



JULIA LAW PUBLISHERS, ENGLAND, UK
WWW.JULIAPUBLISHERS.COM

Peer Reviewed Academic
Article
© 2022 All Rights
Reserved

**PRIME JOURNAL OF ADVANCED
LEGAL STUDIES**

Volume 12 (2022) 1 - 14

ISSN 045-8495 (Print)
ISSN 2045-8509 (Online)

Received 17/06/2022

Accepted: 20/09/2022

Published: 04/10/2022

A Legal Critique of the Law on Extradition in Nigeria

John Uzoma Eke, PhD.

Department of Public Law, Faculty of Law,
Rivers State University, Nkpolu Oroworukwo,
Port Harcourt.

Email: jhoneke15@gmail.com
John.eke@ust.edu.ng

Abstract

This is a body of work centered around the operation of extradition in the Nigerian legal system. Extradition is an important phenomenon in most international relationships and is fundamental under Public International Law. This work examines the concept of Extradition and also evaluates the provisions of the Nigeria Extradition Act of 1966. Extradition is a product of international cooperation in law enforcement and an extradition process involves all acts and operations carried out in order to successfully hand over, exchange or transfer a fugitive across national and international borders to either stand trial or serve time. The aim and objectives of this study is to critically appraise how extradition is practiced in Nigeria in order to educate readers, ascertain the procedures in Nigeria and scrutinize Nigerian extradition laws. I used the doctrinal/conceptual research methodology to theoretically study extradition. This method is the most appropriate in legal research and is a platform for carefully looking at into all legal sources for the completion of the task. After carefully writing on several aspects of extradition and indeed looking into extradition in Nigeria, the paper analyzed some areas that would need both legislative and active adjustments to the legislative and institutional frameworks. The conclusion highlights that the executive arm of government should desist from using hostile and illegal means to extradite fugitive or even target so-called enemies of the state. The government should also work on creating better international relationships with other countries in order to encourage mutual cooperation. The law of extradition which is the extradition act of 1966 should also be adjusted to suit modern times and be followed in accordance with its provisions. Thus, in conclusion, although the law of extradition and its practice in Nigeria is somewhat porous, conscious decisions and steps by the government to abide by legal procedures would result in a better practice of this aspect of international law.

Keywords: Extradition, Treaty, International law, Diplomacy, Nigeria.

Introduction

No state can enter another sovereign state's territory without the consent of that other sovereign state; this is the basis of the sovereign equality principle. This meant that law enforcers in a state could not arrest a fugitive who fled to avoid punishment. Nations came to understand and

recognize the need for cooperation in crime control. Using the reciprocity principle, two or more states began to come to agreements to help them in their quest. Extradition became the solution to this dilemma by creating a means of bringing criminals to justice without undermining the territorial sovereignty of a country.

According to Halsbury's Laws of England, extradition is the formal surrender by one country to another, based on reciprocal arrangements partly judicial and partly administrative, of an individual accused or convicted of a serious criminal offense committed outside the territory of the extraditing state and within the jurisdiction of the requesting state which, being competent by its own law to try and punish him, requests the individual's surrender.¹

A comprehensive study of the law of extradition would involve a clear breakdown of the concept of extradition, a look into the origin and process of extradition, a look into legal and institutional frameworks involved and the treaties entered into by nations specifically those entered into by Nigeria with other nations. An analysis of actual cases of extradition would also help to cement the facts and make room for personal conclusions to be drawn and recommendations made on the topic before us.

A legal critique of the law of extradition in Nigeria focused on conducting a critical analysis and evaluation of extradition within the Nigerian framework and in comparison, to the legislations and procedures of a few selected nations. How extradition is carried out, its essentialities and the unresolved areas of extradition processes in Nigeria forms the core of this paper. The extradition process is compulsory in today's society and international relations. Therefore, the violation of human rights and humanitarian laws as can be seen in recent times makes the topic of extradition an important one.

The concept of extradition is an ancient tradition which originated with the ancient Egyptian and Chinese civilizations in the medieval era. The first evidence of extradition was a hieroglyphic carved on the temple of Ammon at Karnak and another copy also preserved on clay tablets in Akkodrain in the archives of Boghazkoi by the Hittites.² A political document containing a Peace Treaty between the then Pharaoh of Egypt, Ramses II and King Hattusili III of the Hittites in 1280BC was also found. Similar to that was the agreement between Henry II of England and William the lion, King of Scotland in 1174AD which is often known as the Treaty of Falaise.³ Passing through ages of modification and fresh ideas the archaic treaties of peace have morphed into treaties binding several countries at the international level.

