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JURISPRUDENTIAL ANATOMY OF THE LAW OF EXTRADITION IN NIGERIAN AND UNDER INTERNATIONAL LAW

By

Anetochukwu Nworgu, Esq*

Abstract

This paper examines the principles and practice of extradition in Nigeria and under international law. The paper found that in this era of transnationalism, cooperation through the use of international extradition offers a potentially promising tool for countries seeking to extend the long arm of the law beyond borders. Extradition is also necessary for promoting international criminal justice system. The paper maintains that a convict or suspect should not be allowed to escape justice by fleeing to another country. The paper concludes that nevertheless, the absence of any obligation to extradite in international customary law, represents a major limitation to the use of extradition. This is further compounded by the absence of a general multilateral treaty on extradition. The implication is that the reliance on mostly bilateral agreements for extradition simply implies that a criminal or suspect can effectively escape justice by fleeing to a state that has no extradition agreement with the state where the crime was committed. Accordingly, the paper recommends the development of a convention on international extradition at the United Nations Level.

Keyword: *Anatomy, Extradition, International law, Nigeria*

1. Introduction

International relation is hinged on three essential and related pillars: sovereign equality of States,[1] none-interference in the domestic affairs of States and territorial integrity and inviolability.[2] One major incidence of sovereignty of States is non-extra territorial jurisdiction of States. In *Akpabi v Shell*,[3] for instance, the foreign court held that it had no jurisdiction to hear and determine a cause of action that arose in Nigeria.This also includes that a State does not have jurisdiction over a person in another state.[4]However, with increasing globalization especially as a result of modern means of transportation and the evolution of the internet, the world has become more like a global village. Economic integration has been on the increase. There is also increase in extra-territorial criminal activities and trans-boundary criminal networks. Example is the popular Hush-Puppy internet fraud network that cut across several countries. The implication is that customary international law hinged on non-interference in

*LLB (Hons), BL, LLM in view. Email: anetochukwunworgu@yahoo.com, Phone: 08038247060

[1]Gess Karol N 'Permanent Sovereignty Over National Resources' [1964] (23)(2) *International and Comparative Law*, 398

[2]Okowa Phoebe 'Case Concerning Armed Activities on the Territory of Congo (Democratic Republic of Congo v Uganda)' [2006] (55)(3) *International and Comparative Law quarterly,* 742-753

[3]*HRH Emere Godwin Bebe Okpabi and Others v. Royal Dutch Shell Plc and Another* (2018) *ECWA Civ,* 191

[4]Stigall Dan E 'Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law' [2013] (3)(1) *Notre Dame Journal International and Comparative Law*, 1

domestic affairs and inviolability of territorial integrity will be largely deficient for tackling crimes that have extra-territorial flavour.[5]

Thus, only joint efforts and international cooperation can address the challenge of extra territorial criminal activities.[6] The principle of cooperation between States is the rule of *jus cogens*. International cooperation in combating crime is a complex system of social relations which is being implemented in order to prevent, detect, investigate, adjudicate crimes and prosecute offenders. It forms part of the international criminal justice system.[7] It often involves extradition of suspects or convicts. The law presently is that fugitive criminals must either be punished by the haven- state or surrendered to a requesting state that can and will punish them, expressed in the latin maxim *aut punier aut didere.*

2. Clarification of the Concept of Extradition

Extradition is the conventional process in which a person is surrendered by one state to another on the basis of a treaty, or comity, or some bilateral arrangement between the two sovereign states.[8]According to Oppenheim,[9] 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 to be. It is a cooperative law enforcement process between the two jurisdictions and depends on the arrangements made between them. Besides the legal aspects of the process, extradition also involves the physical transfer of custody of the person being extradited to the legal authority of the requesting jurisdiction.[10]Through the extradition process, one sovereign state typically makes a formal request to another sovereign state. If the fugitive is found within the territory of the requested state, then the requested state may arrest the fugitive and subject him or her to its extradition process. The extradition procedures to which the fugitive will be subjected are dependent on the law and practice of the requested state.[11]It is an ancient mechanism, dating back to at least the 13th century BC, when an Egyptian pharaoh, Ramnmesses II, negotiated an extradition treaty with a Hittite king, Hattusili III.[12].

According to the Court in *Attorney-General of the Federation v Olayinka Johnson*,[13]extradition proceedings are not meant to serve as a trial of the respondent. Rather, the proceedings serve as an expression of considerate practice based on the notion that it is in the interest of every

[5] Ana I Cerezoa, Javier Lopezb and Ahmed Patelc 'International Cooperation to Fight Transnational Cybercrime' available at <10.1109/WDFIA.2007.429936 > Accessed December 2, 2021.
[6]Serhii SCherniavskyi and others 'International Cooperation In The Field Of Fighting Crime: Directions, Levels And Forms Of Realization' [2019] (22)(3) *Journal of Legal, Ethical and Regulatory Issues*, 1
[7] K Waltz, *Realism and International Politics* (Google Books. 2008), 34-56.
[8] K Momodu, 'Extradition of fugitives by Nigeria' [1986] (35)(3) *International and Comparative Law Quarterly*, 526
[9]Robert Jennings and Arthur Watts, *Oppenheim's international Law* (9th ed, London, 1992), 248.
[10]Sadoff, David A, *Bringing International Fugitives to Justice: Extradition and its Alternatives* (Cambridge University Press, 2016) 43
[11]Surbhi Wadhwa, Public International Law (Edward Elgar Publishing Limited, 2007) 23
[12] (n 4)
[13] Unreported, Suit No. FHC/L/16C/2013.

