

EXTRADITION (AMENDMENT) DECREE 1988



Decree No. 4

[16th February 1988]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1. The Extradition Act 1966, as amended by the Extradition (Amendment) Act 1970, (hereinafter in this Decree referred to as "the principal Act"), is hereby further amended as specified in the following provisions of this Decree.

Amendment
of 1966. No.
87.
1970. No. 49.

2. Immediately after section 3 of the principal Act, there shall be added the following new section, that is to say—

Addition of
a new
section 3A.

"Offences
under
military
law.

3A—(1) A fugitive criminal may be surrendered notwithstanding that the Attorney-General or a court dealing with the case is satisfied that the offence constitutes an offence only under military law or a law relating only to military obligations.

(2) In this section, a court dealing with the case "in relation to a fugitive criminal" means any magistrate dealing with the fugitive's case in pursuance of section 8 of this Act or any court before which the fugitive is brought on or by virtue of an application made by him or on his behalf for a writ of *habeas corpus*."

3. Immediately after section 9 of the principal Act, there shall be added the following new section 9A, that is to say—

Addition of
new sec-
tion 9A.

"Postpone-
ment of
surrender
of fugi-
tives.

9A.—(1) Subject to subsection (2) of this section, where a fugitive criminal—

(a) has been charged with an offence triable before any court in Nigeria; or

(b) is serving a sentence imposed by any court in Nigeria; then, until such time as he has been discharged (whether by acquittal, the expiration or remission of his sentence or otherwise howsoever) he shall not be surrendered except as permitted by any law in force in Nigeria.

(2) Subject to the provisions of this Act, a prisoner serving such sentence as is referred to in subsection 1 (b) of this section may at the discretion of the President, Commander-in-Chief of the Armed Forces be returned temporarily to another country within the Commonwealth in which he is accused of a returnable offence to enable proceedings to be brought against the prisoner

in relation to that offence, on such conditions as may be agreed between the President, Commander-in-Chief of the Armed Forces and that other country requesting the surrender of the prisoner."

Substitution
of section
18.

4.—(1) For section 18 of the principal Act, there shall be substituted the following new section, that is to say—

"Returnable offences. 18.—(1) A fugitive criminal may only be returned for a returnable offence.

(2) For the purposes of this Act, a returnable offence is an offence however described, which is punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the Commonwealth country seeking his surrender.

(3) Offences described in subsection (2) of this section are returnable offences notwithstanding that any such offences are of a purely fiscal nature under the laws of the country seeking the return of the fugitive and punishable as prescribed in subsection (2) of this section."

Amendment
of section 19.

5. Section 19 of the principal Act is amended by inserting in the proper alphabetical sequence the following new definition, that is—

"court" includes a tribunal established by a Decree or any other enactments ;".

Repeal.

6. Schedule 2 to the principal Act is hereby repealed ; and consequentially, any reference in the principal Act to Schedule 2 shall be read as a reference to section 18, as substituted by this Decree.

Citation.

7. This Decree may be cited as the Extradition (Amendment) Decree 1988.

MADE at Lagos this 16th day of February 1988.

GENERAL I. B. BABANGIDA,
*President, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purport)

The Decree amends the Extradition Act 1966 to reflect the amendments effected to the Commonwealth Scheme on Extradition. Among other things, the amendments declare as extraditable any criminal offence punishable by imprisonment for 2 years or more, including purely fiscal offences. It also provides that a fugitive offender standing trial before a court or tribunal or serving a term of imprisonment may not be surrendered until he has served out the term or has been discharged or acquitted by the court before whom he is standing trial.

TRANSFER OF CONVICTED OFFENDERS (ENACTMENT AND ENFORCEMENT) DECREE 1988



Decree No. 5

[16th February 1988]

Commence-
ment.

