

## THE LAW AND THE POLITICS OF EXTRADITION IN NIGERIA

By

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### Abstract

*International Law encourages cooperative process wherein a State surrenders an offender to another State to be prosecuted in conformity with the law for an offence committed within the jurisdiction of the requesting State through the instrumentality of the principles of extradition. Enabled by bilateral or multilateral pacts, extradition became imperative in view of the expansion of transnational criminal organizations, including but not limited to human and drug trafficking, counterfeiting, cybercrime and terrorism. In recent times, the media space was agog with the news of extradition process of many Nigerians including Bankole Ogunnovo, Nnandi Kanu, Sunday Adeyemo and Abba Kyari among other personalities. In view of this development, this paper examines the concept of extradition within the purview of international milieu. The key objective of the study was to appreciate the relevant Extradition Laws and Treaty obligations with a view to ascertaining the propriety or otherwise of the practice and procedures of extradition in Nigeria. This paper adopted doctrinal research approach with relevant statutes, case laws, textbooks, articles and the internet as the main sources of information and data collection for the study. The paper found that the existence of imbalance in the enforcement of bilateral treaty between Nigeria and some advanced States anchored on the politics of economic superiority negates the jurisprudential justification for extradition. The work recommended inter alia, that sovereign nations should be committed to reciprocal diplomatic relations on the basis of equality and binding legal framework.*

**Keywords:** Extradition, Law, Politics, Diplomatic Relations, Nigeria.

### 1. Introduction

The International Community is organized on the basis of nation States. In consonance with the principle of territoriality of criminal law, States are not permitted to apply their penal laws to crime committed outside their territorial boundaries save in extreme circumstances geared towards the protection of special national interests. However, in order to suppress crime globally, States are generally inclined to cooperate and assists in bringing fugitives abroad to justice. The cooperation among states to pursue fugitives and other wanted individuals in other jurisdictions in order to bring them to justice can be achieved through the process of extradition.

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Thus, extradition is a cooperative process of international law in which one country agrees to return a convicted or suspected criminal to another country for trial or punishment.<sup>2</sup> The obligation to extradite or prosecute in an international cooperation to fight impunity was recognized by Hugo Grotius<sup>3</sup> who postulate the principle of *aut dedere aut punire*.<sup>4</sup> According to Grotius, 'when appealed to, a State should either punish the guilty person as he deserves, or it should entrust him to the discretion of the party making the appeal.'<sup>5</sup> This forms the foundational basis of the doctrine of extradition.

The extradition process is usually contained in bilateral or multilateral treaties. Some States also allow extradition requests in cases where they have exchanged declaration of reciprocity with the requesting States.<sup>6</sup> Therefore, basically, the extradition process is anchored on the existence of binding extradition treaties and the municipal laws of the State from which the extradition of fugitives is being requested. In Nigeria, there are a number of legal regime that set out requirements and obligations governing the process of extradition. In the light of the current realities, this paper examines the legal framework of extradition with a view to ascertaining the propriety or otherwise of the practice and procedures of extradition in Nigeria.

Thus, the paper is divided into nine parts. The introduction is contained in part one while part two appreciates the concept of extradition. Parts three and four appraise the basis of extradition and extradition and the legal duty of the State respectively. Part five follows progressively and x-ray the legal framework relating to extradition in Nigeria whereas part six examines the essential conditions for grant of extradition request. Part seven focuses on the analysis of politics of extradition in Nigeria; part eight draws conclusion from the analysis and part nine proffers solutions by way of recommendations.

## **2. The Concept of Extradition**

It is quite possible for a person to escape another State after committing a crime in his own State. A question normally arises as to whether he can be tried in the country where he has fled away or in the State where the crime has been committed. In ideal situation, a State finds itself in difficulty to punish a person who has committed a crime elsewhere on grounds of lack of jurisdiction. Therefore, such persons are sometimes surrendered to the State where the crime has been committed. Surrender of an accused or a convict is referred to extradition.<sup>7</sup>

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<sup>2</sup> Robert Longley, 'What is extradition? Definition and Consideration' Available on: <https://www.thoughtco.com/what-is-extradition-definition-and-examples-5082047> accessed 12 May 2022

<sup>3</sup> A Dutch jurist who laid the foundations for international law

<sup>4</sup> Either extradite or punish.

<sup>5</sup> Hugo Grotius, *De Jure Belli ac Pacis*, Book 11, Chapter XXI, Section IV. English Translation by Francis W, Kelsey, (Larendon Press/ Humphrey Milford 1925) 527

<sup>6</sup> Faraz Alam Sagar and Pragati Sharma, 'Extradition Law: Fundamentals and Processes' Available on: <https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/834852/extradition-law-fundamentals-and-processes-part-1> accessed 7 May 2022

<sup>7</sup> H.O Agarwal, *International Law and Human Rights* (7<sup>th</sup> edn Central Law Publications 2010) 263

Extradition, therefore, is the delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed or to have been convicted of a crime, by the State on whose territory the alleged criminal happens to be for the time being.<sup>8</sup> According to Starke<sup>9</sup>, the term extradition ‘denotes the process whereby under treaty or upon the basis of reciprocity one State surrenders to another State at its request a person accused or convicted of a criminal offence committed against the laws of the requesting State, such requesting State being competent to try the alleged offender.’ On his part, Saddath<sup>10</sup> appreciates extradition as the legal process by which one country returns a fugitive to another country where the person has been accused or convicted of a crime.

The above definitions make it clear that in extradition, two States are involved. They are: firstly, the territorial State, that is, a State where an accused or a convict is found, and secondly, the requesting State, in other words, a State where the crime has been committed. The extradition request is usually made through the diplomatic channel. Thus, a request for extradition of a person distinguishes extradition from other measures such as banishment, expulsion and deportation where an undesirable person is forcibly removed.<sup>11</sup> The definitions further demonstrate that extradition entails a lengthy and detailed procedures determined through treaties signed by individual States which are applicable to activities that are criminal in both countries. Thus, international extradition is an obligation undertaken by States in good faith to promote and execute justice with a view to suppress global crime. Although some States allow extradition requests in situations where declaration of reciprocity is exchanged with requesting States, the process of extradition is however subject to two vital factors: existence of a binding extradition pact and the municipal laws of the State from which the extradition is being requested. Therefore, the basis of extradition request must lie in an existing reciprocal arrangement between the countries and the crime committed must be deemed crime in both jurisdictions, despite the possibility of the crime being termed differently.<sup>12</sup>

### **3. Basis for Extradition**

In International Law, each State ordinarily is bestowed and exercise complete jurisdiction over all the persons within its domain. However, there may be a situation in which the State concerned finds it difficult to exercise jurisdiction to punish the alleged offender. A situation of this nature is undoubtedly detrimental to peace and order in the society. Therefore, peace and order can be sustained only when there is international co-operation among the States. Thus, the social need to punish criminals and in order to fulfil the social necessity that the

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<sup>8</sup> Robert Jennings and Arthur Watts, *Oppenheim’s International Law* (9<sup>th</sup> edn Longman Group 1992) 948-949

<sup>9</sup> J.G Starke, *Introduction to International Law* (10<sup>th</sup> edn Butterworth-Heinemann 1989)

<sup>10</sup> Claire Saddath, ‘A Brief History of Extradition’ Available on <http://content.time.com/time/world/article/0,8599,1926810,00.html> accessed 7 May 20202

<sup>11</sup> Agarwal, (n6) 263

<sup>12</sup> Charles Adeogun Philips, ‘Adhering to the Rule of Law in Investigation and Prosecution- Extradition and Mutual Legal Assistance: Practice and Procedure’ (being a paper delivered at the National Workshops for Investigators and Prosecutors held at the National Judicial Institute Abuja on the 27<sup>th</sup> August 2019).

principle of extradition has been recognized<sup>13</sup> in the international arena. Collins<sup>14</sup> captures the basis vividly thus:

The inability of a State to exercise its jurisdiction within territory of another State would seriously undermine the maintenance of law and order if there were no cooperation in the administration of justice. Awareness among national decision-makers of the social necessity of jurisdictional co-operation is illustrated by the widespread practice of returning a person who is accused or who has been convicted of a crime to the State in which the crime was committed.

