant to any multilateral convention, or under international law, to take prosecutorial action where they do not extradite, or any other offence that the State Parties have agreed is not an offence of a political character for the purposes of extradition;
  - b) if the requested State Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on

account of that person's race, religion, nationality, ethnic origin, political opinion, sex or status or that the person's position may be prejudiced for any of those reasons;

- c) if the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law;
- d) if there has been a final judgment rendered against the person in the requested State Party or a Third State in respect of the offence for which the person's extradition is requested;
- e) if the person whose extradition is requested has, under the law of either the requesting or requested State Party, become immune from prosecution or punishment for any reason, including lapse of time;
- f) if the person whose extradition is requested has been, or would be subjected in the requesting State Party to, torture, or cruel, inhuman or degrading treatment or punishment, or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and Peoples Rights and Article 14 of the International Covenant on Civil and Political Rights; or,
- g) if the judgment of the requesting State Party has been rendered *in absentia* and the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his defence and he has not had, or will not have, the opportunity to have the case retried in his or her presence.

2. Extradition may be refused in any one of the following circumstances:

- a) if a prosecution in respect of the offence for which extradition is requested is pending in the requested State Party against the person whose extradition is requested;
- b) if the offence for which extradition is requested carries a death penalty under the law of the requesting State Party, unless that State gives such assurance as the requested State Party considers sufficient, that the death penalty will not be imposed or, if imposed, will not be carried out, or both parties agree that the sentence of the requested State Party will be substituted by another sentence in the requested State Party;
- c) if the offence for which extradition is requested has been committed outside the territory of either State Party and the law of the requested State Party does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;
- d) if the offence for which extradition is requested is regarded under the laws of the requested State Party as having been committed in whole or in part within that State; or,
- e) if the requested State Party, while also taking into account the nature of the offence and the interest of the Requesting State Party, considers that, in the circumstances of

the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

**Article 7: Channels of communication and supporting documents**

1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more States Parties.
2. The request shall be supported by:
  - a) the original or an authenticated copy of the conviction and sentence or detention order 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 Party;
  - b) a statement of the offence(s) for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
  - c) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.
3. The request shall indicate the official designation of the official in the requested State Party indicating the contact person and file reference.

**Article 8: Authentication of documents**

1. Where the laws of the requested State Party require authentication, documents shall be authenticated in accordance with the domestic law of the requesting State Party.
2. The authentication procedure of each State Party shall be communicated to the Secretariat.

**Article 9: Additional information**

If the requested State Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this part of the Convention to enable extradition to be granted, the requested State Party may request that additional information be furnished within such time as it specifies.

## **Article 10: Provisional arrest**

1. In case of urgency the competent authorities of the requesting State Party may request the provisional arrest of the person sought. The competent authorities of the requested State Party shall decide the matter in accordance with its domestic law and communicate its decision to the requesting State Party without delay.
2. The request for provisional arrest shall state that one of the documents mentioned in Article 7, paragraph 2(a) exists, and that it is intended to send a request for extradition.
3. A request for provisional arrest shall be sent to the competent authorities of the requested State Party directly 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 Party.
4. An application for provisional arrest shall include the following:
  - a) such information, as may be available, about the description, identity, location and nationality of the person sought;
  - b) a statement that a request for extradition will follow;
  - c) a description of the nature of the offence and applicable penalty, with a brief summary of the facts of the case, including the date and place the offence was committed;
  - d) a statement attesting to the existence of a warrant of arrest or a statement of the punishment that can be or has been imposed for the offence to which this Convention applies; and
  - e) any other information which would justify provisional arrest in the requested State Party.
5. Provisional arrest shall be terminated if the requested State Party has not received the request for extradition and supporting documents through the channel provided for in Article 7, paragraph 1 within thirty (30) days after the arrest. The competent judicial authorities of the requested State Party, insofar as it is permitted by the law of that State, may extend that delay with regard to the receipt of the documents. However, the person sought may be granted bail at any time subject to the conditions considered necessary to ensure that the person does not leave the territory of the requested State Party.
6. The release of a person pursuant to paragraph 5 of this Article shall not prevent re-arrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

### **Article 11: Waiver of extradition**

The requested State Party, if not precluded by its domestic law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents, before a competent judicial authority of the requested State Party, to be extradited.

