# Extradition in Ethiopian Law

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## Introduction

The purpose of this paper is to examine certain significant aspects of the institution of extradition in Ethiopian law. Both domestic law and treaties and conventions relating to extradition to which Ethiopia is party will be considered with a view to determining to what extent the domestic legal framework in Ethiopia is adequate to handle requests for extradition which arise from time to time, and to understanding the international obligations Ethiopia has assumed cocerningex tradition.

Extradition is the delivery of an accused or a convicted individual to the state on whose territory he is alleged to have committed, or to have been convicted of a crime, by the state on whose territory the alleged criminal happens for the time to be. The rationale for extradition lies in the desire of the international community to suppress crime, and with that end in view the preference of states to have the fugitive criminal tried or serve his sentence in the place where he committed the crime. Such preference on the part of the state of asylum indicates that it respects the administration of justice of the requesting state, and also that it disapproves of the act committed by the individual and in fact considers punishable. At the outset it should be pointed out that, unlike many other countries Ethiopia does not have a comprehensive extradition law. Ethiopian law on extradition comprises only a few provisions in the Penal Code, apart from the Extradition Treaty with the Sudan and other international agreements containing one or two provisions on extradition. The Revised Constitution suspened by Proclamation 1 of 1974 establishing a Provisional Minilitry Government in Ethiopia also contained some fundamental principles of extradition.

I

Although the Revised Constitution is no longer in force, it would be worthwhile, at least for historical reasons, to begin the examination of the question of extradition in Ethiopia by referring briefly to its relevant provisions, and also inasmuch as the principles contained therein are of universal application as far as extradition is concerned and may in all likelihood be included in any future constitution of Ethiopia in the event constitutional provisions on extradition are deemed necessary.

Two basic principles are involved. The first is that of the nonextradition of nationals. Thus Article 50 provided that "no Ethiopian subject may be extradited

to a foreign country". The clear import of this part of the provision is that the Government cannot legally conclude an extradition treaty or make Ethiopia party to an extradition treaty or convention undertaking to extradite Ethiopian nationals. In effect, it meant that an Ethiopian national cannot be extradited notwithstanding a treaty obligation to the contrary

The second principle embodied in Article 50, namely, that no other person shall be extradited except as provided by international agreement is included in nearly all national constitutions and extradition laws.It indicated that the Ethiopian Government could not extradite fugitive criminals in the absence of treaty obligations to that effect. This presumably gave a fugitive criminal faced with extradition from Ethiopia, when in fact there is no extradition treaty between Ethiopia and the requestng state or Ethiopia is not party to a multilateral treaty providing for extradition of criminals, the right to challenge the legality of the Government's proposed action. In many countries extradition is not solely an executive or political act and involves protracted judicial proceedings culminating in a ruling for or against the Government's decision to comply with a request for extradition. In Ethiopia, case law involving extradition is non-existent, not for lack of extradition questions in Ethiopia over the years but probably because the individuals involved did not take their cases to court or may not have been in a position to do so.

## II

## The Penal Code[1]

The Penal Code contains a few provisions on extradition. Sub-Art, (1) of Art. 21 provides:

> „Any foreigner who commits an *ordinary* offence outside the territory of Ethiopia and who takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties, or international custom; extradition shall be granted on the application made on proper form by the state where the offence was committed for the purpose of trial under the territorial law when the offence does not directly and principally concern the Ethiopian state" (*emphasis* added).

The first obvious observation with regard to this provision is that it is only a foreigner who is extraditable which is in keeping with the principle of non-extradition of nationals, Secondly, Ethiopia grants extradition only in cases of ordinary offences. What constitutes an ordinary offence in a particular case is in general difficult to determine. Although it is nowhere defined in the provision, it is universally held, particularly by writers, that an ordinary offence is an offence which is not political. Although it is beyond the scope of this paper to go in to

[1] *Negarit Gazetta*-Extraordinary Issue No. 1, 1957 Proclamation No. 158 of 1957.

detail on this question, it has to be pointed out that determining whether a particular offence for which extradition is requested is political is by no means an easy task. On the contrary, it is the single most difficult question in any extradition proceeding where the fugitive criminal contests the extradition by pleading the political character of the offence for which his extradition is requested. Hardly any treaty, convention or national law attempts to define what constitutes a political offence, beyond saying that political offences or offences of a political character are not extraditable. If there is one point over which there seems to be little controversy, it is that the requested state is competent to determine whether a particular offence is one of a political character. National practice in this regard demonstrates considerable diversity in the application of the principle, inasmuch as it is to a large extent left to the judicial or executive organ of the requested state, depending upon domestic law, to determine whether given a particular set of circumstances an offence is political.