Therefore, it is expected that a criminal is extradited to the requesting State so that criminal offence may not go unpunished; to safeguard the interest of the territorial State as is it a step towards the achievement of international co-operation in solving international problems of social character in fulfilment of one of the purpose of the United Nations.<sup>15</sup> Similarly, the State on whose territory the crime is committed is often in better position to try the alleged offender because of the availability of evidence in such a place. Indeed, extradition of the fugitive criminals is mutually beneficial to international community as a whole as it can play a major role in eliminating crimes through international cooperation.

Thus, a universal consensus to the effect that all criminal acts and deliberate criminal omissions should attract deterrent consequences calls for the entronement of the principle of extradition. This is apt as the process for determining and enforcing the criminal consequences should be controlled and well managed in the place where the crime was committed taking into cognizance the proof of crime and proximity to the sources of evidence. In this way, criminal behaviors are not allowed to go unpunished by fugitive simply moving from the jurisdiction where the crimes are committed to another territory. This position was accorded judicial recognition by the Nigerian court<sup>16</sup> where it was held inter alia, that extradition proceedings serve as an expression of considerate practice based on the notion that it is the interest of every State that person fleeing from justice must be disallowed from seeking refuge outside the territory of the State where the person is wanted. The decision of the case under consideration was anchored on the decision of *R v. Arton*<sup>17</sup> where Lord Russell of Killowen, C.J noted that:

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

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<sup>13</sup> S.O Kapoor, *International Law and Human Rights* (18<sup>th</sup> edn Central Law Agency 2011) 345

<sup>14</sup> Edward Collins, *International Law in a Changing World* (Random House 1970) 216

<sup>15</sup> Article 1 Para 3 of the United Nations Charter.

<sup>16</sup> *Attorney General of the Federation v. Olayinka Johnson* Suit No. FHC/L/16C/2013

<sup>17</sup> (No.1) [ 1896] 1 Q.B 108

The significance of the cited judicial authorities is in tandem with the jurisprudential justification for extradition which is the need to ensure that offenders do not evade justice and where necessary, brought to the State where the offence was committed and with sufficient evidence aimed at ensuring that justice is served in line with the applicable laws.

#### 4. Extradition and the Legal Duty of a State

The legal duty of a State with regard to extradition is a matter of international debate. The question is whether it is a legal duty of a State of refuge to deliver the criminal to the requesting State. Grotius is of the view that the State of refuge has a duty to either punish the offender or to surrender him to the State seeking his return.<sup>18</sup> The principle of 'prosecution or extradition' was recognized by Grotius as a legal duty of the State where the offender is found and the legal duty is based on natural law.<sup>19</sup> Vattel also had a similar view. He regarded extradition as a clear legal duty imposed upon States by international law in the case of serious crimes.<sup>20</sup>

However, the principle of 'prosecution or extradition' is not recognized and not been followed by the States, and therefore could not become a rule of International Law. In modern times, extradition depends on the provisions of the existing extradition treaties. Thus a fugitive criminal is not surrendered in the absence of extradition treaties. The United States' court in *Factor v. Laubenheimer*<sup>21</sup> captures the modern position of extradition thus:

The principles of International Law recognize no right to extradition apart from treaty while government may, if agreeable to its own constitution and laws, voluntarily exercise the power to surrender a fugitive from justice to the country from which he fled... the legal right to demand his extradition, and the correlative duty to surrender him to the demanding State exist only when created by treaty.

Similarly, in Nigeria, the Court of Appeal in *George Udeozor v. Federal Republic of Nigeria*<sup>22</sup> took the view that the right of the State, 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.

From the above cited judicial authorities, it is apparent that the legal duty to surrender a criminal arises only when treaties are completed by the States after the formalities are concluded which are enshrined in the extradition treaties. In other words, under Customary International Law, there is no obligation on the State to extradite a fugitive criminal without a

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<sup>18</sup> Ayushi Tripathi, 'Is Extradition a Legal Duty of State?' <https://Lawsisto.com/articleread/NDK4/is-Extradition-a-legal-duty-of-state> accessed 7 May 2022

<sup>19</sup> Ibid.

<sup>20</sup> Agarwal (n6) 204

<sup>21</sup> (1993) 280 U.S 276

<sup>22</sup> CA/L/376/05

formal agreement as each State is sovereign.<sup>23</sup> Only in exceptional cases, a State may extradite a person on the basis of reciprocity. However, this is done not because of any legal duty on the parts of the parties but because of reciprocity or courtesy<sup>24</sup> and an act of good faith by the State. Even when there is treaty, many factors may influence bilateral cooperation on extraditions, including economic and political relations between States. For example, despite signing an extradition treaty with the United States in 1978, Mexico has been historically reluctant to extradite its citizens to the United States in view of several perceived trespasses on Mexican sovereignty by the United States' law enforcement in the pursuit of suspects<sup>25</sup>.

## **5. The Legal Framework Relating to Extradition in Nigeria**

In International Law, rules regarding extradition are not well established mainly because extradition is a topic which does not come exclusively under the domain of International Law.<sup>26</sup> This implies that the law of extradition is dual in nature—it operates at national level as well as international arena. Therefore, extradition law is determined by the municipal courts of a State and equally a part of International Law because it regulates the relations between two Sovereign States over the question of whether or not a person should be surrendered by one State to another State. Indeed, the system is determined by the national courts on the basis of international obligations as well as the principles of international law relating to the subject.

Several efforts have been made to conclude a Convention to govern extradition request among States<sup>27</sup> but not ratified. At the moment, in the absence of multilateral treaty or convention, extradition is done by States anchored on bilateral treaties wherein provisions are made in consonance with the municipal law by which States agreed to surrender the accused or convict to the requesting State. Thus, bilateral treaties, national legislations and the judicial decisions of municipal courts are deemed as general rules of International Law with regard to extradition. Some of the important treaties and laws on extradition in Nigeria are discussed hereunder:

### **a. Model Treaty on Extradition**

In order to provide assistance to States interested in negotiating and concluding bilateral extradition agreements, the United Nations General Assembly adopted a Model Treaty on Extradition resolution on December 14, 1990.<sup>28</sup> The General Assembly convinced that establishment of bilateral and multilateral arrangement for extradition will greatly contribute to the development of more international co-operation for the control of crimes,<sup>29</sup> mandates member States through the resolution to take into consideration the Model Treaty on

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<sup>23</sup> For instance, Edward Snowden who is wanted by United States government on charges of violating Espionage Act of 1917 continues to live in Russia having been granted extended asylum. Since Russia does not have an extradition treaty with the United States, Kremlin denied all Washington requests to extradite Mr. Snowden.