Despite the presence of some of such treaties in Nigeria as well as several instances of extradition, the sad reality remains that extradition is not yet a fully developed concept in Nigeria. In Nigeria, extradition is governed primarily by the Grund-norm which is the Constitution of the Federal Republic of Nigeria 1999⁴ and the Extradition Act of 1966⁵ and by virtue of these legislations, Nigeria is empowered to enter into extradition treaties with other states which then elaborate on the process and requirements for extradition. This paper would serve as a peep into

¹. Reed Elsevier, Halsbury's Laws of England (5th edn, LexisNexis Butterworths 2013)

². 2 Rebecca Rideal, 'Extradition-A Very Brief History' (2020) (10) The History Vault
<<https://thehistoryvault.co.uk/extradition-a-history>> accessed 13 October 2021.

³. L N Oluka, C A Ativie, O M Okuguni, 'The New World Order, Human Rights and Extradition Laws in Africa: Impacts and Prospects' (2019) (82) (2224-3240) Journal of Law, Policy and Globalization; 103

⁴. Cap C23 LFN 2004 (CFRN 1999)

⁵. Cap E25 LFN 2004 (EA 1966)

the present and possible future of the extradition process in international relations and essentially its foothold in the Nigerian International law sphere.

Literature Review

(a) Conceptual Framework

A conceptual framework is the researcher's synthesis of literature on how to explain a phenomenon. It outlines the actions that must be taken during the course of the study, based on his prior knowledge of other researchers' points of view and his observations on the subject of research. In this section, basic concepts related to the research topic will be introduced and explained.

(b) Critique

The word critique is borrowed from the Greek word *kritike* which means the art of criticism. According to Wikipedia, a critique is a method of disciplined, systematic study of a written or oral discourse. Although critique is commonly understood as fault finding and negative judgement,⁶ it can also involve merit recognition, and in the philosophical tradition, it also means a methodical practice of doubt.⁷ A critique is a careful analysis of an argument to determine what is said, how well the points are made, what assumptions underlie the argument, what issues are overlooked and what implications are drawn from such observations. It is a systematic, yet personal response and evaluation of what you read.⁸ It is a detailed analysis and assessment as well as an intellectual and creative exercise.

A legal critique is a critical evaluation of the law and of the attitudes and values underlying the law. For a purely legal critique to be successful, the choice of topic would be the determining factor as it should be one with sufficient important, complex & unresolved areas/issues so that one may have something of value to contribute. It has to have certain evaluations such as contrasting legislative principles, laws and case laws across different states, indicating differences, issues and recommending suitable solutions.⁹ In conducting a legal critique on the subject of extradition, I shall synthesize the legal subject matter and conduct critical evaluation of the topic.

(c) Extradition

Extradition is derived from the Latin word *extradere* which means forceful return of an individual from his state of asylum to the requesting state¹⁰. The basis of extradition is on the Latin term *aut punier aut dedere* (either punish or surrender).

Extradition in Nigeria is governed principally by the Extradition Act of 1966, however the act did not provide a definition for extradition. Rather it defines the extradition process as the surrender by one country to the other of persons wanted for prosecution or punishment.¹¹

⁶. Gasche Rodoiphe, *The honor of thinking: critique, theory, philosophy* (2007) pp. 12-13. 'Let us also remind ourselves of the fact that throughout the eighteenth century, which Kant, in *Critique of Pure Reason*, labelled "in especial degree, the age of criticism" and to which our use of "critique", today remains largely indebted, critique was above all critique of prejudice and established authority, and hence was intimately tied to a conception of the human being as capable of self-thinking, hence autonomous, and free from religious and political authorities'

⁷. Wikipedia, <Critique - Wikipedia> accessed 30 November 2021.

⁸. Behrens and Rosen, *Writing and Reading Across the Curriculum* (Little Brown 1982).

⁹. Ben Matthews. *how to do a legal critique: a primer for research papers at Masters level*, 2009

¹⁰. MC. Bassiouni, *International Extradition: United States Law and Practice* (6th edn, oxford university press 2014)31

The Nepal Extradition Act defines extradition as the process of handover of absconded accused or offenders from a foreign state to Nepal at the request of Nepal and vice versa.¹²

Definitions of the concept of extradition have also been propounded by some jurists and some shall be mentioned below: Extradition is the formal process by which an individual known as the extradite is surrendered from the state of asylum where he is located to the requesting or claimant state in order to face prosecution or if already convicted to serve a sentence.¹³

Haggins stated that extradition is the process whereby one state delivers to another state at its request, a person charged with a criminal offence against the law of the requesting state in order that he may be tried or punished.¹⁴ Oppenheim also propounded that extradition is the delivery of an accused or a convicted individual to the state where he is accused of, or has been convicted of a crime by the state on whose territory he happens for the time being to be in.¹⁵ The practice of extradition enables one state to handover to another state suspected or convicted criminals who have fled to the territory of the former. It is based upon bilateral treaty law and does not exist as an obligation upon states.