State that persons fleeing from justice must be disallowed from seeking refuge outside the territory of the State where the person is wanted. Lord Russell of Killowen, C.J noted in R v. Arton,[14] that:

> The law of extradition is without doubt founded upon the broad principle that it is to the interest of civilised communities that crimes acknowledged as such should not go unpunished and it is part of the comity of nations that one State should afford to another every assistance towards bringing persons guilty of such crimes to justice.

As defined by the Court of Appeal in *George Udeozor v Federal Republic of Nigeria*,[15] extradition is the process of returning somebody, upon request, accused of a crime by a different legal authority to the requesting authority for trial or punishment. For the purposes of extradition proceedings, a person is only deemed to be wanted for trial where a court of law has issued a warrant requiring that the person be brought to answer criminal allegations in court. This is quite different from where a person is wanted for questioning.[16] In George Udeozor's case, the Attorney-General of the Federal Republic of Nigeria on 9th June, 2004 signified to the Federal High Court, by an Order under his hand, that a request had been made to his office for the extradition of the Appellant. The signification was made pursuant to the Extradition Act, Cap. 125. Laws of the Federation of Nigeria, 1990. The request was made by the diplomatic representative of the Embassy of the United State of America, Abuja, for the surrender of Mr. George Chidebe Udeozor, the Appellant.

The documents accompanying the request for surrender of the appellant indicated that the appellant had been charged in the United States of District of Maryland, with the offences of: Conspiracy to (a) commit involuntary servitude, (b) harbour an illegal alien and (c) encourage an illegal alien to come to enter and reside in the United States.

Also involuntary servitude, and harbouring an illegal alien for financial gain at the United States District of Maryland''

On behalf of the Hon. Attorney – General of the federation, a five paragraph affidavit deposed to by Akindele Kolin was filed in support of the application. The appellant did not file any counter-affidavit. At the hearing of the application, the appellant opposed the grant of the application but was overruled. The trial court granted the application, ordered the appellant to be remanded in prison custody to await his surrender over to the United States of America. The appellant was discontented with the decision of the trial court and he appealed to the Court of Appeal.

[14]R v. Arton (No. 1) [1896] 1 Q.B. 108
[15]*George Udeozor .v. Federal Republic of Nigeria,*(2007) 5NWLR (Pt. 1058), 499
[16]*Attorney-General of the Federation v Lawal Olaniyi Babafemi* : Suit No: FHC/ABJ/CR/132/2013.

The Court of Appeal in determining the appeal, construed the provisions of sections 1 and 9(1) of the Extradition Act, Cap, 125, Laws of the Federation of Nigeria, 1990 which provide as follows:

‘’1 Where a treaty or other agreement (in this Act referred o 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 National Council of Ministers may by order published in the Federal Gazette apply this Act to that country.’’

‘’9(1) When a fugitive criminal is brought before a Magistrate on a warrant under section 7 of this Act, or when , in the case of a fugitive criminal brought before a Magistrate on a provisional warrant under section 8 of this Act and remanded in pursuance of subsection (5) of the said section 8, an order of the Attorney -General under section 6 of this Act relating to that fugitive is received, the Magistrate shall proceed with the case in the same manner as near as may be and shall have the same jurisdiction and powers as if the fugitive were brought before him charged with an offence committed within his jurisdiction.’’

The Court of Appeal in a leading judgement delivered by Hon Justice Dongban-Mensem, J. C. A at page 522 had this to say on the basis of extradition of fugitive criminals:

‘’The right of one state or country 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 treaty. Due to the divergence in penal codes of the world, most nations give definite terms in treaties to their mutual obligations to extradite. The extradition treaty between Nigeria and the United States of America is embodied in the Legal Notice No. 33 of 1967 published in the official Gazette No. 23, Vol.54 of the 13th day of April, 1967, known as Extradition (United States of America) Order. Such treaties enumerate what offences the two nations consider extraditable. The general rule is that extraditable crimes must be those commonly recognized as malum in se (acts criminal by their very nature) and not those which are malum prohibitum (acts made crimes by statute). This in most cases explains why the type of crime and the punishment prescribed are included in the extradition treaty. By this principle also, it is generally regarded as an abuse of the terms of the treaty for a state to secure the surrender of a criminal for an extraditable offence and then to punish the person for an offence not included in the treaty’’

Extradition and rendition are two similar and often confusing concepts. Rendition is a general term for all procedures, including extradition, for returning wanted persons or aliens generally, from a State.[17] Unlawful or irregular forms of returning persons wanted for trial or punishment include abduction and extraordinary rendition.[18] Extraordinary rendition is a government sponsored arrest, kidnap and abductions of persons wanted, accused or convicted of a criminal

[17] A Akinsanya, ‘The Dikko Affair and Anglo-Nigerian Relations’ [1985] (34)(3) *The International and Comparative Law Quarterly*, 602, 609
[18] A Singh, Globalising Torture: CIA Secret Detention and Extraordinary Rendition Open Society Foundations (Open Society Foundations, 2008)

offence to the state who sponsored the arrest, or to a willing third party state. Extraordinary rendition denies a person of the right to challenge his transfer to the requesting or receiving state. It involves the violation of the principles of international law especially where the persons transferred are subjected to torture or sham criminal charges or trials.[19] The Nigerian government's spondored abduction and repertration of Mazi Nnamdi Kanu in Kenya someetime in June, 2021 is an example of an extra ordinary rendition.This is different from the Sunday Igboho's case where the Court in Benin Republic ordered for a remand of Igboho in police custody pending the investigation of his illagal entry and connivance with Immigration officers notwithstanding the request for his extradition by the Nigerian Fedeal Government.

