

# A Scholarly Examination of Extradition Law in Nigeria and Its Implications within the Framework of International Law

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## Abstract

This research conducts a comprehensive examination of the extradition legal framework in Nigeria and its subsequent implications in the context of international law. Extradition serves as a crucial mechanism for promoting international collaboration in criminal affairs and upholding the integrity of the global legal framework. Nigeria, being a country extensively involved in a complex web of international treaties and agreements, faces significant challenges in navigating its intricate extradition system, necessitating comprehensive examination. The article begins by examining the historical development of extradition legislation in Nigeria, starting from its inception during the colonial era and progressing to its current state. This paper explores the legislative and judicial developments that have influenced the extradition framework in Nigeria. It provides insights into significant statutes, treaties, and notable legal cases that control the extradition procedure. Furthermore, the study examines the procedural complexities of extradition in the Nigerian context, specifically focusing on the essential aspects of dual criminality, the involvement of executive authority, and the safeguards in place to protect human rights and provide due process. This article critically evaluates Nigeria's adherence to its legal responsibilities as stipulated in several extradition treaties and conventions within the realm of international law. These include the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime, and the African Union Convention on Preventing and Combating Corruption. This paper critically examines the obstacles encountered and accomplishments attained by Nigeria in its extradition endeavors on an international scale, with a specific focus on combating transnational crimes, terrorism, and corruption. In summary, this article provides a thorough examination of Nigeria's extradition legislation in the wider framework of international law.

**Keywords:** Exploration, Extradition, International law, Nigeria

**DOI:** 10.7176/JLPG/139-10

**Publication date:** January 31<sup>st</sup> 2024

## Introduction

The foundation of international relations rests upon three interconnected and fundamental principles: the sovereign equality of nations, the principle of non-interference in the internal affairs of states<sup>1</sup>, and the preservation of territorial integrity and inviolability.<sup>2</sup> One significant manifestation of state sovereignty is the exercise of non-extra-territorial jurisdiction by states. In the case of *Akpabi v Shell*<sup>3</sup>, it is noteworthy that the foreign court rendered a decision wherein it determined that it lacked jurisdiction to adjudicate upon a cause of action that originated within the jurisdiction of Nigeria. Additionally, it should be noted that a State lacks jurisdiction over an individual residing in another State.<sup>4</sup> Nevertheless, due to the escalating process of globalization, primarily driven by advancements in transportation and the development of the internet, the world has transformed into a more interconnected and closely-knit global community. The phenomenon of economic integration has shown a steady growth in recent times. Additionally, there has been a rise in criminal activities that extend beyond national borders, sometimes referred to as extra-territorial criminal activities, as well as the emergence of criminal networks that operate across multiple jurisdictions, known as transboundary criminal networks. One illustrative instance is the widely recognized Hush-Puppy online fraud network, which spanned multiple nations. The inference might be drawn that customary international law, which is based on the principles of non-interference in internal affairs and the inviolability of territorial integrity, may be inadequate in addressing crimes that include characteristics extending beyond national borders.<sup>5</sup>

Hence, it is imperative that the threat posed by extraterritorial criminal activities be tackled through

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

<sup>2</sup> 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

<sup>3</sup>HRH Emere Godwin Bebe Okpabi and Others v. Royal Dutch Shell Plc and Another (2018) ECWA Civ, 191

<sup>4</sup> 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

<sup>5</sup> Ana I Cerezoa, Javier Lopezb and Ahmed Patelc 'International Cooperation to Fight Transnational Cybercrime' available at <10.1109/WDFIA.2007.429936 > Accessed September 20, 2023.

collaborative endeavors and global cooperation.<sup>1</sup> The principle of cooperation among States is a fundamental norm of international law known as *jus cogens*. The establishment of international cooperation in the fight against crime entails a multifaceted network of social interactions aimed at the prevention, detection, investigation, adjudication, and prosecution of criminal activities and individuals involved in such acts. It constitutes an integral component of the global criminal justice framework.<sup>2</sup> Frequently, it entails the process of extraditing individuals who are either suspected of or have been convicted of a crime. The current legal principle dictates that runaway offenders are required to face either punishment by the state providing refuge or extradition to the seeking state, which possesses the capability and intention to administer appropriate punishment. This principle is encapsulated in the Latin phrase "aut punier aut dedere."