(d) Extradition Terms

“Extradition” means the surrender of any person who is sought by the requesting State for criminal prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.

“Requesting State” means a State which requests of [country adopting the law] the extradition of a person or the provisional arrest of a person with a view to extradition. “Receiving State” means a State to which a person is to be extradited from a third State through the territory of [country adopting the law].

“Transferring State” means a State from which a person is being extradited to a third State (receiving State) through the territory of [country adopting the law]. “Extradition treaty” means a bilateral treaty concluded between [country adopting the law] and a foreign country, or a multilateral treaty to which [country adopting the law] is a Party, which contains provisions governing extradition of persons who are present in the territory of [country adopting the law].

“A person sought” means a person whose extradition or provisional arrest with a view to extradition is requested by means of submitting a relevant request to the competent authorities of [country adopting the law].

“Transferee” means a person transferred through the territory of [country adopting the law] while being extradited from a third State (transferring State) to the receiving one.”¹⁶

(e) Sources of Extradition Law

The sources of Extradition law could be identified as treaties¹⁷, regional conventions¹⁸ and national laws. In the past, bi-lateral were used for the extradition and at present multi-lateral and regional conventions are also widely used for the purpose of extradition.

¹¹. Cap E25 LFN 2004 (Extradition Act 1966)

¹². Nepalese Extradition Act 2014, s 2(e)

¹³. Oluka (n3)

¹⁴. O Haggins, an unpublished Ph.D. Thesis, cited by V.E Hartley in British Extradition Law Procedure (Vol 1) (1980) 6

¹⁵. Oppenheim and Robert Jennings and Arthur Watts, Oppenheim ‘s International Law (91h edn London 1992) 248

¹⁶. United Nations Office On Drug and Crime, Model Law On Extradition (2004)

A Bi-lateral treaty is a treaty that takes place between only two parties. The parties should be two states, two international organizations or one party is state and other is an international organization. For example, the Extradition Treaty Between Nigeria & USA, 1935 is between two states. Multi-lateral treaties are the treaties comprised of three or more sovereign states and all the parties are owing similar obligations. For example, the Extradition Treaty Between Nigeria, Benin, Togo & Ghana of 1984. The European Convention on Extradition 1957, Inter- American Convention are examples for Extradition Convention. Further, many states have national legislation regarding Extradition including Nigeria.

The Principles of Extradition

It is usual to derive from existing treaties on the subject, certain general principles, such as: The Principle of Double criminality, Rule of Specialty, The Principle of Proportional Punishment/Risk of Persecution in The Requesting State, Rule of Exception of Political Offences, Opportunity for fair trial, Principle of Double Jeopardy (*ne bis in idem*), Principle of extra territoriality, Unacceptable Trials and Prosecutions.

(a) The Principle of Double Criminality

It is also known as the principle of dual criminality. It is one of the most significant principles governing the law of extradition. It states that the extradition process can only happen when the criminal act under scrutiny is an offence in both the sovereign states i.e. the requesting and receiving states. The rationale behind this principle is, if the alleged act is not an offence under a territorial state they may refuse to extradite the fugitive criminal. The alleged offence need not to have same name or same element to constitute the criminal even though, it should be an offence in both states,¹⁹ The United Nations Office on Drugs and Crime also highlighted this principle as the conduct that constitutes the offence would, if committed in [country adopting the law], constitute an offence, which, however described, is punishable under the law of [country adopting the law] by imprisonment or other deprivation of liberty for a maximum period of at least [one/two year(s)] or by a more severe penalty.²⁰

An offence is returnable and satisfies the double criminality principle if the conduct involved attracts criminal penalty under the penal laws of Nigeria. It is therefore irrelevant if the offence is not categorized in the same way in Nigeria or if it does not have the same nomenclature or classification. In *Attorney-General of the Federation v Mustapha*,²¹ the Respondent was accused of certain offences punishable by the laws of the USA. The court held that the conduct in issue is punishable by the Criminal Code, the EFCC Act, Miscellaneous Offences Act, Advance Fee Fraud and other Fraud Related Offences Act etc. For this reason, the court held that it can never be argued that the offences are unknown to Nigerian Law.

(b) The Principle of Specialty

The idea behind this rule is to prevent blanket extradition demands made by the requesting state. The rule says that the fugitive who is extradited for a certain crime should be tried for that very

¹⁷ . Formal contract between states or international organizations. The state parties to the treaties are binding from international law. The state parties are legally bound.

¹⁸ . A treaty of a multi-lateral nature. But less formal than a treaty that covers particular matters.

