

No. 11547

**FRANCE
and
DAHOMEY**

**Agreement concerning co-operation in the field of justice.
Signed at Paris on 24 April 1961**

Authentic text: French.

Registered by France on 2 February 1972.

**FRANCE
et
DAHOMEY**

**Accord de coopération en matière de justice. Signé à
Paris le 24 avril 1961**

Texte authentique: français.

Enregistré par la France le 2 février 1972.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE FRENCH REPUBLIC AND
THE REPUBLIC OF DAHOMEY CONCERNING CO-
OPERATION IN THE FIELD OF JUSTICE

The Government of the French Republic and
The Government of the Republic of Dahomey,
Considering their desire to co-operate in the field of justice,
Considering that the two States are imbued with the same ideal of justice
and liberty,
Considering their common desire to maintain and strengthen the ties
which link them in the legal and judicial fields,
Have agreed on the following provisions:

TITLE I

GENERAL PROVISIONS

Article 1

The French Republic and the Republic of Dahomey shall establish a regular exchange of information in the field of judicial organization, legislation and jurisprudence.

Article 2

The judicial documents in implementation of this Agreement shall be transmitted, except where provided otherwise, through the diplomatic channel.

In urgent cases, however, they may be transmitted directly between the Ministers of Justice of the two States.

¹ Came into force on 6 October 1961, the date of entry into force of the Treaty on co-operation of 24 April 1961 (see p. 83 of this volume), in accordance with article 67.

TITLE II
RECIPROCAL LEGAL ASSISTANCE

Chapter I

TRANSMITTAL AND EXECUTION OF LETTERS ROGATORY

Article 3

Letters rogatory both in civil and commercial and in penal and administrative matters to be executed in the territory of one of the Contracting States shall be transmitted through the diplomatic channel for execution by the judicial authorities of the requested State.

Article 4

The requested State may refuse to execute a letter rogatory if the letter rogatory does not fall within its competence or is liable to impair the sovereignty, security or public policy of that State.

Article 5

Persons whose testimony is requested shall be invited to appear by a regular administrative notice. If they refuse to comply with such notice, the requested authority shall use the means of coercion provided for in the legislation of the State where the person is to appear.

Article 6

The requested authority shall, at the express wish of the requesting authority, with all due dispatch:

- (1) Execute the letter rogatory by means of a special formality, if that formality does not conflict with the legislation of the State where the letter is to be executed;
- (2) Inform the requesting authority in good time of the date and place of execution of the letter rogatory, so that the interested parties may be present, in accordance with the legislation of the requested State.

Article 7

The execution of letters rogatory shall not give rise to the refunding of any costs save the fees of experts.

Article 8

The provisions of this chapter shall be without prejudice to the right of the Contracting States to cause letters rogatory concerning the

hearing of their nationals to be executed direct by their representatives or deputies.

Where there is a conflict between the legislation of the two countries, the nationality of the person in respect of whom the hearing is requested shall be determined by the law of the State in which the letter rogatory is to be executed at the time it is issued.

Chapter II

APPEARANCE OF WITNESSES IN CRIMINAL MATTERS

Article 9

If, in a criminal case, the personal appearance of a witness is necessary, the Government of the State in which he is resident shall call upon him to answer the summons. If he does, his travel expenses and subsistence allowance, which shall be calculated from his place of residence, shall be at least equal to those provided for under the scales and regulations in force in the State in which the hearing is to take place. At his request, he shall be advanced all or part of the travel expenses by the consular authorities of the requesting State.

Article 10

No witness who is summoned in one of the two States and voluntarily appears before the judicial authorities of the other State may be prosecuted or detained in the latter State for offences or convictions antedating his departure from the territory of the requested State. This immunity shall cease 15 days after the date on which the testimony has been completed and/or the return of the witness has become possible.

Article 11

Requests for the sending of witnesses who are in custody shall be transmitted through the diplomatic channel.

Such requests shall be complied with, unless there are special objections, on the understanding that the said persons in custody are returned promptly.

Chapter III

JUDICIAL RECORDS

Article 12

The Contracting States shall report to each other all convictions entered in the judicial records pronounced by their respective courts against nationals and persons born in the territory of the other State.