### Elucidation of the Notion of Extradition

Extradition is a widely recognized procedure whereby an individual is transferred from one state to another, typically facilitated through a treaty, comity, or bilateral agreement between the two sovereign states.<sup>3</sup> As defined by Oppenheim<sup>4</sup>, extradition involves the surrender of an accused or convicted person to the state in which they are alleged to have committed a crime or have already been found guilty, by the state in which they are currently located. The cooperative law enforcement process between the two jurisdictions is contingent upon the agreements established between them. In addition to the legal dimensions, the procedure of extradition encompasses the physical transfer of custody of the individual being extradited to the legal jurisdiction of the asking entity.<sup>5</sup> The extradition process involves the formal request made by one sovereign state to another sovereign state. In the event that the fugitive is located within the jurisdiction of the sought state<sup>6</sup>, the requested state possesses the authority to apprehend the fugitive and initiate the extradition procedure. The extradition procedures that the fugitive will undergo are contingent upon the legal framework and customary practices of the state to which the extradition is requested. This mechanism has historical roots dating back to the 13th century BC, when an extradition treaty was negotiated between Ramesses II, an Egyptian pharaoh, and a Hittite King, Hattusili III.<sup>7</sup>

In the case of *Attorney-General of the Federation v Olayinka Johnson*<sup>8</sup>, the Court established that extradition procedures do not serve the purpose of conducting a trial for the respondent. The purpose of the proceedings is to exemplify a thoughtful approach grounded in the belief that it is in the best interest of each State to prevent individuals evading justice from seeking asylum beyond the borders of the State where they are wanted. In the case of *R v. Arton*<sup>9</sup>, Lord Russell of Killowen, C.J made an observation that

The legal concept of extradition is undeniably based on the overarching principle that it is in the best interest of civilized societies to ensure that recognized crimes do not go unpunished. Additionally, it is considered a fundamental aspect of international cooperation that one sovereign state should provide full support to another in apprehending individuals who have committed such crimes, with the aim of bringing them to justice.

Extradition, as elucidated by the Court of Appeal in the case of *George Udeozor v Federal Republic of Nigeria*<sup>10</sup>, refers to the formal procedure through which an individual accused of a criminal offense is surrendered, upon solicitation, by one legal jurisdiction to another for the purpose of standing trial or facing appropriate legal consequences. In the context of extradition procedures, an individual is considered to be sought for trial solely when a judicial body has issued a warrant mandating their presence in court to address criminal accusations.<sup>11</sup> This situation diverges significantly from a scenario in which an individual is sought for the purpose of interrogation. In the matter of *George Udeozor*, it was indicated by the Attorney-General of the Federal Republic of Nigeria on June 9, 2004, through an official Order, that a formal request had been sent to his office for the extradition of the Appellant. The significance of the action was carried out in accordance with the provisions of the Extradition Act, Cap. The given numerical value is 125. The subject of discussion pertains to the legislation known as the Laws of the Federation of Nigeria, enacted in the year 1990. The diplomatic official of the Embassy of the United States of America in Abuja made a formal request for the surrender of Mr. George Chidebe Udeozor, who is the Appellant in this case.

<sup>1</sup> Serhii SCherniavskiy 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

<sup>2</sup> K Waltz, *Realism and International Politics* (Google Books, 2008), 34-56.

<sup>3</sup> K Momodu, 'Extradition of fugitives by Nigeria' [1986] (35)(3) *International and Comparative Law Quarterly*, 526

<sup>4</sup> Robert Jennings and Arthur Watts, *Oppenheim's international Law* (9th ed, London, 1992), 248.

<sup>5</sup> Sadoff, David A, *Bringing International Fugitives to Justice: Extradition and its Alternatives* (Cambridge University Press, 2016) 43

<sup>6</sup> Surbhi Wadhwa, *Public International Law* (Edward Elgar Publishing Limited, 2007) 23

<sup>7</sup> *Supra*, note 4

<sup>8</sup> Unreported, Suit No. FHC/L/16C/2013.