¹⁹ . *Collins V Loisel* 259 US 309 (1922)

²⁰ . (n17) s 3(1)(b)

²¹ . Charge No: FHC/L/218C/201 1.

crime and not some other. In other words, the requesting system should specifically mention the alleged offence(s) committed by the fugitive from the territorial state for a successful extradition. This Specialty Doctrine requires that a person whose extradition is sought can only be tried for the crime for which his extradition was requested and none other, In the case of *AG Federation v Okafor*²², the court held that where a fugitive is wanted for trial, extradition shall be for the purposes of the trial which formed the basis of the application for extradition.

Upon surrender of a fugitive, by a state where he sought refuge, the requesting state must only prosecute and convict such a person simply for the crime for which his extradition was requested and for none other committed before the surrender of such fugitive. As seen in the case of *States v Raucher*,²³ the court stated that an accused shall not be arrested or tried for any other offence other than that which he was charged in the extradition proceedings. The requesting state is prohibited from prosecuting the person extradited for an offence apart from that which he was surrendered by the requested state. In a situation where a state prosecutes a fugitive for an offence other than that which the fugitive was extradited, it will be tantamount to an abuse of the principle of extradition. The court held in the case of *Udezor v FRN*²⁴ thus: 'it is generally regarded as an abuse of the terms of the (extradition) treaty for a state to secure the surrender of a criminal for an extraditable offence and then punish him for an offence not included in the treaty'.

The Principle of Proportional Punishment/Risk of Persecution in The Requesting State

Extradition may be refused in cases where there is a possibility for the extradited individual to receive a punishment out of proportion or severe in form when compared to the degree of the offence. This principle is specifically invoked in order to avoid violation of human right norms accepted globally. A fugitive criminal may not be surrendered for extradition by Nigeria if it is established that he may be subjected to torture by the requesting State. Nigeria is a state party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Convention expressly prohibits state parties from expelling, returning or extraditing any person to a state where there are substantial grounds for believing that he would be in danger of being subjected to torture.²⁵ 'Extradition shall not be granted, if, in the view of the [competent authority of country adopting the law], the person sought [has been or] would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment.'²⁶

The Rule of Exception of Political Offences

Political Offences cannot be a ground for extradition. Any person who committed any offence for a political purpose, inspired or motivated by politics cannot be an extradited based on that action. Most of extradition treaties and municipal laws treat political offences as non- extraditable offences. Article 3 (1) of European Convention on Extradition 1957 states that, Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence. This ground of extradition is prohibited on the basis of political offences due to the Human Rights issues. The

²². FHC/Abj/Cr/180/2014.

²³. 119 US 407 (1886)

²⁴. (2007) LPELR-CA/L/376/05

²⁵. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art 3

²⁶. (n17) s 6

cardinal Human Rights Conventions such as Universal Declaration on Human Rights (UDHR)²⁷ and the International Covenant on Civil and Political Rights²⁸ expressly declare that political opinion shall not be a ground of discrimination. Furthermore, Article 14 of UDHR states that, the fugitives of political crimes have the right to seek asylum from territorial countries²⁹

(a) Opportunity for Fair Trial

Before the extradition process is initiated by the requested state it ensures that the fugitive will be given a chance to represent himself under a procedure of fair trial in the requesting state. This principle is tied to the principle of non-inquiry, here the requesting state is under no obligation to subject its judicial procedures to the punctilious evaluation criteria of the requested state. This principle isn't absolute and rigid in nature but the requested state can question the judicial procedure in the requesting state if the same is on the face of it is against the principles of law and justice. Extradition may be refused, if, in the view of the [competent authority of country adopting the law], the person sought [has not received or] would not receive the minimum fair trial guarantees in criminal proceedings in the requesting State.³⁰

(b) Principle of Double Jeopardy (Ne bis in idem)

Extradition may be refused, if there has been a final judgement rendered and enforced against the person sought in [country adopting the law] [or in a third State] in respect of the offence for which extradition is requested.³¹ Even where it is established that the alleged fugitive has committed an extraditable offence, extradition proceedings will fail if the wanted person had been previously acquitted or convicted. This is the principle against double jeopardy. In recognition of the principle of double jeopardy, the Extradition Act expressly prohibits the surrender of a fugitive criminal by the court if it is established that he has been convicted of the offence for which his surrender is sought; or has been acquitted thereof.³² In the case of a conviction, the fugitive criminal may be extradited if he/she has escaped from serving the sentence or is otherwise unlawfully at large.³³

(c) Principle of extra territoriality

Section 13 of the Model Law on Extradition 2004 stated that extradition may be refused, if the offence for which it is requested has been committed outside the territory of the requesting state and the law of [country adopting the law] does not allow prosecution for the same offence when committed outside its territory.³⁴ This shall be further explained in the theoretical framework.

²⁷. UDHR 1948, United Nations Art.21.3

²⁸. ICCPR United Nations General Assembly Art 25

²⁹. (n27) Art 14 (1), Everyone has the right to seek and to enjoy in other countries asylum from persecution.