WHEREAS at the Meeting of the Commonwealth Law Ministers held at Harare, Zimbabwe between 26th July and 1st August 1986 a Scheme for the Transfer of Convicted Offenders within the Commonwealth was agreed and adopted by the Commonwealth Law Ministers ;

AND WHEREAS it is necessary and expedient to make legislative provision for the enforcement in Nigeria of the Scheme :

NOW THEREFORE, THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

PART 1—ENFORCEMENT OF DECREE

1.—(1) As from the commencement of this Decree the provisions of the Scheme for the Transfer of Convicted Offenders within the Commonwealth as are set out in this Decree (hereinafter in this Decree referred to as the "Transfer Agreement") shall, subject to this Decree, have the full force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

Enforce-
ment and
power to
apply
Decree by
order :
recipro-
city.

(2) The provisions of this Decree shall apply to every separate country within the Commonwealth, on the basis of reciprocity.

(3) Accordingly, where a Transfer Agreement has been made between Nigeria and any other Commonwealth Country for the transfer of convicted offenders, the President, Commander-in-Chief of the Armed Forces may by Order published in the *Gazette*, apply the provisions of this Decree to that other country.

(4) An Order made under subsection (3) of this section shall recite and embody the specific terms of the Transfer Agreement or may apply the provisions of this Decree to the country subject to such conditions, exceptions and qualifications as may be specified in the Order.

(5) While an Order made under subsection (3) of this section is in force in respect of any country, this Decree shall apply to that country subject to the provisions of the Order and to the terms of the Transfer Agreement as recited in the text of such Order.

(6) The power to vary an Order made under subsection (3) of this section shall include power, where the terms of the relevant Transfer Agreement has been varied, to amend the Order to recite or embody those terms ; and if the Transfer Agreement to which such an Order relates is determined or otherwise ceases to have effect, the President, Commander-in-Chief of the Armed Forces, shall forthwith revoke the Order.

(7) Every Order made under subsection (3) of this section which applies this Decree to any country shall include a provision inserting in Schedule 1 to this Decree an entry consisting of the name of that country, the year of the statutory instrument containing the Order, and where such Order is varied or revoked, the varying or revoking Order shall include an Order deleting the relevant entry from that Schedule.

(8) For the purposes of subsection (2) of this section, each of the following is a separate country, that is to say—

(a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country so designates ; and

(b) each country within the Commonwealth which, although not sovereign and independent is not designated for the purposes of paragraph (a) of this subsection.

Modification of existing legislation.

2. In any matter to which this Decree relates, the relevant provisions of any other law in force in Nigeria, including—

(a) the Criminal Code and the Penal Code ;

(b) the Criminal Procedure Act and the Criminal Procedure Code and any such similar law in force in any part of Nigeria ; and

(c) the Evidence Act and the Evidence Law in force in any part of Nigeria ;

shall be read with such modifications as to bring them into conformity with the provisions of this Decree.

PART II—TRANSFER OF CONVICTED OFFENDERS

General principles.

3. Any person convicted and sentenced to a term of imprisonment in one country (hereinafter referred to as “the sentencing country”) for an offence may be transferred in accordance with the provisions of this Decree to another country (hereinafter in this Decree referred to as “the administering country”) in order that he may serve the remainder of that sentence in the administering country.

Transfer of a convicted offender.

4.—(1) A convicted offender to whom this Decree applies shall be informed by the sentencing country of the substance of the provisions of this Decree.

(2) A convicted offender may only be transferred following a request either by the sentencing country or the administering country ; but the convicted person may also apply for his own transfer and in doing so he may channel his application to either the sentencing or the administering country.

(3) Where a convicted offender applies for his transfer, the country which receives that application shall, as soon as practicable, so inform the other country.

5.—(1) A convicted offender may be transferred to the administering country under this Decree only on the fulfilment of the following conditions, that is to say—

Conditions
for
transfer.