<sup>9</sup> *R v. Arton* (No. 1) [1896] 1 Q.B. 108

<sup>10</sup> *George Udeozor v. Federal Republic of Nigeria*, (2007) 5NWLR (Pt. 1058), 499

<sup>11</sup> *Attorney-General of the Federation v Lawal Olaniyi Babafemi* : Suit No: FHC/ABJ/CR/132/2013

The accompanying documents submitted with the appellant's request for surrender revealed that the appellant had been formally accused in the District of Maryland, United States, of the following offenses: (a) conspiring to commit involuntary servitude, (b) harboring an illegal alien, and (c) encouraging an illegal alien to enter and reside in the United States.

Additionally, the offenses of involuntary servitude and harboring an illegal alien for financial gain were committed within the jurisdiction of the United States District of Maryland.

The application was supported by a five-paragraph affidavit, which was testified to by Akindele Kolin, the Attorney-General of the Federation. The appellant failed to submit a counter-affidavit. During the proceedings of the application hearing, the appellant expressed their opposition towards the granting of the application; nonetheless, their objection was ultimately dismissed. The trial court approved the application and thereafter directed the appellant to be detained in prison until his extradition to the United States of America. The appellant expressed dissatisfaction with the ruling rendered by the trial court and thereafter lodged an appeal with the Court of Appeal.

In the process of considering the appeal, the Court of Appeal analyzed the content of sections 1 and 9(1) of the Extradition Act, Cap, 125, Laws of the Federation of Nigeria, 1990. These sections state the following:

In accordance with this legislation, when Nigeria establishes a treaty or similar agreement (referred to as an extradition agreement) with another nation, with the intention of facilitating the extradition of individuals sought for prosecution or punishment, the National Council of Ministers holds the authority to extend the application of this Act to that specific country. This extension is to be made through an official order published in the Federal Gazette.

In accordance with Section 9(1) of the aforementioned Act, when a fugitive criminal is presented before a Magistrate based on a warrant issued under Section 7, or in the event that a fugitive criminal is brought before a Magistrate on a provisional warrant under Section 8 and subsequently detained in accordance with subsection (5) of the aforementioned Section 8, upon receipt of an order from the Attorney-General pursuant to Section 6 of the Act pertaining to the aforementioned fugitive, the Magistrate is required to proceed with the case in a manner that closely resembles the standard procedure. Furthermore, the Magistrate shall possess the same jurisdiction and powers as if the fugitive were brought before the Magistrate and charged with an offense committed within the Magistrate's jurisdiction.

In a prominent ruling rendered by Honorable Justice Dongban-Mensem, J.C.A. at page 522, the Court of Appeal expressed its perspective on the fundamental principles governing the extradition of fugitive convicts.

The legal entitlement of a state or country to seek the surrender of a fugitive who is accused of a crime, and the corresponding obligation of the country where the fugitive has sought refuge to hand over the said fugitive, are only established when established by means of a formal agreement or treaty. As a consequence of the variations in penal codes across different nations, the majority of countries establish specific stipulations inside treaties to outline their reciprocal obligations for extradition. The extradition pact between Nigeria and the United States of America is officially documented in Legal Notice No. 33 of 1967, which was published in the official Gazette No. 23, Vol.54 on April 13th, 1967. This legal instrument is commonly referred to as the Extradition (United States of America) Order. These accords specify the offenses that both governments deem eligible for extradition. The prevailing principle dictates that extraditable offenses must primarily consist of conduct that are universally acknowledged as inherently illegal (*malum in se*), rather than activities that are unlawful solely due to statutory provisions (*malum prohibitum*). The inclusion of the type of crime and the corresponding punishment in the extradition treaty is mostly attributable to the need for clarification and justification in most instances. According to this principle, it is commonly perceived as a violation of the treaty's terms for a state to obtain the extradition of an individual for a crime that is subject to extradition, then thereafter subject that person to punishment for an offense that is not covered by the treaty.