Article 13

In proceedings before a court of one of the Contracting States, the *parquet* of that court may obtain direct from the competent authorities of the other State an extract from the judicial records relating to the person against whom the proceedings are being taken.

Article 14

Where, other than in the case of proceedings, the judicial or administrative authorities of one of the Contracting States wish to receive an extract from the judicial records of the other party, they may obtain it direct from the competent authorities in the instances and within the limits prescribed in the legislation of that Party.

Chapter IV

CIVIL REGISTER AND AUTHENTICATION

Article 15

The French Republic shall, at the times specified below, transmit to the Republic of Dahomey, copies of certificates of recognition of natural children, marriage certificates, death certificates and certificates of legitimation issued in France, as well as extracts of judgements and decisions rendered in the territory of the French Republic in matters of divorce, separation, filiation, civil registration and deprivation of legal capacity which concern persons born in the territory of the Republic of Dahomey.

Extracts of judgements and decisions rendered in matters of divorce and separation shall also be transmitted to the Republic of Dahomey when they concern persons who were married in that State.

Each quarter, copies and extracts of such documents, certificates, judgements and decisions issued or rendered during the preceding quarter shall be transmitted by the French Republic to the Republic of Dahomey.

The Republic of Dahomey shall enter in the civil register appropriate particulars from such copies and extracts in the margin of the birth or marriage certificates of the persons concerned. In the absence of a grant of execution, particulars of judgements and decisions shall be included merely for information purposes.

Article 16

The Republic of Dahomey shall, at the times specified below, transmit to the French Republic copies of certificates of recognition of natural children, marriage certificates, death certificates and certificates of legiti-

mation issued in the territory of the Republic of Dahomey, as well as extracts of judgements and decisions rendered in Dahomey in matters of divorce, separation, filiation, civil registration and deprivation of legal capacity which concern persons born in the territory of the French Republic.

Extracts of judgements and decisions rendered in matters of divorce and separation shall also be transmitted to the French Republic when they concern persons who were married in that State.

Each quarter, copies and extracts of such documents, certificates, judgements and decisions, issued or rendered during the preceding quarter shall be transmitted by the Republic of Dahomey to the French Republic.

The French Republic shall enter in the civil register appropriate particulars from such copies and extracts in the margin of the birth or marriage certificates of the persons concerned. In the absence of a grant of execution, particulars of judgements and decisions shall be included merely for information purposes.

Article 17

Each quarter, the French Republic shall transmit to the Republic of Dahomey an original or a copy of birth certificates concerning nationals of that State issued in French territory during the preceding quarter.

Each quarter, the Republic of Dahomey shall transmit to the French Republic an original or a copy of birth certificates concerning French nationals issued in the territory of Dahomey during the preceding quarter.

Article 18

The French Republic and the Republic of Dahomey shall issue free of charge copies of extracts from the civil register made out in their respective territories, when so requested, for a duly specified administrative reason or for needy citizens.

They shall also issue free of charge copies of extracts from the civil register made out in the respective territories of the two States, where such extracts relate to aliens who are nationals of a third country and are requested for a duly specified administrative reason.

Extracts from the civil register made out or transcribed in diplomatic and consular posts shall be equated with extracts from the civil register made out in the respective territories of the two States.

Issue of copies of extracts from the civil register shall in no way prejudice the question of the nationality of the person concerned so far as the two States are concerned.

Article 19

Requests made by the French Republic or by the Republic of Dahomey shall be transmitted to the Dahomean local authorities and the French local authorities by the representatives of the Contracting States.

Requests shall state briefly the grounds on which they are made.

Article 20

Extracts from the civil register, as referred to in articles 18 and 19 above, mean:

- Birth certificates;
- Declarations of still-birth;
- Certificates of recognition of natural children made out by civil registrars;
- Certificates of legitimation;
- Marriage certificates;
- Death certificates;
- Transcripts of court orders, judgements or decisions in matters relating to the civil register;
- Transcripts of judgements or decisions relating to divorce and separation.

Article 21

The following documents, made out by the administrative and judicial authorities in either State, shall be accepted, without need of authentication, in the respective territories of the French Republic and the Republic of Dahomey:

- Copies of extracts from the civil register;
- Copies of decisions, orders, judgements and other judicial documents;
- Affidavits, written statements or other judicial documents registered or filed in the courts of the two States;
- Notarized documents;
- Certificates of entitlement for annuities.