<sup>24</sup> I.A. Shearer, *Starke's International Law* (11<sup>th</sup> edn Butterworths 1994) 318

<sup>25</sup> Jonathan Masters, 'What is Extradition?' <https://www.cfr.org/background/what-extradition> accessed 22 May 2022

<sup>26</sup> Agarwal (n6) 265

<sup>27</sup> For example, the Harvard Law School prepared a draft Convention on the subject in 1935, the Asian-African Legal Consultative Body draft Convention on Extradition 1960

<sup>28</sup> Resolution 45/116 dated December 4, 1990

<sup>29</sup> Preamble to the Model Treaty



Extradition at the time of concluding extradition treaties or when they wish to revise the existing extradition relations. The Model Treaty further encourages member States within the framework of their national legal systems, to enact effective extradition legislations, and calls upon the international community to give possible assistance in achieving that goal.<sup>30</sup>

The Model Treaty consist of 18 Articles focus on the obligations of the member States to extradite wanted persons in requesting countries<sup>31</sup> and the definition of extraditable offence.<sup>32</sup> The Model Treaty covers the seven mandatory grounds for refusal of extradition<sup>33</sup> and eight optional grounds for refusal of extradition.<sup>34</sup> The Model Treaty also laid down the channel of communication and required documents<sup>35</sup> a State need to furnish to another State to activate the process of extradition, a simplified extradition procedure,<sup>36</sup> provisional arrest,<sup>37</sup> and surrender of the person.<sup>38</sup>

**b. Extradition Treaty between the Peoples' Republic of Benin, The Republic of Ghana, The Federal Republic of Nigeria and The Republic of Togo<sup>39</sup>**

This treaty was signed by leaders from Benin, Ghana, Nigeria and Togo in Lagos, Nigeria on the 10<sup>th</sup> day of December, 1984. The Treaty was aimed at fighting against crime in all its forms by facilitating the apprehension and trial of fugitive offenders from the territory of any of the Contracting Parties to the territory of each other<sup>40</sup> and the Contracting Parties undertake to extradite to each other on the basis of reciprocity in accordance with the rules and conditions stated in the Treaty.<sup>41</sup> Extraditable offences are not well spelt out but the Treaty provides that extradition shall be granted in respect of persons accused of crimes or offences punishable by laws of the Contracting Parties by at least two years is imprisonment.<sup>42</sup> Article 4 of the West African Treaty expressly stipulates that extradition shall not be granted for crimes or offences of a political nature and requisition for surrender should be refused if the request is to persecute or punish a fugitive on account of his race, religion or political opinion. Among other vital components of the West African Treaty are the speciality rule,<sup>43</sup> extradition procedure<sup>44</sup> and

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<sup>30</sup> Ibid

<sup>31</sup> Article 1

<sup>32</sup> Article 2

<sup>33</sup> Article 3. Such grounds include a crime of political nature, military nature, if the person would be subjected to torture or cruel, inhuman or degrading treatment.

<sup>34</sup> Article 4. Such grounds include if the person whose extradition is requested is a national of the requested State; if a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested.

<sup>35</sup> Article 5

<sup>36</sup> Article 6

<sup>37</sup> Article 9

<sup>38</sup> Article 11.

<sup>39</sup> Later called The West African Treaty.

<sup>40</sup> The preamble to the Treaty.

<sup>41</sup> Article 1 of the Treaty.

<sup>42</sup> Article 2

<sup>43</sup> Article 5

<sup>44</sup> Article 7

communication of decisions through diplomatic channels.<sup>45</sup> The Treaty further stipulates under Article 6 that the extradition of the fugitive criminals shall be carried out in the requested State in conformity with the laws of the requested State.

### **c. The Constitution of the Federal Republic of Nigeria**

The Constitution of the Federal Republic of Nigeria, 1999<sup>46</sup> is the foundation upon which the existence of all other laws in the Nigerian legal system is anchored. Therefore, the Constitution is the supreme law of the land and its provision bind all persons and authorities throughout the Federal Republic of Nigeria and any law that is inconsistent with the provisions of the Constitution shall be void to the extent of such inconsistency with provisions of the Constitution.<sup>47</sup>

Under the Nigerian Constitution, the powers to make laws and procedures on extradition is exclusively vested in the Federal Government of Nigeria.<sup>48</sup> The Constitution equally confers adjudicatory powers over extradition matters on the Federal High Court to the exclusion of any other court of first instance in Nigeria.<sup>49</sup> Therefore, 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.<sup>50</sup> An appeal arising from extradition lies with the Court of Appeal<sup>51</sup> and up to the Supreme Court.<sup>52</sup> Basically, the Constitution lays down the general legal framework for extradition law and practice in Nigeria.

### **d. The Extradition Act**

The Extradition Act<sup>53</sup> was enacted Extradition Act No. 87 of 1966 and came into effect in January 1967. The Extradition Act was enacted to repeal the former Extradition Laws made by or applicable to Nigeria and to make provisions for more comprehensive legal framework for extradition of fugitive offenders.<sup>54</sup> The Extradition Act is the primary statute regulating extradition process in Nigeria while the Constitution provides the general foundational legal regime for extradition law and practice.

In Nigeria, the Extradition Act recognizes two separate categories of States- in the first category are States that have an extradition treaties with Nigeria and by virtue of which an agreement order has been made and published in the Federal Gazette<sup>55</sup> while the second category comprises of Commonwealth States.<sup>56</sup> The categorization in this regard is necessary because

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<sup>45</sup> Article 8

<sup>46</sup> As amended. Later to be called "The Constitution"

<sup>47</sup> Section 1(3) of the Constitution

<sup>48</sup> Ibid Item 27, Second Schedule, Exclusive Legislative List

<sup>49</sup> Ibid section 251(1)(i)

<sup>50</sup> United Nations, Cases and Materials on Extradition (United Nations 2016) 6

<sup>51</sup> See sections 240 and 241 of the Constitution

<sup>52</sup> Ibid section 233

<sup>53</sup> Cap E25 Law of the Federation of Nigeria 2004

<sup>54</sup> Preamble, Extradition Act

<sup>55</sup> Ibid section 1.

<sup>56</sup> Ibid section 2.



while it is important to enter into separate and individual bilateral or multilateral treaties with States in the first category, no such requirement is stipulated for the second category of the Commonwealth States.<sup>57</sup>

The Extradition Act places restrictions on surrender of fugitives on offence of political character or request for extradition made for the purpose of punishing someone on account of his race, religion, nationality or political opinions.<sup>58</sup> Section 5 of the Extradition Act deals with liability of fugitive to surrender and provides that ‘every fugitives criminal of a country to which this Act applies shall, subject to the provisions of this Act, be liable to be arrested and surrendered in the manner provided by this Act.’ Similarly, section 6 of the Act outlined the procedure for submitting an extradition request to Nigeria and specifically provides that:

A request for the criminal fugitives surrender must have been made in writing to the Attorney-General by a diplomatic representative or consular officer of that country and shall be accompanied by a duly authenticated warrant of arrest or certificate of conviction issued in the country.

The Extradition Act does not expressly provides for what constitute an ‘extraditable offence’ within the purview of the law. However, the Act<sup>59</sup> provides that a fugitive criminal may only be returned for a ‘returnable offence’ which is punishable by imprisonment for two years or greater penalty both in Nigeria as well as the Commonwealth country seeking the fugitive’s surrender. The Extradition Act, in this way, leaves the ambit wide open for any crime punishable by two or more years to be interpreted as extraditable offence. However, it has been asserted that that the most common crimes which may be subject of extradition include murder, kidnapping, drug trafficking, terrorism, rape, sexual assault, burglary, embezzlement, and arson.<sup>60</sup>

A cursory look at the above legal frameworks regulating extradition revealed some noticeable vital principles common to them. Firstly, there must be an extraditable offence punishable by imprisonment for two or more years and the act constituting an extraditable crime must be designated as a crime in both requesting and the surrendering State. Secondly, there must be an extraditable person<sup>61</sup> and the surrender of the fugitive to the requesting State must be in conformity with procedure provided by the relevant and applicable law. Further, the legal framework under review place restrictions on surrender of fugitive on crime of political nature or request for extradition for the purpose of punishing an alleged offender on account of his race, religion, nationality or political opinions.

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<sup>57</sup> Ibid sections 1&2

<sup>58</sup> Ibid section 3.