Next we come to the expression in Article 21 : "may be extradited in accordance with the provisions of the law, treaties or international custom". Any of these may be employed to extradite a fugine criminal. While , by "treaties", it is meant extradition treaties or other treaties containing provisions on extradition, and "international custom" refers to the practice of states or customary international law, it is not clear as to what is meant by the phrase "the provisions of the law". Which law? Penal Code' The Criminal Procedure Code? or any other law? Or does it refer to a special extradition law which as yet does not exist but which the drafter might have hoped would be enacted? Whatever may be the meaning of the phrase in question, it is clear that a foreign fugitive criminal may be extradited from Ethiopia under any of the three procedures. In fact, the clear import of Art. 21 (a) is that, in Ethiopia, extradition in the absence of treaty obligations is possible, since under Art. 21 (1), even if there is no extradition treaty between Ethiopia and the requesting state, the provisions of the law, or international custom may form the bases for the extradition of a fugitive criminal. This may be in conflict with the principle that no person may be extradited except as provided by international agreement, meaning nothing less than an extradition treaty or convention or any other international agreement in which Ethiopia has undertaken to extradite fugitive criminals.

Article 21 (1) further provides that a fugitive criminal will not be extradited if the offence directly and principally concerns the Ethiopian State (Article 13). Article 13 provides for the application of the Penal Code to any person who in a foreign country has committed one of the offences against the Head of State and the country, their safety or integrity, its institutions or essential interests as defined in other provisions of the Code. This means any such person, instead of being extradited, will be tried by Ethiopian Courts under Ethiopian law. But it is hard to imagine a person who would take refuge in Ethiopia when he knows or suspects that the crime he has committed directly and principally concerns Ethiopia.

Sub-Art. 2 of Art. 21 of the Penal Code states, "No Ethiopian national having that status at the time of the commission of the offence may, *save as is otherwise*

*expressly provided*, be handed over to a foreign country. *Failing extradition* he shall be tried by Ethiopian Courts and under Ethiopian law" (*emphasis* added). What do the *underlined* phrases mean? The first, "save as is otherwise expressly provided", implies that the extradition of an Ethiopian national may be provided for either in an extradition treaty or any other law. The second phrase "failing extradition treaty or any other law"; obviously indicates the possibility of extraditing an Ethiopian national in accordance with a provision to that effect in a treaty or domestic law. In effect, under the Penal Code the position of an Ethiopian national is not significantly different from that of a foreigner with regard to extradition.

The only difference is that a foreigner may be extradited in accordance with international custom, while an Ethiopan national may not.

In other words, the only protection an Ethiopian national has against extradition is that he may be extradited only under a treaty obligation to do so. Here the Penal Code may be in conflict with the principle of nonextradition of nationals.

Finally, there is sub-Article (3) of Article 21, which provides that, "in all cases where an offence raises a question of extradition, the request shall be dealt with in accordance with the principles of Ethiopian law and provisions of existing treaties". In view of the fact that, in Art. 21 (1), "the provisions of the law, treaties or international customs" were stated as the bases for extraditing a fugitive criminal, the purpose of this sub-article is unclear. Does it include an additional frame of reference in an extradition case, or is a mere repetition of the guidelines in Sub-Art. 1? On the face of it, it does not seem as if it is a mere repetition. Rather, it seems to lay down an additional guideline. But this additional guideline, instead of facilitating the application of Art. 21 (1), renders it more confusing. The confusion stems first from the phrase "the Principles of Ethiopian law". Which principles of Ethiopian law? The principles of Ethiopian criminal law or procedure, or the principles of Ethiopian extradition law, which is non-existent? Do the "Provisions of the law" referred to in Sub-Art. 1 mean the same thing as "the Principles of Ethiopian law", referred to in Sub-Art. 2? If they are different, it is not indicated as to which prevails. Suppose that, under "the provisions of the law", a fugitive criminal is extraditable, while this would be against "the principles of Ethiopian law", whatever the meaning of these two phrases may be? The second problem with this Sub-Article is the absence of the term "international custom" which is found in Sub-Art. 1. Under Sub-Article (3) of Art. 21, a fugitive criminal may be extradited only in accordance with the principles of Ethiopian law and existing treaties while under sub-Article 1 he may also be extradited in accordance with "international custom". Which provision prevails? It is not clear why the term "international custom" was not included in Sub-Art. 3. In fact, the whole of Sub-Artilce (3), apart from being unnecessary, cripples the whole of Art. 21 which, as we have seen, is in itself so vague and difficult to apply as to serve no purpose in a concrete extradition case.