The jurisprudential justification for extradition includes the following:

i. It is in the interest of the global criminal justice system not to allow offenders who have committed heinous crimes to go unpunished.
ii. There will be sufficient evidence in the country where the offence was committed to bring the offender to justice.[20]
iii. A state in whose territory criminals have taken refuge cannot prosecute or punish them purely because of some technical rule of criminal law or for lack of jurisdiction. Therefore, to close the net round such fugitive offenders, international law applies the maxim *aut punire aut dedere,* that is, offenders must be punished by the state of refuge or surrendered to the state which can and will punish them.[21]

3. Principles Guiding Extradiction

Extradition is guided by some principles which include the following:

i. **There must be an extraditable person and extraditable offence**

For extradition to be ordered, it is not enough to show that the alleged fugitive has committed an offence, it must be shown that the person is extraditable and that the offence is an extraditable offence. Under section 308 of the Constitution of the Federal Republic of Nigeria, 1999(as amended), immunity covers the president, vice president, governor and deputy governor.[22]Thus, the persons are not extraditable. Further, extradition treaties normally expressly identify the extraditable offences. Section 3(a) of the Extradition Act provides:

> A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that the offence in respect of which his surrender is sought is an offence of a political character.

[19] United Nations Office on Drugs and Crimes, *Cases and Materials on Extradition in Nigeria* (United Nations, 2016),
[20]T Hillier, *Sourcebook on Public International Law* (Google Books, 1998)
[21]Abegunde Babalola 'Extradition under International Law: Tool for Apprehension of Fugitives' [2014] (22) *Journal of Law, Policy and Globalization*, 25, 26
[22] The import of section 308 was examined in Global Excellence Communications v Donald Duke (2007) 16 NWLR (Pt. 1059) 22

Where the extradition request is ostensibly made in respect of an extradition crime but is in reality aimed at prosecuting or punishing the fugitive on account of the fugitive's race, religion, nationality or political opinions, the request will be refused.[23] In George *Udeozor v Federal Republic of Nigeria*,[24] it was stated that the general rule is that extraditable crimes must be those commonly recognized *as malum in se* (acts criminal by their very nature) and not those which are *malum prohibitum* (acts made crimes by statute). The Extradition Act has a two-layered mechanism for preventing extradition for non-extraditable offences. First, the Attorney-General is required to refuse an extradition request where the alleged offence is not extraditable.[25]Second, the judiciary serves as the second layer - In the event that the Attorney-General requests for the extradition for a non-extraditable offence, the Court is bound by law to refuse the request.[26]Political offences are also not extraditable.[27]

ii. The Principle of Dual Criminality

Under the principle of dual crminality, the extradition crime must be a crime punishable according to the law both of the state of asylum and of the requesting state. This rule was tested in *Factor v Laubensheimer*,[28] where British authorities instituted extradition proceedings against Jacob Factor on a charge of receiving in London money which he knew was fraudulently obtained. At the time extradition was applied for, Factor was residing in the State of Illinois in USA and the offence charged was not an offence under Illinois Law. The United States Supreme Court held that this did not prevent extradition, since according to the Criminal Law generally (i.e. Federal Law) of the US, the offence was punishable. In a latter case *R v Governor of Pentonville Prison, exparte Budlong*,[29] the US court held held that 'substantial similarity' of the legal system of the state of refuge and requesting state is sufficient to bring into effect the double criminality rule so as to justify a grant of extradition. In a case of *Collins v Loisel*,[30] the American Supreme Court stated that the name by which the crime is described in the two countries need not be the same, nor must the punishment be the same; simply, the requirement of double criminality is met if the particular act charged is criminal in both jurisdictions.

iii. Principle of Speciality

This specialty principle requires that a person whose extradition is sought can only be tried for the crime for which his extradition was requested and none other. That is, upon surrender of a fugitive, by a state where he sought refuge, the requesting state must only prosecute and convict

[23]Section 3(2) (a) Extradition Act, 1966.
[24]*George Udeozor v Federal Republic of Nigeria* CA/L/376/05
[25] Extradition Act 1966, section 3(a)
[26] ibid
[27] J JKenelly, The Political Offense Exception; Is the United States- United Kingdom Supplementary Extradition Treaty, the Beginning of the End? (1987) (2)(1) *American University International Law Review*, 208
[28](1933) 290 US 276
[29](1980) 1 AH ER 701
[30]259 U.S. 309, 42 S.Ct. 49, 66L.Ed.956 (1922).

such a person simply for the crime for which his extradition was requested and for none other committed before the surrender of such fugitive.[31] As seen in the case of *States v Raucher*,[32] 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 idea behind this rule is to prevent blanket extradition demand made by the requesting state.[33]In the judgment given by the apex court in the case of *Daya Singh Lahoriavs v Union of India*,[34]it was stated that a fugitive criminal brought in India under extradition treaty can only be tried for the offense provided in the extradition order and not for any other offense. 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. According to the Courts in Udeozor v F.R.N,[35]

> 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.

iv. Opportunity for Fair Trial:

Under this principle, before the extradition process is initiated by the requested state and the fugitive surrendered, it is ensured that the fugitive will be given a chance to represent himself either personally or by a legl practitioner of his choice under a procedure of fair trial in the requesting state.[36] The fugitive has a right to fair prosecution, not persecution in the reguesting state. Thus, the Extradition Act 1966 provides that a fugitive criminal shall not be surrendered if it appears to the Attorney-General or a court dealing with the case- that the request for his surrender; although purporting to be made in respect of an extradition crime, was in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions or was otherwise not made in good faith or in the interest of justice; or that, if surrendered, he is likely to be prejudiced at his trial.[37]As an extention of the fair trial principle, a fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that, whether in Nigeria or elsewhere, he has been convicted of the offence for which his surrender is sought or has been acquitted thereof and fugitive shall not be surrendered if criminal proceedings are pending against him in Nigeria for the offence for which his surrender is sought.[38] However, in the case of a person already convicted and sentenced, the existence of a possibility or pendency of an appeal does not change the extraditable status of the person.[39]

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[31] Robert Jennings and Arthur Watts (eds) *Oppeheim's International Law* (9thedn, Oxford University Press, 2008), 61
[32]119 U.S. 407, 7S.Ct. 234, 30 L.Ed. 425(1886)
[33]RV Corrigan (1931) 1 KB 527
[34][(2001) 4 SCC 516],
[35](2007) LPELR-CA/L/376/05
[36] P Johnston 'The Incorporation of Human Rights Fair Trial Standards into Australian Extradition Law'[2014] (76) *Australian Institute of Administrative Law Forum*, 20
[37] Extradition Act 1966 section 3(b)
[38] ibid
[39]*Attorney-General of the Federation v Uche Okafor Prince*, Suit No: FHC/ABJ/CR/28/2013.

v. Principle of preservation of human rights

In the consideration of application for extradition, the need for preservation of human rights must always be considered. This was exemplified in the *Soering Case*,[40] where the United Kingdom intended to extradite a person to the United States for a crime carrying a possible penalty of death. The European Court of Human Rights held that such circumstances, where a fugitive might spend years on death row awaiting the result of appeals, would constitute inhuman and degrading treatment and was thus inadmissible.[41] While human rights concerns can add to the complexity of extradition cases it is positive as it adds to the legitimacy and institutionalisation of the extradition system[42].

vi. Principle of Reciprocity

Extradition is reciprocal and mutual arrangement between states. Thus, most extradition treaties have been established to ensure mutual surrender of fugitives. Reciprocity is the self-enforcement mechanism for extradition treaties or extradition bilateral agreements. That is, countries are expected to honour their extradition obligations because failing to do so could undermine the prospect of future extraditions or cooperation in other areas of the international relationship. Thus, the states involved in such an agreement are considerable, and there are major implications for all parties involved. In signing a treaty, a sending country agrees to relinquish its jurisdiction—at least temporarily—over the individual that is subject to extradition.[43]The sending country effectively agrees to surrender its unique coercive powers to the receiving country.[44]Meanwhile, for the receiving country, the treaty establishes the terms and conditions under which extradition may be granted and the expectations of how the individual in question shall be treated.

4. Extradition in Nigeria

Extradition in Nigeria is a complex processes which involves diplomatic, administrative and judicial steps. This section examines the laws, procedures and issues in extradition in Nigeria.

4.1 Legal Framework for Extradition in Nigeria

i. Constitution of the Federal Republic of Nigeria (CFRN) 1999

By section 19(c) of the CFRN 1999, the foreign policy objectives of Nigeria include the promotion of international co-operation for the consolidation of universal peace. Section 41(2)(b) of the constitution recognises extradition as an exception to the right to freedom of

[40](1989) EHRR 430
[41]Radu Mariana and Mititelu, Cătălina: 'The Observance of Human Rights and Freedoms in the Extradition Proceedings at National and International Levels' [2013] (93)(2). *Journal of Danubian Studies and Research*, 100,101
[42]Boister,Neil, *An Introduction to Transnational Criminal Law*(OUP, 2012), 287
[43] Garcia Michael John and Doyle Charles, *Extradition to and From The United States: Overview Of The Law And Recent Treaties* (Congressional Research Services, 2010), 98-985
[44]PowersAnn 'Justice Denied? The Adjudication of Extradition Applications' [2002] (37) *Texas International Law, Journal*, 277, 284.

movement. Emeka argues that extradition is one of the constitutionally permitted limitations to the right of a citizen not to be expelled from Nigeria against his wish.[45] This is not however correct. Extradition cannot be equated to expulsion. A person extradited is not necessarily expelled since he can return after serving his term in the requesting country. By virtue of the Constitution, the power to make laws and procedures regarding extradition is vested exclusively in the Federal Government of Nigeria.[46] Similarly, the Constitution confers adjudicatory powers over extradition matters on the Federal High Court to the exclusion of any other court of first instance.[47]

ii. Extradition Act 1966

The Extradition Act, 1966 was enacted on 31 December 1966 and came into operation in January 1967.It was enacted to repeal all previous extradition laws made by or applicable to Nigeria and to provide for a more comprehensive legal regime with respect to extradition of fugitive offenders.[48] While the Constitution provides the general foundational legal framework for extradition law and practice, the Extradition Act is the primary legislation for specific matters.[49]The Extradition Act recognizes two separate categories of States. States in the first category are those that have an extradition agreement with Nigeria and in respect of which an agreement order has been made and published in the Federal Gazette.[50] The second category consists of Commonwealth States.[51] This categorization is significant because while it is necessary to enter into separate and individual bilateral (or multilateral) extradition treaties with States in the first category, there is no such requirement for the second category of Commonwealth States.[52]

iii. Federal High Court (Extradition Proceedings) Rules, 2015

The Federal High Court (Extradition Proceedings) Rules, 2015 were made pursuant to powers conferred on the Chief Judge of the Federal High Court by the 1999 Constitution.[53] These powers enable the Chief Judge of the Federal High Court to make procedural rules relating to matters over which the Federal High Court has jurisdiction. Although the Extradition Act has certain procedural provisions, they are inadequate and do not cover many areas of proceedings. The Federal High Court (Extradition Proceedings) Rules were made to ensure clarity in extradition proceedings and to promote efficient and expeditious hearing of extradition