The foregoing documents shall bear the signature and the official seal of the authority competent to issue them and, in the case of copies, they shall be certified as true copies of the original by the said authority. In all cases, they shall be made out in such a way as to establish their authenticity.

Chapter V

SECURITY FOR COSTS AND PENALTIES BY FOREIGN PLAINTIFFS
("CAUTIO JUDICATUM SOLVI") AND LEGAL AID*Article 22*

No security or deposit of any kind may be imposed on French nationals in the Republic of Dahomey and nationals of the Republic of Dahomey in France by reason of their status as foreigners or the absence of domicile or residence in the country.

The foregoing paragraph shall apply to bodies corporate set up or authorized under the law of one of the two States.

Article 23

Nationals of either State shall, in the territory of the other State, be entitled to legal aid on the same basis as nationals of that State, provided they comply with the law of the country in which the aid is requested.

Certificates of need shall be issued to applicants by the authorities at their normal place of residence, if they are resident in the territory of one of the two countries.

If the person concerned is resident in a third State, the certificates shall be issued by the appropriate consul for the territory.

Where the person concerned is resident in the State in which the request is made, additional information may be sought from the authorities of the State of which he is a national.

Chapter VI

TRANSMITTAL AND SERVICE OF WRITS AND EXTRA JUDICIAL DOCUMENTS

Article 24

Writs and extra-judicial documents, both in civil and commercial and in criminal and administrative matters, to be served on persons resident in the territory of one of the Contracting States, shall be sent direct between the Ministers of Justice of the two States.

Article 25

The requested authority shall confine itself to having the document served on the addressee.

If the addressee accepts it voluntarily, proof of service shall consist either of a dated receipt signed by him, or of a certificate by the requested authority

confirming that service has been effected and indicating the manner and date of service. One or other of these documents shall be sent to the requesting authority.

If an addressee refuses to accept the document, the requested authority shall return it to the requesting authority forthwith, and shall state the reason why service could not be effected.

Article 26

The costs of serving writs and extra-judicial documents shall not be refunded.

Article 27

The provisions of this chapter shall be without prejudice to the right of the Contracting States to cause writs and extra-judicial documents addressed to their own nationals to be served direct by their representatives or deputies. Where there is a conflict between the legislation of the two countries, the nationality of the addressee shall be determined by the law of the country in which service is to be effected.

Article 28

The provisions of the preceding articles shall, in civil and commercial matters, be without prejudice to the right of interested parties resident in the territory of one of the Contracting States to have documents served on persons in the other State through law officials.

Chapter VII

MISCELLANEOUS PROVISIONS

Article 29

Any national of either Contracting State who has been given a sentence involving imprisonment or a more serious sentence may, at the request of either Government, be transferred to the authorities of the State of which he is a national.

The costs of the transfer shall be borne by the requesting State.

Article 30

The State in which the sentence is enforced shall decide in matters concerning conditional release, notice being given to the State to which the court that has pronounced the sentence belongs.

Article 31

Reprieve and amnesty shall be within the competence of the State to which the court that has pronounced the sentence belongs.

Article 32

Where a court of one of the two States pronounces the death sentence on a national of the other State, a petition for a reprieve shall be entered automatically and the diplomatic representatives of that State shall be informed forthwith.

Article 33

Decisions relating to fines shall be enforced at the request of the financial authorities of the requesting State. Such requests must be supported by copies of the decisions and should reproduce the texts which have been applied and those relating to the statute of limitation for the sentence.

The financial authorities of the requested State shall, after receiving an authorization for enforcement from the Minister of Justice, proceed to effect recovery on behalf of the requesting State.

The legislation of the requested State concerning the enforcement of similar convictions shall be applied.

Article 34

Avocats members of the Dahomean bar may assist or represent parties before all French courts, whether in preliminary investigations or in court, under the same conditions as *avocats* members of the French bar. As a reciprocal measure, *avocats* members of the French bar may assist or represent parties before all Dahomean courts, whether in preliminary investigations or in court, under the same conditions as *avocats* members of the Dahomean bar.

However, *avocats* who choose to assist or represent parties before a court of the other State shall, for the purpose of receiving any notification provided for by law, elect as their domicile the office of an *avocat* of that State.