## III

## Treaties and International Conventions

We now turn to those treaties and international conventions concerning extradition to which Ethiopia is a party. With regard to bilateral extradition treaties, Ethiopia has only one such treaty - the 1964 Extradition Treaty with the Sudan. The Treaty was signed on 29 March 1964, and came into force on 16 April 1964. Here we shall consider only the more salient provisions of the treaty, in the light of the most significant aspect of extradition under international law, as evidenced by treaties and conventions.

As was emphasised in the preceding part of this paper, the most significant universal principle of the law of extradition is that of the non-extradition of political criminals. The Ethio-Sudan Extradition Treaty has provided for this important principle in Art. 7. Under this provision of the Treaty, there shall be no extradition for offences of a political character, and no extradition if the person whose extradition is requested proves that the requisition for his surrender has, in fact, been made with a view to trying or punishing him for a crime or offence of a political character. Although it is not indicated in the Article or elsewhere in the treaty as to who decides whether the offence for which extradition is requested is political the decision should be left to the requested state, since that is the general practice of states in extradition cases. As in almost all extradition treaties or conventions, no attempt has been made in this treaty to define what constitutes an offence of a political character. Furthermore, one significat defect is the absence of the so-called *attentant clause*, which provides that murder of the head of a foreign state or government, or of a member of his family, should not be considered a poltical crime for the purpose of extradition. This is in most cases included in modern extradition treaties or conventions.

Another important universal principle is that of double criminality, which requires that the offence for which extradition is requested be punishable under the laws of both the requesting and the requested state. The Treaty under consideration, after enumerating in Art. 2 the crimes for which extradition shall be granted, adds this important proviso to the effect that these or substantially similar offences should be punishable by the laws of both countries, if committed within their respective jurisdictions, if the extradition is to be granted.

The rule of speciality is the other universal principle included in all extradition treaties and conventions. Art. 5 (1) of the Ethio-Sudan Treaty also provides for this rule, to the effect that a person surrendered can in no case be kept in custody or be brought to trial in the territory of the contracting party to whom the surrender has been made for any other crime or offence, or on account of any other matters than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the territory of the contracting party by whom he has been surrendered.

In most extradition treaties and conventions, states, in keeping with their constitutions and domestic laws, reserve the right to refuse to extradite their own nationals. This is clearly enunciated in Art. 3 of the Treaty that, in no case, nor in any circumstances whatever, shall the contracting parties be bound to surrender their own nationals as determined by their respective laws With regard to Ethiopia, this was in keeping with Art. 50 of the Constitution, which prohibited the extradition of an Ethiopian national. But the way Art. 3 of the Treaty is drafted may, in the light of the phrase "*be bound to*", indicates that the contracting parties may do so if they want to surrender their own nationals. That means that an Ethiopian national whose extradition has been requested by the Sudan, and the request is granted, cannot invoke Art. 3 of the Treaty to challenge the decison, since the phrase "be bound to" implies discretion on the part of the requested state. Any constitutional provision to the contrary being absent, he would theoretically be liable to extradition under the Treaty if the Ethiopian Government decided to do so. Such an eventuality would, however, not arise in view of Article 33 of the Draft Constitution for the People's Democratic Republic of Ethiopia, which clearly provides that no Ethiopian may be extradited. The Draft Constitution under Article 35 (2) provides for more explicit protection to a foreigner than the Revised Constitution of 1955, in that even a stateless person may not be extradited, except as stipulated by international agreement.

Article 13 of the Treaty affords considerable protection to the fugitive criminal by providing that (a), if sufficient evidence for the extradition be not produced within sixty days from the date of the apprehension of the fugitive, or within such further time as the court of the contracting party applied to shall direct, the fugitive shall be set at liberty, and (b) if, after a fugitive has been held judicially declared for surrender under the Treaty, the fugitive is not removed from the territory from which his extradition is desired within thirty days' time, he may be set at liberty. It should, however, be noted that while under paragraph 1 his release is mandatory, under paragraph 2 it is discretionary, which should leave him at the mercy of the requested Government. In such circumstances, his only remedy would be to resort to court.