[45]Chijioke Emeka 'The Right to Freedom of Movement In Nigeria' [2020] (1)(5) *Auxano Law Journal*, 80, 100
[46]Second Schedule, Exclusive Legislative List; Item 27 1999 Constitution of Nigeria (as amended)
[47]Section 251(1) (i) 1999 Constitution of Nigeria (as amended)
[48]Preamble, Extradition Act, 1966.
[49] The Act was modified by the Extradition (Modification) Order 2014 to make it consistent with the CFRN 1999. This was done pursuant to the powers of the president under section 315 of the Constitution to modify existing laws.
[50] Extradition 1966, section 1
[51] Ibid, section 2
[52] ibid
[53] CFRN 1999 section 254

applications. Order 4 Rule 1(1)(2) and (3) of the Federal High Court (Extradition Rules) 2015 provides:

(1) '' Where a fugitive is brought before the Court after arrest under a provisional arrest warrant pursuant to Order 111 of these Rules, the Court shall-

(a) explain to the fugitive in the language he understands, with assistance, where necessary-

(i) the allegation in respect of which the warrant was issued,

(ii) that he may consent to extradition, and

(iii) the effect of such consent;

(b) remand the fugitive in custody or admit him to bail pending the receipt of an application if any from the Attorney-General, requesting the extradition of the fugitive; and

© adjourn the matter to a return date not later than 30 days from the day the fugitive was arrested.

(2) ''The judge shall then cause a report of the proceedings to be sent to the Attorney-General in accordance with section 8(5) of the Act.

(3) '' On the return date, where the judge finds that the Attorney-General has-

(a)Transmitted an order indicating that an extradition request has been received in respect of the fugitive, the –

(i) Attorney- General shall be directed to file and serve his application within 48 hours or such other time as may be ordered, and

(ii) Matter shall be set down for hearing within 14 days from the date of the preliminary hearing; or

(iii) Not transmitted to the judge an order that an extradition request has been received in respect of the accused fugitive or has positively informed the court that no such request has been received, the judge shall discharge the fugitive.

iv. Evidence Act, 2011

The Evidence Act applies to all criminal proceedings with the exception of a field general court martial.[54] It is also applicable in all civil judicial proceedings except those civil causes and matters before the Sharia Court of Appeal, Customary Court of Appeal, Area Court or Customary Court.[55]Extradition proceedings are not listed among the proceedings which are excluded from the application of the Evidence Act. The Evidence Act is therefore applicable to extradition proceedings before the Federal High Court. Among other matters, the Evidence

[54]Section 256 (1) (b) Evidence Act 2011
[55] Evidence Act, section 256 (1)

Act governs the admissibility and weight of evidence, the burden of proof as well as the competence and compellability of witnesses. The presentation of these facts is regulated by The Evidence Act is particularly important in extradition proceedings because foreign laws are regarded as matters of facts which require proof. Thus, the existence of the foreign law, which a fugitive is accused of violating, is a matter of fact. However, in proving the existence of foreign law, the Evidence Act is read in conjunction with the Extradition Act. By this exercise, the relevant foreign law is deemed to exist if mentioned in the warrant issued by the foreign court.[56]

With regards to evidence in Nigeria needed for use in other countries, the Extradition Act 1966 in section 16 permits that testimony of any witness in Nigeria may be obtained in a criminal matter pending in any court or tribunal in other countries just as it may be obtained in civil matters under any law in force in any part of Nigeria.

4.2 Jurisdiction Over Extradition in Nigeria

The Federal High Court is the adjudicatory body that has exclusive jurisdiction on extradition matters.[57]Previously, jurisdiction over extradition proceedings was vested in the Magistrate Courts.[58] However, the Constitution of the Federal Republic of Nigeria 1979, reversed this when it conferred exclusive jurisdiction over extradition matters on the Federal High Court. This exclusivity was retained in the Constitution of the Federal Republic of Nigeria 1999 which succeeded the 1979 Constitution. It thus became necessary to modify the Extradition Act to resolve its inconsistency with the constitution. The Extradition Act (Modification) Order 2014 was issued pursuant to section 315 of the 1999 Constitution of Nigeria which allows the President of Nigeria to modify any existing law so as to bring it into conformity with the Constitution.[59] Section 315 is a saving provision of the 1999 Constitution and it enables the continuing application of laws which were in existence prior to the coming into force of the 1999 Constitution. The rationale behind the section, is to avoid the tedious task of re-enacting pre-1999 laws. All pre- 1999 existing laws including the Extradition Act 1966 and Orders made thereunder are deemed valid and in force subject to the modification that will bring them into conformity with the provisions of the Constitution.[60]

In, *Attorney General of the Federation v Godwin Chiedo Nzeocha*,[61] counsel to the Respondent objected to the jurisdiction of the Federal High Court to adjudicate on extradition matters. Essentially, counsel argued that since the Extradition Act mentioned magistrate courts as having jurisdiction in extradition matters, the Federal High Court lacked jurisdiction to adjudicate over the extradition proceedings brought against the Respondent. The Federal High

[56]Section 6(1) Extradition Act, 1966.
[57] Section 251 (1)(i)1999 Constitution of the Federal Republic of Nigeria (as amended) see also section 7(1) (i) Federal High Court Act.
[58]Section 6, 7, 8 and 9 of the Extradition Act 1966 before amendment in 2014
[59]A.G. Abia v. A.G. Federation (2003) 12 SC 1.
[60]Orhiunu v. A.G. Federation (2005) 1 NWLR (906) 39.
[61]Attorney General of the Federation v Godwin ChiedoNzeocha Charge No.FHC/L/335c/2011.