(a) if the convicted offender—

(i) is a citizen or national of the administering country ;

(ii) has, with the administering country, such close ties of the kind that may be recognised by the administering country as sufficient to warrant a transfer under this Decree ;

(b) if the judgment is final under the laws of the sentencing country ;

(c) if at the time of receipt of the request for transfer the convicted offender still has to serve not less than 6 months of the sentence or if the sentence is indeterminate ;

(d) if the transfer is consented to by the convicted offender or, where in view of his age or his physical or mental condition one of the two countries considers it necessary that a person entitled to act on behalf of the convicted offender consents to the transfer ; and

(e) if the sentencing and administering countries mutually agree to the transfer.

(2) In an exceptional case, both the sentencing and the administering countries may agree to a transfer notwithstanding that the time remaining to be served by the convicted offender is less than that specified under paragraph (c) of subsection (1) of this section.

(3) For the purposes of sub-paragraph (i) of paragraph (a) of subsection (1) of this section—

(a) a person is a citizen of Nigeria if he falls within any of the conditions stipulated under sections 23 to 25 of the Constitution of the Federal Republic of Nigeria 1979 ; and

(b) no person shall as specified in section 26 of the Constitution of the Federal Republic of Nigeria 1979 lay claim to the citizenship of more than one country.

6.—(1) In order to assist the administering country to take a decision on a request for a transfer under this Decree, the sentencing country shall send to the administering country information and documents specified in subsection (2) of this section, unless either party has reached a decision not to consent to the transfer.

Obligation
to furnish
information.

(2) The information and documentation referred to in subsection (1) of this section are as follows—

(a) the name, date and place of birth of the convicted offender ;

(b) the address (if any) of the convicted offender in the administering country ;

(c) a certified copy of the judgment and a copy or account of the law on which it is based ;

(d) a statement of the facts upon which the conviction and the sentence were based ;

(e) the nature, duration and date of the commencement of the sentence ;

(f) whenever appropriate, any medical or social reports on the convicted offender and any information concerning his medical treatment in the sentencing country and any recommendation for his further treatment in the administering country ; and

(g) any other information or documents which the administering country may specify as required in all cases to enable it consider the possibility of transfer and to enable it to inform the convicted offender and the sentencing country of the full consequences of transfer for the convicted offender under the law of the administering country.

(3) The administering country shall if requested by the sentencing country, send to the sentencing country a document or statement indicating, whether the convicted offender is a national of its country within the meaning of section 5 (1) (a) (i) of this Decree.

(4) All documents sent in support of an application for transfer under this Scheme shall be certified.

Requests
and replies.

7.—(1) Requests and applications for transfer and any replies thereto shall be made in writing.

(2) All communications between the sentencing and the administering countries shall be conducted through the channels notified in pursuance of section 19 (2) of this Decree.

Consent
and verification.

8.—(1) The sentencing country shall ensure that the convicted offender or a person authorised to act on his behalf under section 5 (1) (d) of this Decree acts voluntarily and in writing with full knowledge of the legal consequences thereof ; and the procedure for giving such consent shall be in accordance with the law of the sentencing country.

(2) The sentencing country shall afford to the administering country, every opportunity to verify that the consent is given in accordance with the provisions of subsection (1) of this section.

Notification
of decisions.

9. A convicted offender, who has applied for a transfer, shall be informed in writing of any action taken by the sentencing country or the administering country, as well as of any decision taken by either country on such request for his transfer.

Effect of
transfer for
sentencing
country.

10. The enforcement of the sentence by the administering country shall, to the extent that it has been enforced, discharge that sentence in the sentencing country.

Effect of
transfer for
adminis-
tering
country.

11.—(1) The competent authorities of the administering country shall continue the enforcement of the sentence immediately or through a court or administrative order under the conditions set out in section 12 of this Decree.

(2) Subject to the provisions of section 13 of this Decree, the enforcement of the sentence shall, upon transfer, be governed by the law of the administering country which alone shall be competent to take all appropriate decisions.

12.—(1) The administering country shall be bound by the legal nature and duration of the sentence as imposed by the sentence.

Continued enforcement.