<sup>59</sup> Ibid section 20

<sup>60</sup> Ifeoma Okeke, ‘How Extradition works in Nigeria’ <https://businessday.ng/amp/opinion/article/how-extradition-works-in-nigeria/> accessed 7 May 2022

<sup>61</sup> Extraditable persons include those charged with a crime but not yet tried, those tried and convicted who have escaped custody and those convicted in absentia.

## 6. Essential Conditions for Grant of Extradition

Under International Law, it is not enough to establish that the alleged fugitive has committed an offence and should be extradited on the basis of the offence. It must be exhibited that the alleged offence is an extraditable one expressly provided by extradition treaties. However, the courts have also established certain principles and rules with regard to law of extradition. There are some restrictions on surrender of fugitive criminals or essentials conditions for grant of extradition which include the following:

### a. Extradition of Political Offenders:

It is a vital principle of International Law that extradition for political crimes should not be allowed. Most States are reluctant to commit themselves to extradite any person charged with political crimes committed for political purposes or crime that are politically motivated. The practice of non-extradition of political crimes evolved during the French Revolution of 1789. Thus, Article 120 of the French Constitution of 1793 made a provision for granting asylum to those foreigners who exiled from their own country for the cause of liberty. Thereafter, other States adopted the principle of non-extradition of political offenders. For example, Article 3(a) of the Model Treaty on Extradition<sup>62</sup> stipulates that extradition shall not be granted if the offence for which extradition is requested is regarded by the requested State as an offence of political nature. Similarly, the Nigerian Extradition Act<sup>63</sup> provides that a fugitive criminal shall not be surrendered if the offence in respect of which his surrender is sought is an offence of a political character. Indian Extradition Act<sup>64</sup> equally lays down a similar provision. It has been opined that the difficulty of applying political exceptions is obviously a problem that regularly plagues the courts.<sup>65</sup> What then constitutes a political offence? Many attempts have been made to define 'political crime' but success has not been achieved. The lack of uniformity in the definition prompted Oppenheim<sup>66</sup> to assert that:

... many writers consider a crime 'political' if committed from a political motive, others call 'political' any crime committed for a political purpose; again others recognize such a crime only as 'political' as was committed both from a political motive and at the same time for a political purpose; and thirdly, some writers confine the term 'political crime' to certain offences against the State only, such as, high treason, *lese majeste* and the like.

In any event, political offences have been described as acts or conducts that are directed against the government or sovereign authorities of a State without elements of common crime.<sup>67</sup> Example of such crimes which violate the State and can be called political offences are

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<sup>62</sup> Adopted by the United Nations General Assembly Resolution 45/116 subsequently amended by the General Assembly resolution 52/88

<sup>63</sup> Article 3(1)

<sup>64</sup> 1962, Section 31(a)

<sup>65</sup> Collins (n13) 216

<sup>66</sup> Lassa Oppenheim, International Law (8<sup>th</sup> edn Longman Group 1955) 707

<sup>67</sup> Ifeoma Okeke (n59)

treason, sedition, espionage, and to a large extent, disagreement with State ideology.<sup>68</sup> Despite the inherent ambiguity in the definition, the original purpose of the political offence exception to extradition was to protect revolutionaries from being returned to their home countries to face prosecution for crimes committed against their government.<sup>69</sup>

### **b. The Doctrine of Double Criminality**

The doctrine of dual criminality denotes that a crime must be an offence recognized in the territorial as well as the requesting State. Simply put, under this principle, offences are considered as extraditable when they are punishable under the laws of both parties by imprisonment or other deprivation of liberty for a maximum period of at least two years or by a mere severe penalty.<sup>70</sup>

Therefore, no person can be extradited unless this condition is fulfilled. This principle thus satisfies dual purpose: it helps requesting State to enforce its criminal law and the territorial State in the sense that the rule protects it from fugitive criminals.<sup>71</sup> In order that the crime is both recognized in both States, a list of extraditable offences is attached in the extradition laws of some States. The inclusion of an offence in an extradition treaty is a sufficient authority that the mentioned offence has fulfilled the double criminality requirement.<sup>72</sup>

In Nigeria, an offence is returnable and satisfies the doctrine of Double Criminality if the conduct involved attracts criminal penalty under the penal laws of Nigeria. Thus, it is immaterial if the offence is not categorized in the same way in Nigeria or if it does not have the same nomenclature or classification.<sup>73</sup>

### **c. Rule of Specialty**

According to the principle of specialty, a fugitive may be tried by the requesting State only for the offence for which he has been extradited. Therefore, the requesting State is under a duty not to prosecute or punish the fugitive criminal for any other offence than that for which he has been extradited, unless he has been given an opportunity to return to the territorial State.<sup>74</sup> This principle is a safeguard against fraudulent extradition and reflects a fundamental concern of government that persons who are surrendered should not be subject to indiscriminate prosecution by the receiving State.<sup>75</sup>

The doctrine of speciality is incorporated in extradition law of many States and equally contained in extradition treaties. The Extradition Act<sup>76</sup> confers on the Attorney General of the

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<sup>68</sup> *ibid*

<sup>69</sup> Aimee J. Buckland, 'Offending Officials: Former Government Actors and the Political Offence Exception to Extradition' *California Law Review* (2006) (94) 423

<sup>70</sup> Section 20(2) Nigeria's Extradition Act, 2004 (later to be called "Extradition Act")

<sup>71</sup> Agarwal (n6) 274

<sup>72</sup> United Nations, (n49) 24

<sup>73</sup> *Attorney General of the Federation v. Raheed Abayomi Mustapha* Charge No. FHC/218C/2011

<sup>74</sup> *United States v. Rauscher* (1886) 119 USA 407

<sup>75</sup> *United States v. Puentes* 50F.3d 1567, 1572

<sup>76</sup> Section 3(7)

Federation a duty to ensure that provided that the fugitive has not had a reasonable opportunity of returning to Nigeria, the law of the requesting State provides that the fugitive will not be detained or tried for any offence committed before his surrender.

Therefore, while Nigeria under the law cannot surrender a fugitive criminal where it is evidenced that he may be tried for an offence which is not included in the extradition request, conversely, Nigeria can only try fugitive criminal for the offences for which he was surrendered.<sup>77</sup>

#### **d. Military Offenders**

Extradition treaties generally exclude military offences. The United Nations Model Treaty on Extradition<sup>78</sup> makes it a mandatory ground for refusing extradition if the offence for which extradition is requested is an offence under military law. Military offence in the contemplation of the law fall into two categories- those which constitute offences under ordinary law and those which relate specifically to military matters. Thus, only the second category qualify as offences in respect of which extradition will not apply. Desertion is an instance of the second category.<sup>79</sup> In most cases, military offenders are granted asylum by the territorial State. However, the Extradition Act<sup>80</sup> provides that criminal may be surrendered notwithstanding that the offence in issue constitute an offence only under the military law or law relating only to military obligations. In other words, fugitive under military law may be surrendered under the Nigerian Extradition Act.

#### **e. Torture**

Despite the existence of extradition treaties between States, a fugitive criminal may not be surrendered for extradition if it is established that he may be subjected to torture by the requesting State. This is in consonance with the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>81</sup> The Convention<sup>82</sup> prohibits State parties from expelling, returning<sup>83</sup> or extraditing any person to a State where there are substantial grounds for believing that he would be in danger of being subject to torture.

However, the torture contemplated by the Convention does not cover those arising from lawful sanction in accordance with penal law of the requesting State. The Convention<sup>84</sup> defines acts that constitute torture to include severe pain or suffering whether physical or mental, intentionally inflicted on a person for such purposes as obtaining from him information or a confession, intimidating or coercing him or any reason based on discrimination of any kind.