Court ruled that by virtue of section 251(1) of the Constitution, the Federal High Court has exclusive jurisdiction over extradition matters. In *Orhiunu v Attorney-General of Federation*,[62] the Court of Appeal emphasized, in respect to the jurisdiction of the Federal High Court, that exclusive jurisdiction conferred on the Federal High Court by the Constitution cannot be limited otherwise than by the same Constitution.

The jurisdiction of the Federal High Court to adjudicate on extradition proceedings is based on the presence of the fugitive on Nigerian territory. It does not matter if the fugitive is a Nigerian or not. In *Attorney General of the Federation v Dion Kendrick Lee*,[63] the fugitive was a non-Nigerian who was found in Nigerian territory and extradited to the UK by order of the Federal High Court sitting in Lagos. Extradition proceedings will apply to all persons physically present in Nigeria with the exception of persons who are immune from legal process in Nigeria. Persons immune from legal process include those with diplomatic immunity,[64] the President and Vice President of the Federal Republic of Nigeria, and the Governors and Deputy Governors of the States.[65]Jurisdiction in extradition proceedings is therefore in personam and not exercised on the basis of nationality or citizenship. Thus proceedings under the Extradition Act cannot be instituted against Nigerian nationals who are fugitives outside Nigeria's territory. Based on the in personam jurisdictional basis in extradition, only natural persons are subject to extradition and extradition proceedings. To this extent, a company or other legal persons cannot be the subject of extradition proceedings. Rather such legal persons can be subject to other arrangements such as confiscation of proceeds of crime.

4.3 Procedure for Extradition in Nigeria

The procedure for extradition in Nigeria is governed principally by the Extradition Act. The procedure may be summarized as follows:

i. A request for the surrender of a fugitive criminal of any country must be made in writing to the Attorney-General by a diplomatic representative or consular officer of the requesting.[66]
ii. The request is accompanied by a duly authenticated warrant of arrest or certificate of conviction issued in that country.
iii. Where such a request is made to him, the Attorney-General may by an order under his hand signify to a Judge of the Federal High Court that such a request has been made and require the Judge to deal with the case in accordance with the provisions of the Act.
iv. If the surrender of the same fugitive criminal is requested by more than one country, whether for the same offence or different offences, the Attorney-General shall

[62](2005)1 NWLR (906) 39.
[63]Attorney General of the Federation v. Dion Kendrick Lee Charge No: FHC/L/465C/11.
[64]Diplomatic Immunities and Privileges Act, 1962.
[65] Section 308 of the CFRN 1999
[66] Extradition Act, section 6

determine which request is to be accorded priority, and accordingly may refuse the other request or requests.[67]

v. On receipt of order of the Attorney General, the Judge may issue a warrant for the arrest of a fugitive criminal, if such evidence is produced as would in the opinion of the Judge justify the issuance.

vi. The warrant issued may be executed anywhere in Nigeria.

vii. A fugitive criminal arrested on a warrant issued shall be brought before the Judge as soon as it is practicable after he is arrested.[68]

viii. When a fugitive criminal is brought before the Judge, the Judge shall proceed with the case as in the same manner, as near as may be, and shall have the same jurisdiction and powers, as if the fugitive were brought before him charged with an offence committed within his jurisdiction.

ix. The Judge shall receive any evidence which may be tendered to show that the offence of which the fugitive is accused or alleged to have been convicted is not an extradition offence or that the surrender of the fugitive is for some other reason precluded by the Act or by the extradition agreement (if any) in force between Nigeria and the country seeking his surrender.[69]

x. In the case of a fugitive criminal accused of an offence claimed to be an extradition offence, if there is produced to the Judge, a warrant issued outside Nigeria authorizing the arrest of the fugitive, and the Judge is satisfied- that the warrant was issued in a country to which this Act applies, is duly authenticated, and relates to the prisoner; that the offence of which the fugitive is accused is an extradition offence in relation to that country; that the evidence produced would, according to the law of Nigeria, justify committal of the prisoner for trial if the offence of which he is accused had been committed in Nigeria, and that the surrender of the fugitive is not precluded by the Act and, where the country requesting the surrender of the fugitive is one to which the Act, the Judge shall, commit the fugitive to prison to await the order of the Attorney-General for his surrender.[70]

xi. A fugitive criminal committed to prison shall not be surrendered before the expiration of fifteen days beginning with the day on which he is so committed or, if a writ of habeas corpus bas been issued, until the court has given its decision on the return of the writ, whichever is later.[71]

xii. where a writ of habeas corpus has been issued, if the fugitive criminal is not discharged by the decision of the court on the return of the writ, the Attorney-General, unless it appears to him that the surrender of the fugitive is precluded by law, may by order,