A unique provision in the Treaty is Art. 6 which provides that "a requisition for extradition shall not be founded on a sentence passed *in contumacium*". Clearly, this is intended to protect the person who has been tried and sentenced *in absentia*, since to extradite him when in fact he has not appeared in court would be unfair, and tantamount to depriving him of his liberty without due process of law. This provision of the treaty would serve to restrain the requesting state from trying and sentencing the accused *in absentia*, and then requesting his extradition so that he may serve his sentence in the requesting state. Without such a provision, the requesting state might well go ahead and try the accused *in absentia* since it would find it relatively easier to have him convicted Unfortunately, such a provision is seldom included in extradition treaties or conventions.

Nearly all extradition treaties and conventions contain provisions making the extradition of the fugitive criminal conditional upon the nonimposition of the death

penalty on him, or, it has already been imposed, its reduction to a lesser penalty But such a provision is not included in the Treaty under consideration, which thus lacks a significant and universal principle of modern extradition law and practice

With regard to the procedure for extradition, which is, as a rule, left to municipal extradition laws, the Treaty in Art. 8 requires that the requisition for extradition must be accompanied by a warrant of arrest issued by a court in the requesting state, or, in the case of an already convicted person, by sentence of condemnation passed against the convicted person by the compe tent court in the requesting state. It is only after these formalities are met that the requested state proceeds under Art. 9, to arrest the fugitive criminal.

Under Art. 10 of the Treaty, extradition shall take place when the evidence is found to be sufficient, according to the laws of the territory from which extradition is desired, either to justify the committal of the prisoner for trial, if the crime or offence of which he is accused had been committed in that territory; or the evidence may be sufficient to prove that the prisoner is the person convicted by the courts of the contracting party which makes the crime of offence of which he had been convicted one in respect of which extradition would, at the time of the conviction, have been granted by the contracting party applied to, and provided, further, that no criminal shall be surrendered until after the expiration of fifteen days from the date of his commital to prison to await his surrender. Here it should be noted that (a)the fugitive's guilt need not be proved beyond reasonable doubt (b) that sufficient evidence to justify commital for trial is enough, and (c) a period of fifteen days has to elapse before the fugitive is extradited. The last requirement is, presumably, to give him time to apply for a writ of Hebeas Corpus.

The Treaty does not expressly provide for a hearing to decide on an extradition request. However, Art. 11 provides for "examination", which the authorities of the requested state have to make in accordance with the stipulations in the Treaty. The question is whether "examination" means the same thing as hearing. It is submitted that the period of fifteen days before extradition takes place would seem to have no purpose if one does not take "examination" to mean "hearing" since Art. 11 (1) provides for the admission as evidence of authenticated (asprovided) sworn depositions, or the affirmations of witnesses taken in the territory of the other contracting party, or copies thereof, and likewise the warrants and sentences issued there or copies thereof and certificates of, or judicial documents stating the fact of a conviction. Such an elaborate provision clearly shows that the fugitive criminal should be given the opportunity to present at whatever forum all possible defences or counter-arguments to escape extradition.

To sum up, the Extradition Treaty between Ethiopia and the Sudan insofar as it contains almost all the significant and universal principles of extradition (with the exception of some drawbacks pointed out in the foregoing analysis), is a typical extradition treaty. As such, it can serve as a model for future extradition treaties or for the drafting of a domestic legislation on extradition procedure.

### International Conventions

Under this heading, four conventions on different subjects to which Ethiopia is a party and which contain provisions on extradition will be examined.

#### 1. Convention on the Prevention and Punishment of the Crime of Genocide of 1948[2]

This Convention was adopted by the General Assembly of the United nations on 9 December 1948. Ethiopia ratified the Convention on 1 July 1949. As of 31 December 1982,87 states are parties to the Convention. Article 8 of this convention provides that genocide and the other acts enumerated in Article 8,i.e. conspiracy to commit genocide, direct and public incitement to commit genocide, and complicity in genocide, shall not be considered as political crimes for the purpose of extradition.

The contracting parties have pledged themselves in such cases to grant extradition in accordance with their laws and treaties in force. In the application of this provision to a particular case, all the known principles considered above would obviously apply.

#### 2. The Single Convention on Narcotic Drugs (1961).[3]

Ethiopia became party to this convention on 29 April 1965. Article 36 (b) of the Convention provides that it is desirable that the offences referred to in paragraph 1 and paragraph 2(a) (11) namely, cultivation, production, manufacture, sale, delivery, brokerage, dispatch, etc., of narcotic drugs, conspiracy and attempt be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the parties, and, as between any of the parties which do not make extradition conditional on the existence of a treaty or reciprocity, be recognised as extradition crimes, provided that extradition shall be granted in conformity with the law of the party to which application is made, and that party shall have the right to refuse to effect the arrest or grant the extraditon in cases where the competent authorities consider that the offence is not sufficiently serious. In connection with this, it may be noted that the Extradition Treaty between Ethiopia and the Sudan, which is also a party to the Convention on Narcotic Drugs, includes offences relating to narcotics among the extraditable offences.[4]

[2] UNTS Vol. 78, p. 277.