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<sup>77</sup> Section 15 Extradition Act

<sup>78</sup> Article 3(c)

<sup>79</sup> Starke (n8) 319

<sup>80</sup> Section 4(1)

<sup>81</sup> Later called "the Convention"

<sup>82</sup> Article 3

<sup>83</sup> Principle of "refouler"

<sup>84</sup> Under Article 1.1

Thus, in the event that Nigeria, a signatory to the Convention, extradites a fugitive criminal to a requesting State where he would be tortured, it would be tantamount to the violation of Nigeria's obligation under the Convention.

#### **f. Irregular Proceedings**

The Extradition Act<sup>85</sup> provides that where criminal proceedings are pending in any court in Nigeria for the same offence for which surrender is sought, the fugitive criminal shall not be surrendered. In the same vein, where the fugitive criminal has been charged with an offence under Federal, State or Local government legislation, he shall not be surrendered until such time as he has been discharged and if the fugitive criminal is convicted or was a convict at the time the extradition request was made, he shall not be surrendered until such a time that the sentence has expired or otherwise terminated.<sup>86</sup> Similarly, an extradition request will be rejected if the fugitive criminal 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 opinion.<sup>87</sup> Even where it is established beyond reasonable doubt that the alleged fugitive committed an extraditable offence, the extradition proceedings will not succeed if the fugitive criminal had been previously acquitted or convicted of the offence for which the surrender is sought.<sup>88</sup> This is in recognition of the principle of double jeopardy. However, in the event of a conviction, the fugitive offender may be extradited if he has escaped from serving the sentence or he is otherwise unlawfully at large.<sup>89</sup>

In view of the above provisions of the relevant treaties and the Extradition Law, coupled with the essential conditions for a grant of extradition discussed above, it is pertinent at this stage to consider some extradition cases involving Nigeria and Nigerians in order to situate the discourse in its proper perspective under the title 'Politics of Extradition in Nigeria'.

### **7. Politics of Extradition in Nigeria**

As earlier submitted, extradition is typically carried out through the instrumentality of bilateral or multilateral treaty. Nigeria has signed Post-Independence Treaties and other instruments of extradition with several countries around the world, among them include South Africa,<sup>90</sup> United Arab Emirate,<sup>91</sup> Extradition Treaty between among Benin, Ghana, Nigeria and Togo 1984, London Scheme for Extradition within the Commonwealth 2002<sup>92</sup> and Agreement on Transfer of Sentenced Persons between United Kingdom and Nigeria 2014. Nigeria also signed a pre-independence Extradition Treaty with the United States of America on December 22, 1931 and entered into force on June 24, 1935.

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<sup>85</sup> Section 3(5)

<sup>86</sup> Ibid section 3(6)

<sup>87</sup> Ibid section 3(2)(b)

<sup>88</sup> Ibid section 3(4)

<sup>89</sup> Ibid

<sup>90</sup> Extradition Treaty between Nigeria and South Africa 2005

<sup>91</sup> Extradition Treaty between Nigeria and United Arab 2016

<sup>92</sup> Applicable as a multilateral Treaty among countries that are members of the Commonwealth Nations.

It is to be noted with concern that since 1935, in compliance with the provisions of the Nigeria/ United States Treaty, Nigeria has extradited fugitive offenders to the United States for various extraditable offences ranging from drugs, advance fee fraud and terrorism related offences.<sup>93</sup> However, there is no available evidence to the effect that the United States has extradited any individual to face justice in Nigeria. This is not to infer that no American or its resident have committed crimes for which they could be extradited to Nigeria. Most request for extradition of fugitive criminals to Nigeria were usually frustrated on the basis of lack of assurance that the fugitive will be given fair trial in Nigeria or the offences to which Nigeria requested the extradition of the criminal fugitives are of a political character.<sup>94</sup>

The unequal commitment and strict implementation of the extradition treaty between Nigeria and the United States can be attributed to the socio-economic theory of the relationship between the centre and the periphery where the former substantially determines the implementable parts of a binding agreements as the latter is considered not economically strong enough to activate and insist on the principle of reciprocity in such a diplomatic relations. We shall now appreciate some specific cases of politics of extradition involving Nigeria and Nigerians.

#### **a. Bankole Ogunnowo Extradition Attempt**

In December 2019, extradition request was made by Nigeria to the UK<sup>95</sup> for an extradition of one Bankole Ogunnowo, in conformity with the London Scheme of Extradition within the Commonwealth, a multilateral treaty. It was alleged that Mr. Ogunnowo was involved in altercation with his ex-wife, Eileen Odumosu and court order was obtained to extradite him to Nigeria from the UK on grounds of offence of threat to life, falsification of documents and impersonation.<sup>96</sup> The Nigeria's request for Mr. Ogunnowo to be extradited to Nigeria for the offence that was allegedly committed in UK<sup>97</sup> was dismissed by the court for lacking in merits needed for extradition. The judge, Michael Fanning discharged Mr. Ogunnowo on the grounds that 'If he (ogunnowo) is extradited on what appears and inherently weak case, and faces potentially lengthy (and arbitrarily so) pre-trial detention in prison conditions that are wholly inadequate, that must amount to an impermissible interference with Article 8 right of RP and his family.'<sup>98</sup>

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<sup>93</sup> For instance, recently in April 2022, the Federal Government of Nigeria extradited a suspect, Adewunmola Gbadegesin to the United States for alleged conspiracy to commit wire fraud and money laundering following February 4, 2022 order of the Federal High Court, Lagos in suit No. FHC/L/CS/765/21. Available on <https://thenigerialawyer.com/148000-fraud-nigeria-extradites-suspected-yahoo-boy-u-s/> accessed 22 May 2022.

<sup>94</sup> Thaddeus Chukwuka Eze, Exploring the Politics and Law of Extradition in International Relations. Available on <https://www.ajol.info/index.php/nauij/article/view/215297> accessed 15 May 2022

<sup>95</sup> United Kingdom

<sup>96</sup> Premium Times, 'Nigerian Police Officers harassed, extorted UK-based Nigerian after failed, 'malicious' Extradition' Available on: <https://www.premiumtimesng.com/news/hesdlines/414213-nigerian-police-officers-harrassed-extorted-uk-based-nigerian-after-failed-malicious-extradition-request.html> accessed 16 May 2022

<sup>97</sup> Where all the parties involve reside and work.

<sup>98</sup> Louisa Collins, 'Westminster Rejects Extradition to Nigeria: Court finds no effective system of protection against torture' Available on: <https://www.lexology.com/library/detail.aspx?g=c14e98aa-953a-424c-8c2d-0a632386e040> accessed 16 May 2022



It is observed that since the existence of diplomatic relations between Nigeria and UK, the Ogunnowo's case was only the second time that Nigeria had made an extradition request to the UK authorities that had come before the courts, the first of such request was never litigated.<sup>99</sup> . However, in this case, the UK court was emphatic that Nigeria's extradition request was inadequate and the conditions in Nigeria prisons were so bad that the detention within it would amount to inhuman and degrading treatment.<sup>100</sup>In clear terms, the judge further stated:

I could not countenance sending RP to a Nigerian prison in the absence of an assurance in the terms indicated above. Lest I be criticized for failing to set out in this judgment in details I have read concerning the treatment of prisoners in Nigeria, all I urge is that the open sources bundle of materials be read. They include the UN Special Rapporteur on torture, Amnesty International, the US State Department; UNDOC, Human Rights Watch, and the British High Commission to Nigeria.<sup>101</sup>