[67] Section 6(4)
[68] Ibid, section 7
[69] Ibid, section 9
[70] Section 6(2)
[71] Ibid, section 10

direct the fugitive to be surrendered to any person authorized by the country requesting the surrender to receive him, and the fugitive shall be surrendered accordingly.[72]

xiii. If a fugitive criminal who has been committed to prison is not surrendered and conveyed out of Nigeria within two months beginning with the day on which he is so committed, or if a writ of habeas corpus has been issued, within two months beginning on the day on which the court gives its decision on the return to the writ, whichever is the later, the Court may, on application made by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make the application has been given to the Attorney-General, order the fugitive to be discharged from custody.[73]

5. Extradition in International Law

In international law, there is no obligation to extradite.[74] In the case of Nigeria, this is subject to a few exceptions, such as the situation relating to Commonwealth States. Extradition is generally regulated by conventional international law through bilateral or multilateral 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 provisions.[75] Put differntly, extradition does not exist as a matter of international law but only on agreements between states. In *George Udeozor v Federal Republic of Nigeria*,[76] 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. In Attorney-General of the *Federation v Kingsley Edegbe* the Federal High Court struck out an application for extradition to the Netherlands on grounds that there was no mutual treaty between Nigeria and the Netherlands.[77] In the absence of treaty or statute, the grant of extradition depends purely on reciprocity or courtesy.[78] In Assange vs. Swedish Prosecution Authority[79], a case involving set of legal proceedings in the United Kingdom concerning the requested extradition of Julian Assange to Sweden for preliminary investigation into accusations of sexual offences. The proceedings began in 2012. On 12 August, 2015, Swedish prosecutors announced that they had dropped their investigation into three of the allegations against Assange, because the statute of limitations had expired. The investigation into the rape allegation was dropped by Swedish authorities on 19 May, 2017. Assange said in these proceedings that he feared he would ultimately be extradited to the United States if he were sent to Sweden. In May 2019, Swedish prosecutors reopened the

[72] ibid
[73] Ibid section 12
[74]Blakesley Christopher L 'The Practice of Extradition from Antiquity to ModernFrance and the United States: A Brief History' [1981] (49)*Boston College International Law& Comparative Law Review*, 41–42.
[75] Vienna Convention on the Law of Treaties, 1969, article 37 provides that 'a treaty does not create either obligations or rights for a third State without its consent."
[76]*George Udeozor v Federal Republic of Nigeria* CA/L/376/05.
[77]Suit No. FHC/ABJ/CS/907/2012, Judgment delivered on 1st July, 2014, per Mohammed
[78]J G Sharke,*Starke's International Law* (11thedn, OUP, 1994), 317-328.
[79] Assange v. Swedish Prosecution Authority<https//en.m.wikipedia.org/wiki/Assange vs. Swedish

investigation against Assange. The prosecutors expressed the intent to extradite Assange from the United Kingdom after he served his 50 week prison sentence for skipping bail. In June 2019, Uppsala District Court denied a request to detain Assange, thereby preventing his extradition from Sweden. It said the Swedish investigation did not require Assange's presence in Sweden.

5.1 Economic Community of West African States Convention on Extradition Abuja, 1994.

The Economic Community of West African States (ECOWAS) was established to engineer economic integration of the West African States[80]. In furtherance of this, this ECOWAS has taken steps including the Protocol on free movement of community citizens within the sub-region. The sixteen ECOWAS member states also concluded the Economic Community of West African States Convention on Extradition in Abuja, Nigeria on the 6th day of August 1994. The Convention provides a multilateral framework for extradition within ECOWAS[81]. Article 2 (1)(2) of the Convention provides:

> (1) States undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons within the territory of the requested State who are wanted for prosecution for an offence or who are wanted by the legal authorities of the requesting State for the carrying out of a sentence.
>
> (2) In the case of a minor aged under 18 at the time of the request for extradition, the competent authorities of the requesting and requested States shall take into consideration the interests of the minor and, where they think that extradition is likely to impair social rehabilitation, shall endeavour to reach an agreement on the most appropriate measures.

Extradition shall be granted under certain circumstances stated in article 3 in respect of offences punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a minimum period of two years. Where there has been a conviction and a prison sentence has been imposed in the territory of the requesting State, extradition shall be granted only if a period of at least 6 months remains to be served[82]. The Convention provides that extradition shall not be granted if the offence in respect of which is requested is regarded as a political offence or as an offence connected with a political offence. Again, there shall be no extradition if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of race, tribe, religion, nationality, political opinion, sex, or status[83]. Furthermore, extradition for offences under military law which are not offences under ordinary criminal law shall not be granted under this Convention[84]. Extradition shall not be granted for an offence in

[80] ECOWAS Revised Treaty 1993 article 2
[81] Kassim Momodu, Extradition: The Treaty Between Benin, Ghana, Nigeria and Togo, Nigerian (1985) Current Law Review, 155.
[82] Article 3(1)
[83] Ibid article 4
[84] Ibid, article 7

respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law[85]. If the offence for which extradition is requested is punishable by death under the law of the requesting State, and if in respect of such offence the death penalty is not provided for by the law of the requested State, extradition may not be granted[86].

Under the Convention, extradition shall not be granted if the person whose extradition is requested has been, or would be, subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting State or if that person has not received, or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and People's Rights[87]. Consequently, the requested State may refuse to extradite a person if extradition would be incompatible with humanitarian considerations in view of age or health. Where the person sought to be extradited is a national of the requested State, extradition is a matter of discretion for that State. Nationality if in issue is determined at the time of the offence for which extradition is being requested[88].