³⁰. (n17) s 7(1).

³¹. The extraterritorial jurisdiction of the requesting State should be exercised in accordance with international law and its domestic legislation.

³². (n5) s3(4)

³³. Ibid

³⁴. (n 17); Revised Manual on the Model Treaty on Extradition, paras 85-87.

(d) Unacceptable Trials and Prosecutions

Where the offence committed by the fugitive is not political and is otherwise extraditable, an extradition request will nonetheless be rejected if the fugitive offender is likely to be prejudiced at his trial, or to be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.³⁵ If the Attorney General makes a request for extradition and the fugitive will be subjected to an unfair trial or unlawful discrimination in the requesting State, the fugitive may prove the relevant facts to the notice of the Judge. If the court finds the fugitives facts to be admissible and credible, the extradition request will be denied.

The Legal and Institutional Frameworks

1. The Legal Framework

The legal frameworks on extradition which are in place are instrumental in combating international crimes. There are laws and regulations in place that enable countries to make extradition requests to Nigeria, likewise, treaties have also been entered into by Nigeria in order to cement mutual legal assistance. There are a number of laws that govern extradition in Nigeria and various treaties that Nigeria is signatory to. The instruments and laws relating to extradition fall into four distinct categories. The first category consists of legislative instruments that are made by or deemed to be made by the National Assembly. The second category consists of orders or proclamations made by the executive arm of the Federal Government. The third consists of rules and practice direction made by the judiciary. Policy documents issued by Governmental Ministries, Departments and Agencies are in the fourth category.

(a) The Constitution

The Nigerian State is a constitutional democracy based on a three-tier structure of governance made up of the federal, state and local governments. The Constitution of the Federal Republic of Nigeria 1999 is foundational to the existence of all other laws in the Nigerian legal system i.e. it is the grundnorm. The 1999 Constitution expressly stipulates that it ‘...is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.’³⁶ The 1999 Constitution is therefore the tool by which the validity or legality of all existing laws, within the country, are determined. It is in this sense that the 1999 Constitution stipulates that if any other law is inconsistent with its provisions that other law shall, to the extent of the inconsistency, be void.³⁷

By virtue of the 1999 Constitution, the power to make laws and procedures regarding extradition is vested exclusively in the Federal Government of Nigeria.³⁸ Thus, the state and local governments are devoid of powers to legislate on matters connected to extradition as this is an exclusive preserve of the federal government.³⁹ Similarly, the Constitution confers adjudicatory powers over extradition matters on the Federal High Court to the exclusion of any other court of first instance.⁴⁰ Thus, all extradition applications or any challenge to the validity or legality of pre-extradition steps are matters to be dealt with by the Federal High Court.

³⁵. (n 5)s 3(2)(b) Treaty on Extradition, paras 85-87.

³⁶. Ibid, s 1 (1)

³⁷. (n56) s 1 (3)

³⁸. Ibid, Second Schedule, Exclusive Legislative List; Item 27 1999 Constitution of Nigeria (as amended)

³⁹. State Governments can legislate on matters on the concurrent and residual lists in the 1999 Constitution while and Local Governments can legislate on matters on the residual list.

⁴⁰. (n56) s 251(1)(i)

However appellate proceedings may be instituted at the Court of Appeal and subsequently at the Supreme Court, both of which are federal courts.⁴¹ Essentially, the Constitution provides the general foundational legal framework for extradition law and practice in Nigeria. Section 4. (1) of the 1999 Nigerian Constitution empowers the legislative arms of government thus, vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives. Section 42 provides as follows:

“The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.”

Similarly, Item 27 on the exclusive legislative list is extradition. Also, section 251 of the constitution which vests jurisdiction on the federal high court provides that the court shall have and exercise exclusive jurisdiction to the exclusion of all other courts in civil causes and matters connected with or pertaining to extradition.

(b) Extradition Act

In Nigeria, Extradition is governed by the Extradition Act of 1966⁴², By virtue of this Act, the Nigerian State is empowered to enter into extradition treaties with other states. Prior to the enactment of the Extradition Act, there had been series of laws on Extradition. By virtue of the long title of this Act, it was licensed to repeal all other Acts before it so as to make a more comprehensive provision for the extraction of fugitive offenders for Nigeria. According to Momodu⁴³, the fact that one of the reasons for the enactment of the 1966 Extradition Act was due to the extradition case of Chief Anthony Enahoro in 1963 which revealed the inadequacies of the Fugitive Offenders Act 1881.

(c) Mutual Assistance in Criminal Matters Law 2019

Mutual Assistance in Criminal Matters Law 2019 was signed into law by President Buhari in June, 2019 to replace the Mutual Legal Assistance in Criminal Matters in the Commonwealth (Enactment and Enforcement Act 2004). This bill which was passed put Nigeria in a better position to combat transnational crime. In particular, its focus is on the ways in which embezzled funds can be recovered and also assures the countries that cooperate in the manner requested will receive same assistance when such is requested of Nigeria.