Extradition and rendition are two closely related ideas that are frequently subject to confusion. The term "rendition" encompasses many procedures, such as extradition, that involve the repatriation of sought individuals or non-citizens from a particular state.<sup>1</sup> Illicit or anomalous methods of repatriating individuals sought for prosecution or punishment encompass kidnapping and extraordinary rendition.<sup>2</sup> Extraordinary rendition refers to a practice endorsed by governments wherein individuals who are desired, accused, or convicted of criminal offenses are apprehended, seized, and transported either to the state responsible for the arrest or to a cooperating third-party state. The practice of extraordinary rendition effectively deprives individuals of their ability to contest their transfer to the state making the request or the state receiving them. The act in question pertains to the infringement upon the fundamental tenets of international law, particularly when individuals who are transferred are subjected to acts of torture or are unjustly subjected to spurious criminal charges or prosecutions.<sup>3</sup> The

<sup>1</sup> A Akinsanya, 'The Dikko Affair and Anglo-Nigerian Relations' [1985] (34)(3) *The International and Comparative Law Quarterly*, 602, 609

<sup>2</sup> A Singh, *Globalising Torture: CIA Secret Detention and Extraordinary Rendition* Open Society Foundations (Open Society Foundations, 2008)

<sup>3</sup> United Nations Office on Drugs and Crimes, *Cases and Materials on Extradition in Nigeria* (United Nations, 2016),

incident that occurred in June 2021, involving the Nigerian government's sponsored abduction and repatriation of Mazi Nnamdi Kanu in Kenya, can be classified as an instance of extraordinary rendition. This situation contrasts with the case of Sunday Igboho, where the Court in Benin Republic issued an order for his remand in police custody, pending an investigation into his illegal entry and alleged collaboration with immigration officers. It is worth noting that despite the Nigerian Federal Government's request for his extradition, Igboho's situation differs from Kanu's.

The rationale behind extradition from a jurisprudential perspective encompasses the following factors:

- i. It is imperative for the global criminal justice system to ensure that perpetrators who have perpetrated egregious offenses do not evade accountability.
- ii. In the jurisdiction where the offense was perpetrated, there will exist an ample amount of evidence to facilitate the prosecution and subsequent conviction of the perpetrator.<sup>1</sup>
- iii. A state is unable to prosecute or impose punishment on criminals who have sought sanctuary within its territory only due to certain technicalities of criminal law or jurisdictional limitations. Hence, in order to apprehend these elusive criminals, the principles of international law dictate the application of the maxim *aut punire aut dedere*, which stipulates that such offenders must either be subjected to punishment by the host state or be handed over to the state capable and willing to administer appropriate punishment.<sup>2</sup>

### The Guiding Principles of Extradition

The process of extradition is governed by a set of principles, which encompass the following:

#### i. There must exist an Extraditable Individual and Extraditable Offense

In order to get an extradition order, it is insufficient to merely demonstrate that the accused individual has engaged in criminal activity. It is imperative to establish both the extraditability of the person in question and the extraditable nature of the offense committed. According to Section 308 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the concept of immunity extends to the president, vice president, governor, and deputy governor.<sup>3</sup> Therefore, the individuals in question are not subject to extradition. Moreover, extradition treaties typically include explicit provisions that specify the offenses for which extradition might be sought. According to Section 3(a) of the Extradition Act, it is stipulated that:

*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.*

The refusal of an extradition request occurs when the request appears to be based on an extradition offense, but in actuality, it is intended to prosecute or punish the fugitive due to their race, religion, nationality, or political beliefs.<sup>4</sup> According to the ruling in the case of *George Udezor v Federal Republic of Nigeria*<sup>5</sup>, it was asserted that the prevailing principle dictates that extraditable offenses should primarily consist of activities that are universally acknowledged as *malum in se*, i.e., inherently criminal acts, rather than those categorized as *malum prohibitum*, i.e., acts criminalized by statute. The Extradition Act incorporates a dual-tiered procedure aimed at preventing the extradition of individuals for offenses that are not subject to extradition. The initial requirement for the Attorney-General is to decline an extradition request if the alleged offense does not fall under the category of extraditable offenses.<sup>6</sup> Additionally, the judiciary acts as a secondary safeguard, as it is legally obligated to reject the extradition request if the Attorney-General seeks extradition for a non-extraditable offense.<sup>7</sup> It is important to note that political offenses are also not subject to extradition.<sup>8</sup>