In extradition under the Convention, the place of commission of the alleged crime is relevant. This is because the requested State may refuse to extradite a person for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory. When the offence for which extradition is requested has been committed outside the territory of the requesting State extradition may only be refused if the law of the requested State does not allow prosecution for the same category of offence when committed outside the territory of the latter or does not allow extradition for the offence concerned[89]. Again, the requested State may refuse to extradite the person claimed if the competent authorities of such State are proceeding against that person in respect of the offence or offences for which extradition is requested[90].

The Convention does not allow for double jeopardy. Consequently, extradition shall not be granted if final judgement has been passed by the competent authorities of the requested State upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested State have decided either not to institute or to terminate proceedings in respect of the same offence or offences[91]. Moreover, if new proceedings are instituted by the requesting State against the person in respect of whom the requested State has terminated proceedings for the offence for which extradition was granted, any period passed in remand or in custody in the requested State shall be taken

[85] Ibid, article 16
[86] Ibid, article 17
[87] Ibid, article 6
[88] Article 10
[89] Ibid, article 12
[90] Ibid
[91] Article 13

into consideration when deciding the penalty involving deprivation of liberty in the requesting State[92].

The request for extradition under the Convention shall be in writing and shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State[93]. However, use of the Diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more States. The request shall be supported by: the original or an authenticated copy of the conviction and sentence immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting State; a statement of the offences for which extradition is requested. The time and place of their commission; their legal descriptions; and a reference to the relevant legal provision shall be set out as accurately as possible; and an authenticated copy of the relevant law indicating the sentence which may be or has been imposed for the offence and as accurate a description as possible of the person claimed together with any other information which will help to establish his identity, nationality and whereabouts[94].

The procedure for extradition under the Convention is governed solely by the law of the requested State. However, States, whilst providing for a speedy extradition procedure, shall ensure that the person whose extradition has been requested has the right to be heard by a judicial authority and to be assisted by the lawyer of his own choice and shall submit to a judicial authority the control of his custody for the purpose of extradition as well as the conditions of his extradition[95]. Similarly, expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State. Expenses incurred in conveying the person from the territory of the requested State shall be borne by the requesting State. Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the requesting State[96].

5.2 International Extradition among Commonwealth States

Ordinarily, the Extradition Act is only applicable to a State that has an extradition treaty with Nigeria. However, the Extradition Act makes an exception of Commonwealth States to the extent that the Act is applicable to every separate country within the Commonwealth[97] For the purposes of the Extradition Act, a separate country within the Commonwealth, refers to 'each sovereign and independent country within the Commonwealth[98]. If any sovereign and independent country within the Commonwealth has a dependent territory, such a territory will be regarded as a part of the Commonwealth for extradition proceedings if the President of the

[92] Ibid
[93] Ibid, article 18
[94] Article 27
[95] Ibid, article 28
[96] Article 30
[97] Section 2(1), Extradition Act.
[98] Section 2(2)(a), Extradition Act.

Federal Republic of Nigeria makes an order published in the Federal Gazette designating such a territory as forming part of the Commonwealth country in issue.[99]

However, the President will only make such an order if the country, to which the dependent territory is attached, has signified to the Federal Government that it desires that the dependent territory should be designated as part of the Commonwealth for the purposes of extradition. If it appears to the President that a Commonwealth country to which section 2 of the Extradition Act is applicable no longer contains provisions substantially equivalent to the provisions of the Extradition Act, he may by order published in the Federal Gazette modify the application of the Extradition Act to that country[100].The modifications as specified in the order may by way of addition, alteration or omission[101]. A Commonwealth country may however still enter into an extradition treaty with Nigeria. In this event, the extradition relationship between Nigeria and the country shall cease to be governed by section 2 of the Extradition Act[102].Rather the relationship shall be based on the extradition treaty between the Nigeria and the country[103]. In every other case, international extradition depends on treaties or bilateral agreements between the states.

6. Conclusion

Modern society is devastating from the manifestations of international crime, which harms social relations in political, economic, social, and spiritual spheres. Despite considerable efforts, no state in the world can independently fight crime. This is because the availability of modern means of transportation makes it easier for suspects to flee to another country. Moreover, the interconnectivity of the world has made it possible for criminal activities across national boundaries to thrive. Consequently, the need for collaborative joint efforts and international cooperation among states cannot be over-emphasised in addressing global security challenges. A convict or suspect should not be allowed to escape justice by fleeing to another country. Extradition therefore has a great potential to contribute to international criminal justice where is effectively implemented without bias. Nevertheless, the absence of any obligation to extradite in international customary law, represents a major limitation to the use of extradition. This is further compounded by the absence of a general multilateral treaty on extradition. The reliance on most bilateral agreements for extradition simply implies that a criminal or suspect can effectively escape justice by fleeing to a state that has no extradition agreement with the state where the crime was committed.

7. Recommendation

The United Nations Convention against corruption has as one of its 5 main areas, as international cooperation which stipulates that member countries are bound to render specific

[99] ibid
[100] Section 2(4) Extradition Act
[101] ibid
[102] Section 2(5), Extradition Act
[103] ibid

forms of mutual legal assistance in gathering and transferring evidence for use in court to extradite offenders, that needs to be strengthened. It is therefore strongly recommended that an international Extradition Convention be reached at the United Nations Level which will capture the majority of states. The treaty should provide the framework for international extradition including guiding principles and procedural issues. This uniformity of principles and procedure will expand the scope of the states among which extradition can be implemented and remove the procedural bottlenecks associated with having to rely on respective state rules in extradition proceedings.