[3] 18 United Nations Treaty Series 52, p. 252.

[4] Article 4, paragraph 22.

### 3. Convention on Offences and Certain Other Acts Committed on Board Aircraft (done at Tokyo on 14 September 1961)[5]

This convention was the first of a series of international conventions relating to the safety of air transport, adopted under the auspices of the International Civil Aviation Organization. It entered into force on4 December 1969. As of August 1983, 112 states were parties to the Convention. Ethiopia ratified the Convention on 27 March 1979.

The Convention provides for the powers of the aircraft commander and the steps to be taken by the parties to the Convention in the event of unlawful seizure of aircraft. Although the Convention does not make extradition obligatory, it provides under Article 16(1) that offences committed on aircraft registered in a contracting State shall be treated, for the purpose of extradition, as if they had been committed not only in the place in which they have occurred but also in the territory of the state of registration of the aircraft.

### 4. Convention for the Suppression of Unlawful Seizure of Aircraft (done at the Hague 16 December 1970)[6]

This Convention essentially deals with hijacking, and is meant to be an improvement over the Tokyo Convention. As of August 1983, 117 states are parties. Ethiopia became party to this Convention on 26 March 1979. Article 7 and 8 of the Convention relate to extradition. The former gives contracting states the option of prosecution or extradition. and provides:

> The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of extradition.

Under Article 8, paragraph 1, it is provided that the offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. It is further provided that any contracting state may at its option consider the convention as the legal basis for extradition, in the event of request for extradition, if, under its laws, extradition is conditional on the existence of a treaty. It is, however, stated that extradition shall be subject to the other conditions provided by the law of the requested state. Under paragraph 3 of Article 8, contracting states which do not make extradition conditional on the existence of a treaty are bound to recognise the offence as an extraditable offence between themselves, subject to the conditions provided by the law of the requested state

[5]United Nations Treaty Series, Vol. 704, p. 219.

[6]10 *International Legal Materials* (1971), p. 133.

### 5. Convention to Discourage Acts of Violence Against Civil Aviation[7] (done at Montreal, 23 September 1971)

This Convention is concerned with unlawful acts against aircraft and air transport other than hijacking, such as destroying an aircraft in service, or damaging or destroying air navigation facilities. As at August 1983, 117 states are parties to the Convention. Ethiopia acceded to the Convention on 25 March 1979.

In connection with extradition, this convention contains, under Articles 7and 8, provisions identical with those in the Hague Convention considered above, namely the option on the part of contracting states to prosecute or extradite, regarding the offences specified in the Convention as extraditable under extradition treaties between contracting states, and undertaking by the contracting parties to include the offences as extraditable offences in every extradition treaty to be concluded between them. As between states whose laws do not make extradition dependent upon the existence of a treaty, there is the undertaking to recognise the offences which the Convention is intended to suppress as extraditable offences between themselves, without prejudice to the laws and regulations of the requested state in relation to extradition.

## Conclusion

This paper has attempted to analyse the present state of Ethiopian law on extradition. We have seen that Ethiopia's municipal extradition law, with the exception of the treaties and conventions, is so deficient and confusing as to serve very little useful purpose in concrete situations. This is particularly true, as we have seen, of the Penal Code provisions on extradition.

Thus, the need for a comprehensive municipal extradition law is apparent. It might be argued that, since Ethiopia does not have many extradition treaties with other states, and it does not follow the practice of extraditing in the absence of treaty obligations, there is no need for a municipal extradition law. But the simple answer to this argument would be that even the extradition treaty between Ethiopia and the Sudan, and the multilateral conventions to which Ethiopia is party, considered above, presuppose the existence of a national extradition law. Furthermore, it is more likely than not that Ethiopia may in future conclude other extradition treaties with other states or be party to additional multilateral conventions, and therefore, Ethiopia needs a framework within which is might do so. Treaties and conventions on extradition to which states are parties would invariably require domestic legislation for their proper implementation. Difficulties encountered by authorities of the Government in handling the few requests for extradition over the past couple of years have clearly illustrated the need for rules and procedures on extradition. If and when Ethiopia enacts a law on extradition, then the Penal Code Provisions on extradition will be superseded by the new legislation.

[7] 10 *International Legal Materials* (1971), p. 1151.