### **Article 12: Concurrent requests**

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

### **Article 13: Language**

1. The request for extradition and documents in support of a request for extradition shall be in the language of the requesting or requested State Party. The requested State Party may require a translation into one of the official languages IGAD to be chosen by it.
2. The official languages of IGAD are English and French.

### **Article 14: Extradition decision**

1. The requested State Party shall, without delay, inform the requesting State Party by the means mentioned in Article 7, paragraph 1 of its decision with regard to the extradition.
2. Before refusing a request, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with an opportunity to present its reasons or provide information in proceeding with the request.
3. Reasons shall be given for any complete or partial rejection.

### **Article 15: Surrender of a person**

1. If the request is agreed to, the requesting State Party shall be informed without undue delay of the place and date of surrender and of the length of time for which the person sought was detained with a view to surrender.
2. The person shall be removed from the territory of the requested State Party within 15 days of the notification of the extradition decision and shall in any case be released after the expiry of 30 days of that decision. If the person is not removed within the 30 days period, the requested State Party may release the person and may refuse to extradite that person for the same offence.
3. If circumstances beyond its control prevent either the requesting or requested State Party from surrendering or removing the person to be extradited, it shall notify the other State Party. The two State Parties shall then agree a new date of surrender and, for the purposes of paragraph 2, the time limit shall run from the new date agreed by the two States Parties.

### **Article 16: Postponed or conditional surrender**

1. The requested State Party may, after making a decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case, the requested State Party shall advise the requesting State Party accordingly.
2. The requested State Party may, instead of postponing surrender, temporarily surrender the person sought to the requesting State Party in accordance with conditions to be determined between the two States Parties.

### **Article 17: Rule of specialty**

1. A person extradited under this Convention shall not be proceeded against, sentenced, detained, re-extradited to a Third State, or subjected to any other restriction of personal liberty in the territory of the requesting State Party for any offence committed before surrender other than:
  - a) an offence for which extradition was granted;
  - b) any other offence in respect of which the requested State Party consents to. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Convention.

2. A request for the consent of the requested State Party under this Article shall be accompanied by the documents mentioned in Article 7 of this Convention and a legal record of any statement made by the extradited person with respect to the offence.
3. Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the requesting State Party and has not done so within thirty (30) days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State Party after leaving it.
4. 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 18: Handing over of property**

1. To the extent permitted under the laws of the requested State Party, and subject to the rights of third parties, which shall be duly respected, all property found in the requested State Party that has been acquired as a result of the offence and that may be required as evidence shall, if the requesting State Party so requests, be surrendered if extradition is granted.
2. The said property may, if the requesting State Party so requests, be surrendered to the requesting State Party even if the extradition agreed to can not be carried out.
3. When the said property is liable to seizure or confiscation in the requested State Party, it may retain it or temporarily hand it over.
4. Where the laws of the requested State Party or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State Party after the completion of the proceedings, if the requested State Party so requests.

**Article 19: Transit**

1. Where a person is to be extradited to a State Party from a Third State through the territory of the other State Party, the State Party to which the person is to be extradited shall request the other State Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other State Party is scheduled.
2. Upon receipt of such a request, which shall contain relevant information, the transit State shall deal with this request pursuant to procedures provided by its own laws. The transit

State shall grant the request expeditiously unless its essential interest would be prejudiced thereby.

3. The transit State shall ensure that legal provisions exist that would enable the detention of the person in custody during transit.
4. In the event of an unscheduled landing, the State Party to be requested to permit transit may, at the request of the escorting officer, hold the person for such reasonable period as may be permitted by its laws, pending receipt of the transit request to be made in accordance with paragraph 1 of this Article.