Indeed, the above UK's court ruling in Ogunnowo's extradition request glaringly captured the overcrowded and extreme deplorable conditions of the Nigerian prisons.<sup>102</sup> Curiously, the court further stated that there are no established bilateral relations between Nigeria and the UK in respect of extradition.<sup>103</sup> The reason for this is not farfetched. Whereas extradition between Nigeria and the UK is regulated by "The London Scheme for Extradition within the Commonwealth", Nigeria is designated as a part 2 territory under the UK Extradition Act. However, Nigeria has not been designated by the UK Secretary of State under section 71(4) of the Act. Therefore, for a successful extradition, Nigeria must satisfy the UK extradition judge that there is *prima facie* case disclosed on the paperwork.<sup>104</sup>

#### **b. Henry Okah's Trial in South Africa**

Mr. Henry Okah moved to South Africa in 2003 where he held residency in Johannesburg until he was arrested in Angola in September 2007 on allegation of gunrunning. Angola extradited Mr. Okah to Nigeria and he remained in custody for two years.<sup>105</sup> In 2009, Mr. Okah was released and he returned to South Africa following an amnesty program instituted by the Nigerian government to end the Niger Delta Conflict.<sup>106</sup>

On October 1, 2010, a group named MEND<sup>107</sup> allegedly detonated two explosives in Abuja, Nigeria's capital on Independence Day celebration killing 12 people and injured 36

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<sup>99</sup> Ibid

<sup>100</sup> Ibid

<sup>101</sup> Ibid

<sup>102</sup> Now called Nigeria Correctional Service

<sup>103</sup> Premium Times (n95)

<sup>104</sup> Louisa Collins (n97)

<sup>105</sup> Henry Okah's trial tests the South African Counter-Terrorism Act. Available on: <https://issafeica.org/iss-today/henry-okahs-tests-the-south-african-counter-terrorism-act> accessed 15 May 2022

<sup>106</sup> Henry Okah: Nigerian oil militant jailed for 24 years. Available on: <https://www.bbc.com/news/world-africa-21997985> accessed 16 May 2022

<sup>107</sup> Movement for the Emancipation of Niger Delta

others.<sup>108</sup> South African law enforcement officers arrested Mr. Okah the next day in Johannesburg for his alleged involvement in the Independence Day attacks but Mr. Okah has maintained his innocence and denied involvement in the attacks.<sup>109</sup> On the 21<sup>st</sup> January, 2013, a South African High Court convicted Mr. Okah of 13 terrorism charges.<sup>110</sup>

It is to be established anon that despite the weighty allegations of terrorism and other related crimes brought against Mr. Okah, there is no available record to indicate that the Nigerian government had made a formal request for his extradition to Nigeria to stand trial. Mr. Okah had consistently maintained that South Africa had no jurisdiction to try him for the alleged bombings in Abuja<sup>111</sup> and the refusal of the Nigerian government to seek his extradition is because a trial in Nigeria may prove his innocence.<sup>112</sup>

Similarly, there is no available official reasons adduced by the Nigerian government as to the failure to make request to the South African authorities for the extradition of Mr. Okah in consonance with her 2005 extradition treaty with South Africa. Indeed, it is unlikely that South Africa will legally be able to extradite Mr. Okah to Nigeria unilaterally without extradition request from the Nigerian authorities. In the circumstance, we submit that South Africa was legally obligated to prosecute Mr. Okah in domestic court in compliance with extradition principle of *aut dedere aut judicare*<sup>113</sup>. For the reluctance of Nigerian government to file formal extradition request, South African authorities charged Mr. Okah under the Protection of Constitutional Democracy against Terrorist and Related Matters Act 2004.<sup>114</sup>

Mr. Okah's case, we further submit, would have taken a different legal dimension should Nigeria requested for his extradition. Probably South Africa's response to such an extradition request would be determined by a number of factors including but not limited to its municipal law, international law and the bilateral agreement between Nigeria and South Africa in 2005 dealing with political nature of the alleged offence and if the accused risks being prosecuted, subjected to torture or inhuman and degrading treatment.

### c. Nnamdi Kanu's Conundrum

In June, 2021, Nnamdi Kanu, the leader of the government proscribed IPOB<sup>115</sup> was arrested in Kenya at the instance of the Nigerian government to face charges of terrorism, treasonable

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<sup>108</sup> Oct 1 Bombing: Henry Okah found guilty faces life jail' Available on: <https://www.vanguardngr.com/2013/01/oct-1-bombing-henry-okah-found-guilty-faces-life-jail/amp> accessed 16 May 2022

<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> SA had no jurisdiction to try me for bombing, says convicted Nigerian terrorist Henry Okah. Available on: <https://www.news24.com/amp/citypress/news/sa-had-no-jurisdiction-to-try-me-for-bombings-says-convicted-nigerian-henry-okah-20191008> accessed 16 May 2022

<sup>112</sup> Nigerian Militant Leader Okah Condemns Refusal to Extradite Him. Available on: <https://www.bloomberg.com/news/articles/2011-03-09/nigerian-rebel-leader-okah-condemns-refusal-to-extradite-him-over-bombings> accessed 15 May 2022

<sup>113</sup> Either extradite or prosecute

<sup>114</sup> Henry Okah Counter –terrorism ruling is a Judicial Triumph for South Africa and the Continent. Available on: <https://issafrica.org/iss-today/henry-okah-counter-ruling-is-a-judicial-triumph-for-south-africa-and-the-continent-> Accessed 15 May 2022

<sup>115</sup> Indigenous People of Biafra

felony, unlawful possession of firearms and management of unlawful society, among other allegations. While in Kenya, Mr. Kanu posited that he was held incommunicado and chained to a bare floor for eight days in a nondescript private facility.<sup>116</sup> According to Abubakar Malami, Nigerian Attorney General and Minister for Justice, Mr. Kanu's arrest was a collaborative effort of Nigerian Intelligence and Security Services<sup>117</sup> in order to bring him to Nigeria to face his outstanding criminal charges. However, the Kenyan authorities have denied any involvement in Kanu's arrest and rendition and confirmed to the court 'that there is no record from any of the police station within the country (Kenya) to indicate that the subject in issue (Kanu) was lawfully arrested and detained for purposes of commencing extradition proceedings'.<sup>118</sup>

Whether or not Kenyan Government was involved in Mr. Kanu's arrest and rendition, the undisputed fact is that Mr. Kanu was arrested in Kenya to face trial in Nigeria. The important issue for determination in the circumstance is whether Mr. Kanu's arrest, detention and repatriation to Nigeria was in compliance with relevant extradition treaties Nigeria is a signatory to. The general principle is to the effect that for a successful extradition in consonance with the law, the person to be extradited must either have been charged before a competent court or have been tried and convicted. Simply put, arrest of this nature must be sanctioned by either judicial order or warrant of arrest issued by competent authorities. It was not in doubt that Mr. Kanu was undergoing criminal trial before the Nigerian court, jumped bail, fled Nigeria and a bench warrant of arrest was issued against him by a Federal High Court, Abuja.<sup>119</sup>

Therefore, in the eye of the law, we submit, Kanu can be extradited to face trial in Nigeria. However, extradition is not carried out in isolation, it is a process that must be followed strictly to its logical conclusion in line with the provisions of the law. It is further submitted that the Nigerian government can make a formal request to the Kenyan Government through the instrumentality of the London Scheme for Extradition within Commonwealth, a multilateral treaty to which both Kenya and Nigeria are signatories.<sup>120</sup> However, there is no available record to indicate that extradition request was made to Kenya by Nigerian Government for extradition of Mr. Kanu and Kenyan authorities have openly denied the receipt of such request and it is equally on record that Kanu did not under extradition proceedings in Kenya.<sup>121</sup> What can be

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<sup>116</sup> Nnamdi Kanu speaks from detention, reveals how he was arrested in Kenya- Lawyer Available on: <https://www.premiumtimesng.com/news/headlines/473720-nnamdi-kanu-speaks-from-detention-reveals-he-was-arrested-in-kenya-lawyer.html> accessed 17 May 2022

<sup>117</sup> IN FULL: What AGF Malami said about Nnamdi Kanu's arrest Available on: <https://www.premiumtimesng.com/features-and-interviews/4706326-in-full-what-agf-malami-said-about-nnamdikanus-arrest.html> accessed 17 May 2022

<sup>118</sup> We have no hand in Kanu's arrest, extradition, Kenya govt tells court. Available on: <https://www.vanguardngr.com/2022/11/we-have-no-hand-in-nnamdi-kanus-arrest-extradition-kenya-govt-tells-court/amp/> accessed 17 May 2022

<sup>119</sup> 'Biafra: Court revokes Kanu's bail, issues bench warrant for his arrest' Available on: <https://www.vanguardngr.com/2019/03/biafra-court-revokes-kanus-bail-issues-bench-warrant-for-his-arrest/amp> accessed 17 May 2022

<sup>120</sup> Nigeria has no bilateral treaty with Kenya at the moment.