The preceding Act, Mutual Legal Assistance in Criminal Matters in the Commonwealth (Enactment and Enforcement) Act 2004 was limited to Commonwealth Countries which did not serve Nigeria’s need for global cooperation, a welcome change in the new bill. Despite this change, an exception to the law remains for offences that are ‘political in nature and which relate to military offences’ which in reality contracts the supposed wide scope of the of the new law.

⁴¹. Ibid, ss 233, 240, 241.

⁴². Cap E25 FN 2004

⁴³. M. Kassim-Momodu, ‘Extradition of Fugitives by Nigeria’ The international and comparative Law Quarterly (1986)35 (3) 514 <<https://www.cambridge.org/core/journals/international-and-comparative-law>

2. *International Legal Framework: Treaties*

Extradition is primarily a treaty-based legal framework, though there are statutes and rules and judicial decisions which mediate the implementation of extradition treaties. There is no obligation in customary international law to extradite. Subject to a few exceptions, such as the situation relating to Commonwealth States, extradition is generally regulated by conventional international law through bilateral treaties. Although international agreements on extradition are mostly bilateral, there are also some multilateral conventions on the subject. It is noteworthy that only parties to a particular treaty, bilateral or multilateral, are bound by its provisions⁴⁴. In *Udeozor v. Federal Republic of Nigeria*,⁴⁵ the Court of Appeal held that the right of one State (country in the present circumstance), to request of another, the extradition of a fugitive accused of crime, and the duty of the country in which the fugitive finds asylum to surrender the said fugitive, exist only when created by a treaty.

(a) Treaties

According to Wikipedia, a treaty is a formal, legally binding written agreement between actors in international law. It is usually entered into by sovereign states and international organizations, but can sometimes include individuals, business entities, and other Legal persons. A treaty may also be known as an international agreement, protocol, covenant, convention, pact, or exchange of letters, among other terms. Regardless of terminology, only instruments that are legally binding upon the parties are considered treaties pursuant to, and governed by, international law.⁴⁶ Under international law, a treaty is any legally binding agreement between states (countries). A treaty can be called a Convention, a Protocol, a Pact, an Accord, etc.; it is the content of the agreement, not its name, which makes it a treaty.⁴⁷

Extradition treaties that are relevant to Nigeria fall into two distinct periods in time. On the one hand, there are pre-independence treaties entered into by the British colonial administration. On the other hand, there are post-independence treaties entered into by Nigeria as a sovereign State. The applicability of pre-independence treaties to Nigeria derives from a devolution of treaty agreement between Nigeria and Britain, On October 1, 1960, the territories formerly comprising of the British Colony and Protectorate of Nigeria attained sovereign independence as a State known as the Federation of Nigeria.⁴⁸ Using the instrumentality of an exchange of letters, dated October 1, 1960, between the High Commissioner for the United Kingdom in the Federation of Nigeria and the Prime Minister of the Federation of Nigeria, Nigeria agreed to assume, from October 1, 1960, all obligations and responsibilities of the United Kingdom which arise from any valid international instrument insofar as such instruments may be held to have application to or in respect of Nigeria.⁴⁹ However, for extradition treaties to be justiciable before Nigerian Courts and implemented by the executive arm of government, they must be domesticated by means of an order made pursuant to the Extradition Act. The Extradition Act categorically states that:

⁴⁴. Article 37 of the Vienna Convention on the Law of Treaties, 1969 (VCLT) provides that “A treaty does not create either obligations or rights for a third State without its consent.”

⁴⁵. (n25)

⁴⁶. <www.wikipedia.com/treaty> accessed 2 February 2022.

⁴⁷. <<https://www.phe.gov/s3/law/Pages/International.aspx>> accessed 2 February 2022.

⁴⁸. Federation of Nigeria Independence Act (Her Majesty’s Stationery Office, England 1960).

⁴⁹. Federation of Nigeria: International Rights and Obligations; Exchange of letters between the Federation of Nigeria and the Government of the United Kingdom, 1960 (Nigeria, International Rights and Obligations).

Where a treaty or other agreement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment, the President may by order published in the Federal Gazette apply this Act to that country. Some of the pre-independence Treaties are:

- Extradition Treaty Between United Kingdom and United States
- Extradition Treaty between United Kingdom and Lithuania 1927
- Extradition Treaty between United Kingdom and Albania 1926
- Extradition Treaty between United Kingdom and Finland 1925
- Extradition Treaty between United Kingdom and Latvia 1924

An overview of some Post-Independence Treaties

There are several Treaties between Nigeria and other countries. However, this paper highlights on just two.