#### ii. The Principle of Dual Criminality

According to the principle of dual criminality, the act of extradition requires that the alleged offense must be considered a chargeable crime under the legal systems of both the state providing sanctuary and the state making the extradition request. The efficacy of this regulation was examined in the legal case of *Factor v Laubensheimer*<sup>9</sup>, wherein the British authorities initiated extradition proceedings against Jacob Factor on the grounds of his alleged receipt of money in London, with knowledge of its illicit acquisition. At the time the request for extradition was made, Factor was residing in the State of Illinois in the United States, and the offense for which he was charged did not constitute a violation of Illinois Law. The United States Supreme Court

<sup>1</sup>T Hillier, Sourcebook on Public International Law (Google Books, 1998)

<sup>2</sup>Abegunde Babalola 'Extradition under International Law: Tool for Apprehension of Fugitives' [2014] (22) Journal of Law, Policy and Globalization, 25, 26

<sup>3</sup>The import of section 308 was examined in *Global Excellence Communications v Donald Duke* (2007) 16 NWLR (Pt. 1059) 22

<sup>4</sup>Section 3(2) (a) Extradition Act, 1966.

<sup>5</sup>*George Udezor v Federal Republic of Nigeria* CA/L/376/05

<sup>6</sup>Extradition Act 1966, section 3(a)

<sup>7</sup>*Ibid*, note 25

<sup>8</sup>J J Kenelly, 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

<sup>9</sup>(1933) 290 US 276

determined that the aforementioned circumstance did not serve as a barrier to extradition. This conclusion was reached based on the understanding that, in accordance with the prevailing Criminal Law, specifically Federal Law in the United States, the offense in question was subject to legal punishment. In the case of *R v Governor of Pentonville Prison, ex parte Budlong*<sup>1</sup>, the court in the United States determined that the presence of a "substantial similarity" between the legal systems of the state where the individual sought shelter and the state requesting extradition is adequate to use the double criminality principle. This principle serves as a basis for justifying the granting of extradition. In the case of *Collins v Loisel*,<sup>2</sup> the Supreme Court of the United States asserted that the nomenclature used to describe a crime in two different countries does not necessarily have to be identical, nor does the severity of punishment have to be equivalent. The principle of double criminality is satisfied if the specific act in question is deemed criminal in both jurisdictions.

### iii. The Principle of Speciality

The concept of specialty necessitates that an individual, whose extradition is being pursued, can solely be prosecuted for the offense for which their extradition was sought, and no further charges may be brought against them. In the context of a fugitive's surrender, when a state grants shelter to the fugitive and subsequently extradites them, the requesting state is obligated to solely prosecute and convict the individual for the specific crime for which their extradition was sought. No further charges can be brought against the fugitive for any offenses committed prior to their surrender.<sup>3</sup> In the precedent-setting decision of *States v Raucher*,<sup>4</sup> the court established the principle that an individual should not be subjected to detention or trial for any offense other than the one for which they were charged during the extradition procedures. The rationale underlying this rule is to prohibit indiscriminate extradition requests made by the requesting state.<sup>5</sup> In the verdict rendered by the highest court in the case of *Daya Singh Lahoriavs v Union of India*,<sup>6</sup> it was affirmed that a fugitive criminal brought to India under an extradition treaty can solely be prosecuted for the offense specified in the extradition order, and not for any other offense. When a jurisdiction prosecutes a fugitive for a different offense from the one for which the fugitive was extradited, it can be considered an abuse of the concept of extradition. In the case of *Udeozor v F.R.N.*,<sup>7</sup> as determined by the Courts, the act of obtaining the surrender of a criminal for an extraditable offense under the provisions of an extradition treaty, and thereafter subjecting them to punishment for an offense that falls beyond the scope of said treaty, is commonly perceived as an abuse of the treaty's terms.