Article 35

Evidence of the legislative provisions and customary law of either State shall be presented to the courts of the other State in the form of "certificates of custom" made out by the consular authorities concerned.

TITLE III

GRANT OF EXECUTION IN CIVIL,
COMMERCIAL AND ADMINISTRATIVE MATTERS*Article 36*

In civil and commercial matters, decisions in adversary and non-adversary proceedings rendered by the courts in the territory of the French Republic or the territory of the Republic of Dahomey shall automatically have the force of *res judicata* in the territory of the other State provided that they satisfy the following conditions:

- (a) The decision was rendered by a court competent under the rules concerning conflicts of competence which are admitted in the State in which the decision is executed;
- (b) The decision has, under the law of the State in which it was rendered, acquired the force of *res judicata* and is enforceable;
- (c) The parties have been duly summoned, represented or declared in default;
- (d) The decision contains nothing contrary to the public policy of the State in which it is invoked or to the principles of public law applicable in that State. Moreover, it must not conflict with a judicial decision which has been rendered in that State and has the force of *res judicata*.

Article 37

The decisions referred to in the preceding article and decisions which have been declared provisionally enforceable may be enforced by the authorities of the other State or be the subject of a formal procedure initiated by those authorities, for example, by entries or corrections in the civil registers, only if they have been declared enforceable.

Article 38

Whatever the value of the dispute, execution shall be granted by the president of the high court or the court of the place where execution is to be carried out.

The president shall proceed and take a decision in the way provided for exceptional proceedings.

There may be no appeal from this decision except to the court of cassation.

Article 39

The president shall confine himself to establishing whether the decision for which a grant of execution is requested satisfies the conditions laid down in article 36 in order to have *ipso facto* the force of *res judicata*.

He shall automatically proceed with such an examination and record the outcome in the decision.

He shall, where necessary, order the requisite measures to ensure that the decision for a grant of execution is publicized in the same way as if it had been rendered in the State in which it is declared enforceable.

Execution may be granted for only part of the decision invoked.

Article 40

The decision granting execution shall be binding on all parties concerned and throughout the territory to which this Agreement applies.

It shall, as from the date on which the grant of execution is obtained, make it possible for the decision which has been rendered enforceable to have, in so far as enforcement measures are concerned, the same effect as if it had been rendered by the court which has granted execution on the date on which execution was granted.

Article 41

The party invoking the authority of a judicial decision or requesting its execution shall produce:

- (a) A duly certified copy of the decision;
- (b) The original of the certificate of service of the decision or of any other equivalent document;
- (c) A certificate of the clerk of court establishing that there is no objection to or appeal against the decision;
- (d) Where necessary, a copy of the summons served on the defaulting party, certified as a true copy by the clerk of the court which rendered the decision.

Article 42

Arbitral awards rendered in either State shall be recognized and enforced in the other State in accordance with the provisions of the New York Convention of 10 June 1958 ¹ on the Recognition and Enforcement of Foreign Arbitral Awards.

Article 43

Legal instruments, including notarized documents, which are enforceable in either State shall be declared enforceable in the other by the president of

¹ United Nations, *Treaty Series*, vol. 330, p. 3.

the court referred to in the first paragraph of article 38 in accordance with the law of the State in which they are to be executed.

The said authority shall merely ascertain whether the instruments meet the requirements for authenticity in the State in which they have been received and whether enforcement of their provisions are not contrary to the public policy of the State where enforcement is requested or to the principles of public law of that State.

Article 44

Land mortgages contracts concluded in either country shall be registered and shall be valid in the other only when the document containing the agreement has been rendered enforceable by the competent authority in accordance with the law of the country in which registration is requested.

The said authority shall merely ascertain that the documents and the pertinent power of attorney meet all the requirements for validity in the country in which they are received.

The preceding provisions shall also apply to documents recording the satisfaction or reduction of mortgages signed in either country.

Article 45

Decisions rendered in administrative matters shall be enforced as specified in this title, subject to the condition that the president of the competent court for the first hearing of strictly adversary proceedings shall replace the president of the court referred to in the first paragraph of article 38.