<sup>121</sup> 'Kenya Govt confirmed Nnamdi Kanu's extradition illegal, no record of arrest' Available on: <https://dailypostng.com/2021/11/04-kenya-govt-confirmed-nnamdi-kanus-extradition-illegal-no-record-of-arrest-brother/?=1> accessed 18 May 2022

deduced from the present scenario is that it appears that the Nigerian authorities resorted to extraordinary rendition<sup>122</sup> in order to bring Mr. Kanu to Nigeria. Extraordinary rendition has been described as a total violation of international law<sup>123</sup> and typically involved human rights violations, including abduction, arbitrary arrest and detention and unlawful transfer without due process.<sup>124</sup>

In the light of the above, we submit further that while it is necessary to activate legal machinery to bring fugitive to justice, it is equally important to stress that such process must be carried out within the legal framework in order to enjoy legitimacy and international acceptability, otherwise Nigeria may become a subject of international scrutiny for human right violations as already initiated by the United Nations Working Group on Mr. Kanu arrest and purported extradition from Kenya.<sup>125</sup>

#### **d. Sunday Adeyemo's Extradition Saga**

Sunday Adeyemo, widely known as Sunday Igboho, who has been agitating for the succession of the Yoruba nation from Nigeria was arrested by the government of the Republic of Benin in July 2021, on his way to Germany enroute Cotonou three weeks after he was declared wanted by Nigeria's secret police. The Nigerian government requested for the extradition of Mr. Adeyemo from the Government of the Republic of Benin in consonance with the West African Extradition Treaty 1984. The propriety or otherwise of the Nigerian Government's request in the circumstance, should be subjected to a legal scrutiny.

Under Article 7(1) of the West African Extradition Treaty, request for extradition should be accompanied by the original or certified copy of a judgment of conviction or warrant of arrest or any other order having the same effect and issued in the form prescribed by the requesting State. However, in the case of urgency, and on the request of the competent authorities of the requesting State, a provisional arrest can be made pending the formal request for extradition<sup>126</sup> but the provisional arrest shall be terminated<sup>127</sup> if within the period of forty days after the arrest the authorities of the requested State have not received the requisite documents<sup>128</sup> from the requesting State.

Mr. Adeyemo had been declared wanted by the Nigerian authorities shortly before his arrest in Benin Republic. Before then, the Nigerian DSS<sup>129</sup> raided Mr. Adeyemo's residence in Ibadan,

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<sup>122</sup> Government-sponsored arrest, kidnap and adoption of suspected offender

<sup>123</sup> Eze (n93)

<sup>124</sup> Ayodele Akenroye, 'Nigeria: The Kanu and Igboho Saga- International Law and Extradition to Nigeria.'

<sup>125</sup> 'Documents: List of UN Demands in Queries to Nigerian, Kenyan Governments Over Nnamdi Kanu's Arrest, Extradition, others' Available on: <https://saharareporters.com/2021/10/documents-list-un-nnamdi-kanu%E2%80%99s-arrest> accessed 18 May 2022

<sup>126</sup> Article 7(3) the West African Extradition Treaty 1984

<sup>127</sup> <sup>127</sup> Ibid Article 7(6)

<sup>128</sup> The documents are either the original or certified copy of a judgment of conviction or warrant of arrest or any other order having the same effect as prescribed by Article 7(1).

<sup>129</sup> Department of State Services

Oyo State, killing two people and arresting his aids but Mr. Adeyemo escaped.<sup>130</sup> Mr. Adeyemo had planned a ‘Yoruba Nation Rally’<sup>131</sup> in Lagos before the raid.

To appreciate the law dispassionately, there was no evidence that the request for Mr. Adeyemo’s extradition was accompanied by the relevant documents in compliance with Article 7 of the West African Extradition Treaty. There was neither a record of certified copy of conviction judgment nor warrant of arrest against Mr. Adeyemo presented by the Nigerian authorities to warrant his extradition. Assuming but not conceding that the Nigerian Government accompanied the requisite documents to the extradition request, there may still be another hurdle to cross: the treaty under consideration stipulates that a person cannot be extradited if his offences are political in nature or the request is to persecute or punish him on account of his race, religion or political opinion.<sup>132</sup> While there is no universal consensus as to the meaning of ‘political offence’, the United States Department of Justice defined political criminal ‘as an individual who, motivated by his conviction, commits an unlawful act designed to attack the social structure to bring about a reorganization of the system’.<sup>133</sup> The original purpose of the political crime exception to extradition therefore, was to protect revolutionaries from being returned to their own countries to face prosecution for crimes committed against their government.<sup>134</sup>

In view of the above, it is our submission that Mr. Adeyemo’s predicament has some elements of political character that would render it extremely difficult for Benin Republic to extradite him to Nigeria in line with the provisions of the West African Extradition Treaty. Therefore, in the present scenario, Benin Republic may safely prosecute Mr. Adeyemo for a breach of criminal law of the country and not on the basis of extradition request or anticipation of extradition request from the Nigerian authorities.

#### **e. Abba Kyari’s Extradition Request**

The US<sup>135</sup> authorities had requested for extradition for the suspended Commander of the Police Intelligence Response Team, Deputy Commissioner of Police, Abba Kyari, over the allegation of wire fraud committed by Abbas Ramon popularly known as Hushpuppi and four others. The Diplomatic Representative of the US Embassy in Nigeria had in the extradition request to the AGF,<sup>136</sup> stated that a warrant of arrest was issued by the US District Court of California for Mr. Kyari to stand trial in the United States for conspiracy to commit wire fraud and identity

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<sup>130</sup> ‘EXPLAINER: Lawyer claims Igboho can’t be extradited from Cotonou-but what does the law say’ Available on: <https://www.thecable.ng/explainer-lawyer-claims-Igboho-cant-be-extradited> accessed 18 May 2022

<sup>131</sup> Possibly to sensitize the Yoruba nation on the need to break away from Nigeria

<sup>132</sup> Article 4 of the West African Treaty

<sup>133</sup> ‘Political Crime/Office of Justice Programs’ Available on: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/political-crime> accessed 19 May 2022

<sup>134</sup> Aimee J. Buckland, Offending Officials: Former Government Actors and the Political Offence Exceptions to Extradition’ *California Law Review* (2006) (96)423

<sup>135</sup> United States of America

<sup>136</sup> Attorney General of the Federation



theft.<sup>137</sup> Mr. Kyari was alleged to be subject of an indictment in Case Number 2-21-cr-00203<sup>138</sup> filed in April 29, 2021.