### iv. The Provision of a Fair Trial Opportunity

In accordance with this principle, prior to the commencement of the extradition process by the state to which the request is made, and prior to the surrender of the fugitive, measures are taken to guarantee that the fugitive will have the opportunity to present his case, either personally or through legal representation of his choosing, in a fair trial procedure within the state making the request.<sup>8</sup> The individual who is evading legal authorities possesses the entitlement to a just and impartial legal process, rather than being subjected to unjust treatment or harassment within the jurisdiction seeking their extradition. The Extradition Act of 1966 stipulates that the surrender of a fugitive criminal shall not occur under certain circumstances. These circumstances include situations where it is determined by the Attorney-General or a court handling the case that the request for surrender, despite being presented as pertaining to an extradition crime, was actually made with the intention of prosecuting or punishing the individual based on factors such as race, religion, nationality, or political beliefs. Additionally, if it is determined that the request was not made in good faith or in the interest of justice, or if it is believed that the individual would face prejudice during their trial if surrendered, then surrender shall not take place.<sup>9</sup> Furthermore, in line with the principle of fair trial, a fugitive criminal shall not be surrendered if the Attorney-General or a court handling the case is satisfied that the individual has already been convicted or acquitted of the offense for which surrender is sought, either in Nigeria or elsewhere. Lastly, if criminal proceedings are currently ongoing against the individual in Nigeria for the offense in question, surrender shall not be carried out.<sup>10</sup> Nevertheless, in situations where an individual has already been found guilty and given a sentence, the presence of a potential appeal or its ongoing process does not alter the extraditable condition of that individual.<sup>11</sup>

<sup>1</sup> (1980) 1 AH ER 701

<sup>2</sup> 259 U.S. 309, 42 S.Ct. 49, 66L.Ed.956 (1922).

<sup>3</sup> Robert Jennings and Arthur Watts (eds) *Oppenheim's International Law* (9th edn, Oxford University Press, 2008), 61

<sup>4</sup> 119 U.S. 407, 7S.Ct. 234, 30 L.Ed. 425(1886)

<sup>5</sup> *RV Corrigan* (1931) 1 KB 527

<sup>6</sup> [(2001) 4 SCC 516],

<sup>7</sup> (2007) LPELR-CA/L/376/05

<sup>8</sup> P Johnston 'The Incorporation of Human Rights Fair Trial Standards into Australian Extradition Law'[2014] (76) Australian Institute of Administrative Law Forum, 20

<sup>9</sup> Extradition Act 1966 section 3(b)

<sup>10</sup> *Ibid*, note 27

<sup>11</sup> *Attorney-General of the Federation v Uche Okafor Prince*, Suit No: FHC/ABJ/CR/28/2013.

#### v. The Principle of Preserving Human Rights

When evaluating a request for extradition, it is imperative to take into account the imperative of safeguarding human rights. The illustration of this phenomenon can be observed in the *Soering Case*,<sup>1</sup> wherein the United Kingdom sought to extradite an individual to the United States for a criminal offense that potentially entailed capital punishment. According to the European Court of Human Rights, situations in which a fugitive is subjected to prolonged periods on death row while awaiting the outcome of appeals would be considered as instances of inhuman and degrading treatment, and so deemed impermissible.<sup>2</sup> The inclusion of human rights considerations in extradition proceedings contributes to the intricacy of such cases, but it also has a beneficial impact by enhancing the credibility and institutionalization of the extradition system.<sup>3</sup>

#### vi. The Principle of Reciprocity

Extradition is a bilateral and mutually agreed upon arrangement between sovereign governments. Consequently, the establishment of the majority of extradition accords has been aimed at facilitating the reciprocal transfer of individuals evading the law. Reciprocity serves as the inherent mechanism by which extradition treaties or bilateral agreements pertaining to extradition are enforced. Countries are anticipated to uphold their extradition duties due to the potential negative impact on future extraditions or cooperation in other aspects of the international relationship if they fail to do so. Hence, the states participating in this agreement hold significant importance, and there are substantial ramifications for all entities concerned. When a treaty is signed, the sending country consents to temporarily relinquish its jurisdiction over the individual who is the subject of extradition.<sup>4</sup> This entails the sending country surrendering its distinct coercive powers to the receiving country.<sup>5</sup> Simultaneously, the treaty establishes the conditions and requirements for granting extradition in the receiving country, as well as the expected treatment of the individual in question.

### Extradition in Nigeria

The process of extradition in Nigeria is multifaceted, encompassing diplomatic, administrative, and judicial procedures. This section provides an analysis of the legal framework, procedural aspects, and pertinent considerations surrounding the practice of extradition in Nigeria.