(a) Extradition Treaty Between Nigeria & Great Britain & Northern Ireland 9 January 2014

The Treaty entered into force on 29 September 2014 taking into consideration developments in international prisoner transfer arrangements; Desiring to ensure that wherever possible foreign national prisoners should serve their sentences in their own country, Re-affirming that sentenced persons shall be treated with respect for their human rights.

(b) Extradition Treaty Between Nigeria & USA, 1935

In 1935, Nigeria and the United States of America signed an extradition treaty. Not in person as Nigeria had not yet gained independence then. Rather Britain signed an extradition treaty with the United States of America on December 22nd, 1931 and it entered into force on June 24th, 1935. Therefore, the treaty became applicable to Nigeria upon the grant of independence due to Nigeria being a former colony of Britain and has remained that way. The treaty was a provision for a reciprocal repatriation of criminals between the 2 nations. Article 1 states that the contracting parties had undertaken to deliver up to each other, persons in their territories who are accused/convicted for committing specific offences within the jurisdiction of a party to the agreement. Article 3 then outlined a list of these offences. An extradition would be granted for any offence listed as a crime both in Nigeria and the US.

Critique of Extradition Laws in Nigeria

In carrying out a critique of any legal subject, it is essential to compare the scenario of different countries to contrasting legislative principles, laws and case laws across different states, pointing out differences and recommending suitable solutions in form of changes.

(a) Extradition of Umaru Dikko: A Case Study

Umaru Abdulraman Dikko was a Nigerian politician. He was an adviser to President Shagari [who was his brother-in-law] and served as the minister for transportation from 1979-1983. On 5th July, 1984, he was the center of the 'Dikko Affair' as he was found drugged in a crate at the airport as a diplomatic baggage. The kidnap of Dikko was initially thought to be the work of criminals. However here is what really transpired. After the Shagari government was toppled in 1983 in military coup led by Major General Muhammadu Buhari, a new military government was established. No sooner than 2 days in power, the ruling president issued a list of former government officials accused of various crimes. At the top of the list was Dikko who was being accused of embezzling several billion US dollars from the national treasury. Dikko then fled to Britain to settle in London and became a critic of the Buhari administration.

The government was to make an extradition request to Britain however they chose another approach. Dikko was kidnapped in front of his home by Israeli Mossads and drugged into unconsciousness by an Israeli doctor and they all settled into airport cargos as diplomatic baggage; However, proper documentation was not done in line with *Article 27[4] of the Vienna Convention Diplomatic Relations, 1961* to prevent the cargo from being searched.⁵⁰

Suspicious British customs officers were on alert after receiving information on the kidnap by the foreign office who were tipped off by a secretary, Elizabeth Hayes who saw the abduction take place. These officers opened the crates, found the culprits and the unconscious Dikko with the Israeli doctor in 2 cargos and foiled the kidnap attempt. The unconscious Dikko was taken to a hospital and the men caught at the scene were arrested and tried. They got between 10-14 years' imprisonment and appeals to reduce their sentence were denied.

Neither Israel nor Nigeria admitted taking part in the plan but were said to have been involved. Though Israel at the time did not have formal diplomatic relations with Nigeria, there were less visible ties between them. Nigeria was an important source of oil for Israel and Israel was an arms supplier for Nigeria. Moreover, the Israeli intelligence Mossad said he was tasked with bringing Dikko back to Nigeria to stand trial)⁵¹ When a subsequent request came in from Nigeria for an extradition, Britain refused the request.⁵² Diplomatic relations between Nigeria and the UK broke down for some years after that.

(b) Extradition of Julian Assange: A Case Study

Julian Assange is an Australian editor, publisher and activist as well as the founder of WikiLeaks. He came into international recognition when he used WikiLeaks in 2010 to publish leaked diplomatic files. He released thousands of internal documents from different corporate and government entities such as details on the US military detention facility in Cuba, documents on the US wars in Iraq and Afghanistan. President Obama's administration condemned Assange's "scientific journalism" as a threat to US national security. He faced sexual assault charges in Sweden as well and he was eventually arrested in London in December 2010 pending possible extradition to Sweden. While the British supreme court weighed the matter, Assange was under house arrest in the house of one of his supporters. In June 2012, his extradition appeal was denied by the supreme court and he sought refuge with the Ecuadorian embassy as he fought extradition to Sweden over the initial rape inquiry. The rape charges were later dropped and he stayed in the embassy till 2019 when the embassy expelled him.

Immediately after his Ecuadorian covering was removed the US sought his extradition and indicted him for violating the espionage act. However, the US request was rejected on the grounds that the American prison conditions should lead him to commit suicide which was appealed by the trump administration and the current Biden administration made assurances of humane treatment in July 2021 and also assured that it would consent to Assange being transferred to Australia to serve any sentence imposed on him after the us is done with him if that was the stumbling block to his extradition.