**Article 20: Costs**

1. The requested State Party shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition.
2. The requested State Party shall bear the costs incurred in its territory or jurisdiction in the arrest and detention of the person whose extradition is sought until that person is surrendered to the requesting State Party. The requested State Party shall also bear the costs incurred in its territory or jurisdiction in connection with the seizure and handing over of property.
3. If during the execution of a request, it becomes apparent that fulfillment of the request will entail costs of an extraordinary nature, the requested State Party and requesting State Party shall consult to determine the terms and conditions under which execution may continue.
4. The requesting State Party shall bear the costs incurred in translation of extradition documents and conveying the person extradited from the territory of the requested State Party.
5. Consultations may be held between the requesting State Party and the requested State Party for the payment by the requesting State Party of extraordinary expenses.

**PART III**

**FORMALITIES**

**Article 21: Signature and accession**

1. Until its entry into force, this Convention shall be open for signature by IGAD member States.

2. Subsequent to its entry into force, this Convention shall be open to accession by any IGAD member State. For each such non signatory, this Convention shall enter into force on the 60<sup>th</sup> day following the date of deposit of its instrument of accession.

#### **Article 22: Reservations**

1. Any State Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
2. Any State Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the IGAD Secretariat.
3. A State Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save insofar as it has itself accepted the provision.

#### **Article 23: Relationship with other treaties**

The provisions of any treaty or bilateral agreement governing extradition between any two States Parties shall be complementary to the provisions of this Convention and shall be construed and applied in harmony with this Convention. In the event of any inconsistency, the provisions of this Convention shall prevail.

#### **Article 24: Ratification, Secretariat and Depositary**

1. This Convention is subject to acceptance, approval or ratification<sup>1</sup> by the signatories, in accordance with their respective domestic laws.
2. Instruments of acceptance, approval, ratification or accession shall be deposited with the IGAD Secretariat which shall serve as Depositary and Secretariat of this Convention.

#### **Article 25: Entry into force**

1. This Convention shall enter into force on the 60<sup>th</sup> day following the date upon which 3 of the IGAD member States have deposited their instruments of acceptance, approval and ratification. For each signatory depositing its instrument after the said entry into force, this Convention shall enter into force on the 60<sup>th</sup> day after deposit of its instrument.

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<sup>1</sup> The Republic of Djibouti and the Federal Democratic Republic of Ethiopia are the only member States that have ratified the convention.

2. If, after 31 December 2009, this Convention has not entered into force under paragraph 1 of this Article, any signatory which has deposited its instrument of acceptance, approval and ratification may declare in writing to the Executive Secretary of IGAD its readiness to accept entry into force of this Convention under this paragraph. This Convention shall enter into force for any such signatory on the 60<sup>th</sup> day following the date upon which two (2) such declarations have been deposited by at least two (2) signatories. For any signatory depositing its declaration after such entry into force, this Convention shall enter into force on the 60<sup>th</sup> day following the date of such deposit.

**Article 26: Amendment**

1. Any State Party to this Convention may propose its amendment. A proposed amendment shall be submitted to the Executive Secretary of IGAD who shall communicate it to the other States Parties at least 90 days before convening a meeting of the States Parties to consider the proposed amendment.
2. An amendment adopted by consensus of the States Parties shall enter into force 60 days after such adoption and ratification by all of the States Parties.

**Article 27: Withdrawal**

A State Party may withdraw from this Convention by submitting written notification to the Executive Secretary of IGAD. Such withdrawal shall be effective six (6) months after the date of the receipt of the said notification. After such withdrawal, co-operation shall continue between the States Parties and the State Party that has withdrawn, in relation to all requests for extradition made before the effective date of withdrawal and which remain pending.

**Article 28: Registration**

In compliance with Article 102 of the United Nations Charter the present Convention shall be registered with the United Nations Secretary General in New York by the depository.