#### The Legal Framework for Extradition in Nigeria

##### i. The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)

According to Section 19(c) of the Constitution of the Federal Republic of Nigeria (CFRN) in 1999, one of the foreign policy objectives of Nigeria is to actively foster international cooperation in order to strengthen and solidify global peace. According to Section 41(2)(b) of the constitution, extradition is acknowledged as a limitation on the entitlement of freedom of movement. Emeka posits that extradition constitutes a constitutionally sanctioned restriction on the inherent right of a Nigerian citizen to remain inside the country without being compelled to leave against their volition.<sup>6</sup> However, this assertion is not accurate. The act of extradition should not be conflated with the act of expulsion. The act of extraditing an individual does not inherently result in their expulsion, as they may have the opportunity to return to their home country after completing their sentence in the country requesting their extradition. The exclusive authority to establish legislation and protocols pertaining to extradition in Nigeria is conferred upon the Federal Government, as stipulated by the Constitution.<sup>7</sup> In the same vein, the Constitution grants the Federal High Court exclusive jurisdiction over extradition cases, so excluding any other court of primary jurisdiction.<sup>8</sup>

##### ii. The Extradition Act of 1966

The Extradition Act of 1966 was officially implemented on December 31, 1966, and subsequently enforced in January 1967. Its primary purpose was to annul all preceding extradition legislation pertaining to Nigeria and provide a more complete legal framework concerning the extradition of individuals evading justice.<sup>9</sup> The Constitution serves as the fundamental legal basis for extradition law and practice, while the Extradition Act serves as the principal legislation governing specific aspects of this field.<sup>10</sup> Within the Extradition Act, two distinct categories of States are acknowledged. The states falling within the first group are those that have

<sup>1</sup> (1989) EHRR 430

<sup>2</sup> 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

<sup>3</sup> Boister,Neil, *An Introduction to Transnational Criminal Law*(OUP, 2012), 287

<sup>4</sup> 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

<sup>5</sup> PowersAnn 'Justice Denied? The Adjudication of Extradition Applications' [2002] (37) *Texas International Law, Journal*, 277, 284.

<sup>6</sup> Chijioke Emeka 'The Right to Freedom of Movement in Nigeria' [2020] (1)(5) *Auxano Law Journal*, 80, 100

<sup>7</sup> Second Schedule, Exclusive Legislative List; Item 27 1999 Constitution of Nigeria (as amended)

<sup>8</sup> Section 251(1) (i) 1999 Constitution of Nigeria (as amended)

<sup>9</sup> Preamble, Extradition Act, 1966.

<sup>10</sup> 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.

established an official extradition agreement with Nigeria. Additionally, these states have undergone the necessary legal procedures, including the issuance and publication of an agreement order in the Federal Gazette.<sup>1</sup> The second group comprises Commonwealth States.<sup>2</sup> The significance of this categorization lies in the distinction between the necessity of establishing separate bilateral or multilateral extradition treaties with States in the first category, as opposed to the absence of such a requirement for the second category of Commonwealth States.<sup>3</sup>

### iii. The Federal High Court (Extradition Proceedings) Rules of 2015

The Federal High Court (Extradition Proceedings) Rules, 2015 were enacted in accordance with the authority granted to the Chief Judge of the Federal High Court under the 1999 Constitution.<sup>4</sup> The Chief Judge of the Federal High Court possesses the authority to establish procedural regulations pertaining to the subject subjects falling within the jurisdiction of the Federal High Court. Despite the presence of procedural requirements within the Extradition Act, it is evident that these rules are insufficient and fail to encompass a wide range of proceedings. The primary objective of enacting the Federal High Court (Extradition Proceedings) Rules is to enhance the transparency and coherence of extradition proceedings, while also facilitating the prompt and efficient adjudication of extradition cases. According to the Federal High Court (Extradition Rules) 2015, Rule 1(1)(2) and (3) pertain to the ordering of procedures.

When a fugitive is presented before the Court following their detention under a temporary arrest warrant in accordance with Order 111 of these Rules, the Court is obligated to-

(a) Provide a comprehensive explanation to the individual evading legal authorities in a manner that is comprehensible to them, utilizing appropriate support as required.

- (i) The allegation for which the warrant was issued.
- (ii) in order to potentially provide consent for extradition, and
- (iii) the impact of said consent;

(b) Detain the fugitive in custody or grant them bail until an application, if any, is received from the Attorney-General, requesting the extradition of the fugitive.