The Federal Government of Nigeria approved the extradition request<sup>139</sup> and consequently filed an extradition application<sup>140</sup> at the Federal High Court in Abuja. However, the planned hearing of the extradition application was stalled on April 27, 2022 owing to the request by the AGF for time to file some documents.<sup>141</sup> The case experienced similar delay on account of the inability of the AGF to serve the relevant processes on Mr. Kyari who is in the NDLEA's<sup>142</sup> custody. NDLEA announced in February 2022 that Mr. Kyari was allegedly involved in an illegal cocaine dealing and obtained an order of the court to detain him.<sup>143</sup> Subsequently, on February 28, 2022 the NDLEA brought eight count charges against Mr. Kyari bothering on trafficking in hard drugs for allegedly dealing in 17.55 kilograms of cocaine in suit marked FHC/ABJ/CR/57/2022<sup>144</sup>

The Federal Government of Nigeria should be commended for the due process taken in compliance with the law in dealing with Mr. Kyari's extradition request. This is because an alleged offender can be extradited for trial where a court of law has issued a warrant requiring that the person be brought to answer allegations of crime in court.<sup>145</sup> This is what the US authorities had demonstrated by the exhibition of warrant of arrest issued by the US District court of California in Mr. Kyari's extradition request to the Nigerian Government which is in consonance with the Extradition Act.<sup>146</sup> However, if the US extradition request is deserving in the circumstance, we submit that the Nigerian authorities should grant it expeditiously in conformity with the Extradition Act<sup>147</sup> and refuse same if the request does not comply with the law. It is also our submission that the continued stalling of the extradition proceedings on account of multiplicity of preliminary applications may give a wrong impression to the

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<sup>137</sup> 'Updated: Hushpuppi: FG approves extradition of Abba Kyari to face charges in U.S' Available on: <https://www.premiumtimesng.com/news/headlines/514977-updated-hushpuppi-fg-approves-extradition-of-abba-kyari-to-face-charges-in-u-s.html> access 19 May 2022

<sup>138</sup> Also referred to as 2:21-MJ-00760 and 2:21-CR-00293-RGK

<sup>139</sup> 'Breaking: FG approves US request for Abba Kyari's extradition' Available on: <https://www.vanguardngr.com/2022/03/breaking-fg-approves-us-request-for-abba-kyaris-extradition/amp> accessed 15 May 2022

<sup>140</sup> Marked FHC/ABJ/CS/249/2022

<sup>141</sup> Hushpuppi: Malami's application stalls hearing on Abba Kyari's extradition to US <https://www.vanguardngr.com/2022/04/hushpuppi-malamis-application-stalls-hearing-on-abba-kyaris-extradition-to-us/amp/> accessed 19 May 2022

<sup>142</sup> National Drug Law Enforcement Agency

<sup>143</sup> Court grants NDLEA request to detain Abba Kyari for 14 days. Available on: <https://guardian.ng/news/court-grants-ndlea-request-to-detain-abba-kyari-for-14-days/> accessed 19 May 2022

<sup>144</sup> NDLEA slams eight criminal charges against Abba Kyari, others for drug offences: Available on: <https://guardian.ng/news/ndlea-slams-eight-criminal-charges-against-abba-kyari-others-for-drug-offences/> accessed 15 May 2022

<sup>145</sup> *AGF V, Lawal Olaniyi Babafemi* Suit No: FHC/ABJ/CR/132/2013.

<sup>146</sup> Section 16(1).

<sup>147</sup> Section 5(1)



international community that there may not be a strong political will on the part of the Nigerian Government to extradite the alleged offender.

## 8. Conclusion

Extradition involves a formal process whereby a state requests from the requested State the return of an alleged offender to undergo trial or serve a sentence in the requesting State. Historically, there was no general obligation to extradite a criminal fugitive as extradition was basically anchored on informal relations between sovereign States. The increasing search for justice and the imperativeness to suppress crimes across the world engendered the need for formal extradition agreement between States. At the moment, extradition law is on the basis of bilateral, multilateral and national laws. Therefore, existence of a treaty is regarded as an absolute pre-condition for extradition. However, in the absence of any treaty arrangements, in an exceptional cases, a fugitive may be extradited on the basis of reciprocity. Bilateral and multilateral extradition treaties basically set out essential conditions for grant of extradition and among other vital elements, excludes offences of a political nature from what constitute an extraditable offence. For instance, the pervasiveness of political character exception prompted the US Justice Department to reject Turkey's request to extradite Fethulah Gulen for alleged coup attempt against President Recep Tayyip Erdogan in 2016.<sup>148</sup> In the circumstance, it would be extremely difficult for the request of extradition of Mr. Sunday Adeyemo by the Nigerian authorities to be granted.

Similarly, in line with the extradition principles, it is our conclusion that it is pertinent for the requesting State to establish a cogent and verifiable *prima facie* case against the alleged offender sought to be extradited. It is equally paramount that requesting State put in place a functional and independent judicial system rooted in the rule of law that guarantees fair trial without interference in addition to habitable and effective prison system.

The noticeable inequality in the enforcement of a bilateral extradition treaty between Nigeria and some advanced States anchored on the politics of economic superiority, we conclude, is not in tandem with the jurisprudential justification for extradition. For example, there are evidence of Nigeria's compliance with extradition obligations to the United States by way of extradition of fugitives for trial.<sup>149</sup> Recently, in April, 2022 the Nigerian government extradited an alleged offender, Adedunmola Gbadegesin to the United States to face fraud charges.<sup>150</sup> However, there has not been any public record of extradition of any fugitive by the United States to Nigeria for prosecution since the bilateral extradition treaty between Nigeria and the United States came into effect in 1935.

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<sup>148</sup> U.S Justice Dept denies exploring extradition of Erdogan foe to appease Turkey Available on: <https://www.reuters.com/articles/us-saudi-khashoggi-usa-gulen-idUSKCNINL2FJ> accessed 20 May 2022

<sup>149</sup> For instance, on the 2<sup>nd</sup> day of November, 2019, Nigeria extradited Adedeji Adeniran to the Northern District of Florida for bank related fraud trial, Lawal Olaniyi Babafemi was also extradited to stand trial in the US Court on August 28, 2013 for terrorism related offences.

<sup>150</sup> Nigerian Govt Extradites suspect to U.S over alleged fraud case. Available on: <https://allafrica.com/stories/202204280013.html> accessed 20 May 2022

## **9. Recommendations**

In view of the foregoing analysis and the conclusion reached, it is recommended as follows:

- a) The International Law Commission should quickly activate the process of codification of multilateral Convention on extradition for universal application aimed at suppressing crime and achieving international co-operation in social fields in line with Article 1 Para 3 of the United Nations Charter. In this way, general rules of International Law on extradition can be harmonized.
- b) For a harmonious relationship between Sovereign States on extradition, it is recommended that an independent international judicial body be established for the conduct of extradition proceedings. This would not only dissuades Sovereign States from their reluctance to honour international obligations but address jurisdictional issues as regard extradition proceedings. Such an international judicial body should equally be empowered to sanction cases of extraordinary rendition considered as a grave violation of human rights.
- c) Nigeria, should without further delay, improve on the institutional framework to guarantee fair trials and humane treatment of offenders in prison custody in order to gain the confidence of the international community in granting the country's extradition request.
- d) The politics of selected request on extradition should be discouraged in order to give room for uniform approach within the purview of the law. Thus, there is no justification under the law for the refusal of the Nigerian authorities to make request for the extradition of Mr, Henry Okah from South Africa for an offence allegedly committed in Nigeria. This is the same period Nigeria was making strenuous but futile efforts to extradite Mr. Bankole Ogunnowo from the United Kingdom for an offence allegedly committed in the UK.
- e) Sovereign nations should be more committed to reciprocal international relations on the basis of equality within the framework of the law. Imbalance extradition enforcement negates the cherished principle of reciprocity in diplomatic relations. It is a diplomatic aberration for developing countries such as Nigeria to honour an international obligations with respect to extradition whereas advanced countries appear not to reciprocate in equal measures.