TITLE IV

EXTRADITION AND EXECUTION OF SHORT SENTENCES

Chapter I

EXTRADITION

Article 46

The Contracting States undertake to surrender to each other, in accordance with the rules and conditions laid down in the following articles, persons in the territory of either State who are the subject of proceedings or have been sentenced by the judicial authorities of the other State.

Article 47

The Contracting States shall not extradite their own nationals. Nationality shall mean the nationality at the time of the commission of the offence for which extradition is requested.

The requested Party undertakes, however, in so far as it is competent to judge them, to institute proceedings against any of its nationals who, in the territory of the other State, have committed offences which are punishable as crimes or correctional offences in the two States, when it has received from the other Party through the diplomatic channel a request for proceedings accompanied by the files, documents, exhibits and information in its possession. The requesting Party shall be informed of the results of the request.

Article 48

The following shall be subject to extradition:

1. Persons against whom proceedings are being taken for crimes or offences punishable under the laws of both Contracting States by at least two years' imprisonment;
2. Persons who, for crimes or offences punishable under the law of the requested State, are sentenced *audiatur et altera pars* or in default by the courts of the requesting State to at least two months' imprisonment.

Article 49

Extradition may be refused if the offence in respect of which it is requested is regarded by the requested State as a political offence or as an offence allied to a political offence.

Voluntary homicide and poisoning shall not be considered political offences.

Article 50

Extradition shall be granted, under the conditions laid down in this Agreement, in matters relating to taxes, duties, customs and foreign exchange, when so decided by a simple exchange of letters for each specially designated offence or category of offences.

Article 51

Extradition shall be refused:

- (a) If the offences in respect of which it is requested have been committed in the requested State;
- (b) If a final judgement on the offences has been rendered in the requested State;
- (c) If the act or the sentence falls under the statute of limitation in accordance with the legislation of the requesting State or of the requested State at the time of the latter's receipt of the request.
- (d) If the offences have been committed outside the territory of the requesting State by a person who is not a national of that State and the legislation

of the requested country does not authorize proceedings in connexion with such offences when they are committed outside its territory by an alien;

(e) If an amnesty has been declared in the requesting State or in the requested State.

Extradition may be refused if the offences are the subject of proceedings in the requested State or judgement on them has been rendered in a third State.

Article 52

A request for extradition shall be sent through the diplomatic channel. It shall be accompanied by the original or a certified copy of either an enforceable sentence or a warrant of arrest or any other document having the same force and issued in the manner prescribed by the law of the requesting State.

The circumstances of the acts in respect of which extradition is requested, the time and place of their commission, their designation in law and references to the legal provisions applicable thereto shall be stated as accurately as possible. A copy of the relevant legal provisions shall also be attached and, so far as possible, the particulars of the person claimed and any information which will help to establish his identity and nationality.

Article 53

In an emergency, provisional arrest shall be made at the request of the competent authorities of the requesting State, pending receipt of the request for extradition and the documents referred to in the second paragraph of article 52.

A request for provisional arrest shall be sent to the competent authorities of the requested State either direct by post or telegraph or by any other means affording evidence in writing. It shall, at the same time, be confirmed through the diplomatic channel.

It shall state that one of the documents mentioned in the second paragraph of article 52 exists and that it is intended to send a request for extradition.

It shall state the offence in respect of which extradition is requested, when and where it was committed, and the particulars of the person claimed, which shall be as accurate as possible. The requesting authority shall be informed without delay of the result of its request.

Article 54

Provisional arrest may be terminated if, within a period of 20 days after the arrest, the requested authorities have not received any of the documents mentioned in the second paragraph of article 52.

Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

Article 55

Where supplementary information is essential to ensure that the conditions laid down in this Agreement are fulfilled, the requested State, when it feels that the omission can be rectified, shall advise the requesting State through the diplomatic channel before it refuses the request. A time-limit may be set by the requested State for the receipt of such information.

Article 56

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 freely, having regard to all the circumstances and especially the possibility of subsequent extradition between the requesting States, the respective dates of the requests, the relative seriousness and the place of commission of the offences.

Article 57

Where there are grounds for extradition, all property which has been acquired as a result of the offence or may serve as evidence and is found at the time of his arrest in the possession of the person claimed, or is discovered subsequently, shall, upon demand of the requesting State, be confiscated and handed over to the authorities of that State.