(2) The administering country may, if its law requires, by court or administrative order adopt the sanction to a punishment or measure prescribed by its own law ; so however that in so doing, the administering country shall ensure that—

(a) the nature, punishment or measure so adopted shall, as far as possible correspond with that imposed by the judgment of the sentencing country ; and

(b) the nature or duration of punishment so adopted does not aggravate the nature or duration of the sanctions imposed by the sentencing country.

13.—(1) Unless the sentencing and the administering countries otherwise agree, only the sentencing country may in accordance with its Constitution or other laws grant pardon, amnesty or commutation of the sentence of a transferred convicted offender.

Pardon, amnesty, commutation or review.

(2) Only the sentencing country may consider and decide on any application for the review of the judgment concerned.

14. The administering country shall terminate enforcement of the sentence—

Termination of enforcement.

(a) at the end of the term of the sentence ; or

(b) as soon as it is informed by the sentencing country of any decision or measure as a result of which the sentence ceases to be enforceable.

15.—(1) The administering country shall notify the sentencing country—

Information on enforcement.

(a) when it considers the enforcement of the sentence to have been completed in accordance with section 14 of this Decree ; or

(b) if the convicted offender escapes from custody before enforcement of the sentence has been completed as required by section 14 of this Decree.

(2) The sentencing country may at any time request a special report from the administering country concerning the enforcement of the sentence.

16.—(1) Each Commonwealth country shall afford reasonable co-operation to another Commonwealth country by facilitating the transit through its territory of convicted offenders who are being transferred between other countries pursuant to the Commonwealth Scheme for the Transfer of Convicted Offenders.

Transit.

(2) Where in the course of the transfer of a convicted offender it is necessary to go through the territory of any Commonwealth country, the country intending to make the transfer shall give advance notice of such transfer to all countries through which it is proposed to take the convicted offender.

Costs.

17. The cost of the transfer of the convicted offender under this Decree shall be borne by both the sentencing country and the administering country in such proportions as they may agree either generally or in regard to any particular transfer.

Application.

18. The provisions of this Decree shall apply to the enforcement of sentences imposed before as well as after the date when this Decree comes into force.

Acceptance of Scheme and notification.

19.—(1) Immediately after the commencement of this Decree, the appropriate authority shall, through the diplomatic channel, notify the Commonwealth Secretary-General that the provisions of the Commonwealth Scheme for the Transfer of Convicted Offenders has come into force in Nigeria.

(2) Accordingly, the President, Commander-in-Chief of the Armed Forces may by Order published in the *Gazette* designate a person or authority as the proper channel for communication under this Decree.

(3) Accordingly, the appropriate authority shall inform the Commonwealth Secretary-General of the person or authority designated under subsection (2) of this section as the proper channel for communication under this Decree.

(4) For the purposes of subsection (1) of this section, the "appropriate authority" shall be the Minister of External Affairs.

Interpretation.

20. In this Decree, unless the context otherwise requires—

"administering country" means the country to which a convicted offender may be or has been transferred in order to serve his remaining sentence ;

"convicted offender" means a person upon whom a sentence has been imposed ;

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

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

"sentencing country" means the country in which the sentence was imposed on the convicted offender who may be, or has been, transferred.

Citation.

21. This Decree may be cited as the Transfer of Convicted Offenders, (Enactment and Enforcement) Decree 1988.

SCHEDULE**Section 1**

COUNTRIES IN RESPECT OF WHICH AN ORDER UNDER SECTION 1 OF THIS DECREE ARE IN FORCE

Country	Date and Number of Statutory Instrument containing the Order
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MADE at Lagos this 16th day of February 1988.

GENERAL I. B. BABANGIDA,
President, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purpose)

The Decree makes legislative provision to give municipal effect to the Commonwealth Scheme on the Transfer of Convicted Offenders between Commonwealth countries. Basically, the Decree provides that on application, a person convicted and sentenced to a term of imprisonment in one country (the sentencing country) may with mutual consent be transferred to another country (the administering country) usually his home country, to enable him serve out his sentence there.