⁵⁰. Umaru Dikko [abduction] Hansard report for the British House of commons (Retrieved 2008-10-06) accessed 18 January 2022.

⁵¹. Max Siollun, The Mossad Affair: The Kidnap of Umaru Dikko accessed 20 January 2022

⁵². <https://www.google.com/amp/s/www.independent.co.uk!news/obituaries/umaru-dikko-politician-who-waskidnapped-by-agc-of-the-nigerigement-then-discovered-in-a-crate-at-stansted-airport9580261.html%3famp> accessed 10 January 2022

(c) Extradition of Ramon Abbas [Hushpuppi]: A Case Study

One of the most influential socialites from Nigeria with an estimated net worth of \$35.5 million Raymond [Ramon] Igbalode Abbas popularly known as hushpuppi is the next case study. Born on the 14th June 1998 in Lagos, Nigeria, he became wealthy after moving to Malaysia and paraded himself as a real estate developer later living in Dubai. He is known to live a luxurious life⁵³ which he displayed on Instagram for over 2 million followers who were no doubt curious about the source of his wealth.⁵⁴ This source was revealed after he was arrested by the Federal Bureau of Investigation[FBI] in collaboration with INTERPOL. It turned out that investigations had been ongoing about a large fraud scheme led by a Nigerian criminal organization who had targeted the US unemployment insurance system to siphon its funds.⁵⁵

Conclusion

Extradition in international jurisprudence was the focus of this article. A legal critique into the law of extradition in Nigeria. Extradition is a process where a fugitive [in this term it is a person who has been charged for an offence or charged, tried and convicted but has absconded/escaped to another country without serving time] is surrendered by a country to the requesting country to be tried. The procedures for extradition stem from the agreements, nations may choose to enter which in legal parlance are called treaties; other times it could be mutual assistance agreements, both states clearly that the signatories to these agreements are willing to cooperate in the transfer and exchange of persons across national borders in order to achieve justice via prosecution and even handing over persons to serve their sentence. These nations usually outline the grounds as well as the legal processes through which this extradition must be done. Where there is no extradition treaty, a nation that has an extradition treaty would then turn to their domestic extradition act/law that stipulates how extradition concerning that country must be done, both on the giving and receiving end. The laws of extradition of the giving country would be followed by the receiver country would then be followed by both parties to legally exchange such individual.

Extradition seems to be a way to restore balance to a society that has become unbalanced as a result of crimes perpetrated by fugitives from justice. However, this impression contrasts from what was available in the early twenty-first century, when extradition was used as a tool for crime control and punishment. In Nigeria today, it is critical that extradition be viewed and subsequently implemented as a tool for bringing fleeing offenders to justice, regardless of whether such offenders are Nigerian citizens or foreign nationals who came to Nigeria and disregarded or showed contempt for Nigerian law.

Recommendations

It is exceedingly unlikely that any government would want to aid, much alone be associated with, a country that may misuse the objective of an extradition or mutual legal assistance order. This is an area that could be improved. It is hereby recommended as follows:

- a) The executive branch of the government that is in charge of entering into treaties on Nigeria's behalf has been cited as one of the causes of failure exploitation in the field of Extradition Law. As a result, it has become extremely difficult to extradite or request the extradition of fugitives from justice. Therefore, a reform in the executive arm concerning

⁵³. Ratliff Evan, *'The Fall of the Billionaire Gucci Master'*

⁵⁴. Hotnaija YouTube channel, June 1 1th 2020, accessed 20 January 2022

⁵⁵ CBS Evening News, 19th May 2020, accessed 20 January 2022

the conduction of extradition in order to control the use of hostile methods would be a great way to improve the system.

- b) As stressed earlier, much of the efficiency of the measures of extradition depends on mutual cooperation with other countries and so a continued improvement of the diplomatic relations between Nigeria and other countries would be a welcome development.
- c) Success and improvement in the area of extradition is also dependent on the global insight on mutual cooperation of a state. This bias coupled with evidence that has led to the concern faced by Nigeria in extraditing the former petroleum minister, Diezani Alison-Madueke. Where a requesting state doesn't respect the rule of law in its jurisdiction it is difficult to impress or move other nations to act according to their international obligation when Nigeria needs it. Given this, it is exceedingly unlikely that any government would want to aid, much alone be associated with, a country that may misuse the objective of an extradition or mutual legal assistance order. This is an area that could be improved. Therefore, a recommended solution to the poor relations in extradition matters would be Nigeria internally improving its respect for its own laws and also respecting the fundamental rights of its citizens.
- d) The Nigerian government should take an active role in negotiating extradition arrangements with foreign governments. This is critical because it allows the Nigerian government to prosecute offenders who seek asylum in another nation in order to evade punishment for the crime committed.