Article 58

The requested State shall inform the requesting State through the diplomatic channel of its decision with regard to extradition.

Reasons shall be given for any complete or partial rejection.

If the request is agreed to, the requesting State shall be informed of the place and date of surrender. Unless otherwise agreed, the person extradited shall be conducted by the requested State to the place designated by the diplomatic mission of the requesting State.

Except as provided for in the last paragraph of this article, the requesting State shall have its agents take over the person to be extradited within a period of one month from the date determined in accordance with the third paragraph of this article. Once that period has expired, the person shall be released and cannot be claimed again for the same offence.

If exceptional circumstances prevent the person who is to be extradited from being surrendered or taken over, the State concerned shall inform the other State before the period expires. The two States shall agree on another date for surrender and the provisions of the preceding paragraph shall apply.

Article 59

If the person claimed is the subject of proceedings or has been sentenced in the requested State for an offence of other than the one giving rise to the request for extradition, the latter State shall nonetheless take a decision on the request and inform the requesting State of its decision regarding the extradition, in the manner prescribed in the first and second paragraphs of the preceding article. If the request is agreed to, surrender shall, however, be deferred until the legal requirements of the requested State have been met.

Surrender shall take place on a date to be determined in accordance with the provisions of the preceding article.

The provisions of this article shall not prevent the person concerned from being sent temporarily to appear before the judicial authorities of the requesting State, on the express condition that he shall be returned once those authorities have rendered their judgement.

Article 60

A person who has been extradited may not be the subject of proceedings or be sentenced or detained for the purpose of carrying out a sentence for any offence committed prior to his surrender other than the offence which has given rise to the extradition, except in the following cases:

- (1) When the person who is extradited, having been free to leave the territory of the State to which he has been surrendered, has not done so within thirty days of his final discharge or has returned to that State after leaving it;
- (2) When the State which has surrendered him consents. A request for consent shall be submitted, accompanied by the documents referred to in the second paragraph of article 52 and by a legal record of any statement by the extradited person on the extension of the extradition and mentioning the opportunity afforded him to submit a memorandum in his own defence to the authorities of the requested State. When the designation of the offence is altered in the course of the proceedings, the person extradited shall be the subject of proceedings or sentenced only in so far as the factors constituting the newly designated offence would permit extradition.

Article 61

Except in cases where the person concerned has remained in the territory of the requesting State under the conditions laid down in the preceding article or is returned to that territory under such conditions, the consent of the requested State shall be required to enable the requesting State to hand over the person surrendered to it to a third State.

Article 62

Expenses incurred under the procedures described in this chapter shall be borne by the requesting State, it being understood that no claim shall be made for the costs of proceedings or of imprisonment.

Chapter II

EXECUTION OF SHORT SENTENCES

Article 63

Final sentences involving less than two months' imprisonment imposed by the court of one State may be executed in the territory of the other Contracting State in the conditions specified in articles 64 and 65:

- (1) For offences punishable under the law of both States by at least two years' imprisonment;
- (2) For wilful assault and battery or unintentional bodily injury.

Article 64

The request for execution shall be submitted through the diplomatic channel to the judicial authority of the other State.

The State which submits a request for execution must produce:

- (a) A statement of the facts and charges made;
- (b) The laws that have been applied and those relating to the statute of limitations for the sentence imposed;
- (c) A copy of the decision;
- (d) An extract from the judicial records.

Article 65

The decision shall be enforced at the request of the Minister of Justice of the requested State who shall sign the decision for execution after having verified its authenticity and the identity of the person concerned. He shall ascertain that execution is possible in the light of the legal status of the person in question and any adverse effects which execution might have on the public policy of the requested State.

The parquet of the court which imposed the penalty shall be notified directly when the sentence expires.

FINAL PROVISIONS

Article 66

The provisions of this Agreement shall remain in force until the procedures for which it makes provision and which have been initiated before the day on which either Contracting Party expresses the wish that it should lapse have been completed.

Article 67

This Agreement shall enter into force at the same time as the Treaty on co-operation signed on today's date. ¹

DONE at Paris, on 24 April 1961.

For the Government
of the French Republic:

[Signed]

M. DEBRÉ

For the Government
of the Republic of Dahomey:

[Signed]

HUBERT MAGA

¹ See p. 83 of this volume.