(c) It is recommended to adjourn the matter to a subsequent date that does not exceed a 30-day period from the day of the fugitive's apprehension.

2. The presiding judge is required to send a report of the proceedings to the Attorney-General, as stipulated by section 8(5) of the Act.

- a. On the specified date of return, the presiding court determines that the Attorney-General has-
  - i. The order was transmitted to indicate the receipt of an extradition request concerning the fugitive.
  - ii. The Attorney-General is required to submit and deliver his application within a period of 48 hours, or as otherwise instructed by the court.
  - iii. The scheduling of the hearing for a matter shall occur within a period of 14 days following the preliminary hearing.

If the judge is not presented with an order indicating the receipt of an extradition request for the alleged fugitive or is not provided with confirmation that no such request has been received, the judge will release the fugitive.

### The Evidence Act of 2011

The application of the Evidence Act encompasses all criminal processes, excluding those conducted under a field general court martial.<sup>5</sup> The application of the Evidence Act extends to all civil judicial proceedings, with the exception of civil causes and matters that fall under the jurisdiction of the Sharia Court of Appeal, Customary Court of Appeal, Area Court, or Customary Court.<sup>6</sup> It is worth noting that extradition proceedings are not specifically excluded from the scope of the Evidence Act. Consequently, the application of the Evidence Act extends to extradition proceedings conducted within the jurisdiction of the Federal High Court. The Evidence Act is responsible for regulating various aspects, including the admissibility and probative value of evidence, the allocation of the burden of proof, and the qualifications and obligation of witnesses. The proper presentation of these facts, as stipulated by The Evidence Act, holds significant importance in extradition proceedings due to the recognition of foreign laws as factual items that necessitate substantiation. Hence, the veracity of the foreign legislation, which an individual evading legal pursuit is said to have contravened, is a factual inquiry. Nevertheless, when it comes to establishing the presence of foreign legislation, the Evidence Act is interpreted alongside the Extradition Act. In this exercise, the presence of pertinent foreign law is considered to be

<sup>1</sup> Extradition 1966, Section 1

<sup>2</sup> Supra, note 50, Section 2

<sup>3</sup> Ibid, note 51

<sup>4</sup> CFRN 1999 Section 254

<sup>5</sup> Section 256 (1) (b) Evidence Act 2011

<sup>6</sup> Ibid, Section 256 (1)

established if it is referenced in the warrant issued by the foreign court.<sup>1</sup>

The Extradition Act of 1966, specifically section 16, allows for the acquisition of witness testimony from Nigeria for use in criminal proceedings in foreign courts or tribunals. This provision extends to civil matters as well, in accordance with the applicable laws within Nigeria.

### **The Legal Authority to Exercise Jurisdiction over Extradition in Nigeria**

The Federal High Court is the primary adjudicatory institution with exclusive jurisdiction over extradition matters.<sup>2</sup> In the past, the authority to handle extradition procedures was entrusted to the Magistrate Courts.<sup>3</sup> Nevertheless, the allocation of exclusive jurisdiction over extradition issues to the Federal High Court was revoked by the Constitution of the Federal Republic of Nigeria in 1979. The preservation of this exclusivity was upheld in the 1999 Constitution of the Federal Republic of Nigeria, which followed the 1979 Constitution. Consequently, it became imperative to amend the Extradition Act in order to rectify its incongruity with the Constitution.<sup>4</sup> The issuance of the Extradition Act (Modification) Order 2014 was carried out in accordance with section 315 of the 1999 Constitution of Nigeria, which grants the President of Nigeria the authority to make amendments to any prevailing legislation in order to align it with the provisions of the Constitution. Section 315 of the 1999 Constitution serves as a provision for preservation, allowing for the continued validity and application of laws that were in effect previous to the enactment of the 1999 Constitution. The purpose of this section is to circumvent the laborious process of reproducing legislation that were in effect prior to 1999. All laws that were in existence prior to 1999, including the Extradition Act of 1966 and any subsequent Orders, are considered legally legitimate and in effect. However, they may require modifications to align with the provisions outlined in the Constitution.<sup>5</sup>

In the case of *Attorney General of the Federation v Godwin Chiedo Nzeocha*<sup>6</sup>, the legal representative for the Respondent raised an objection about the jurisdiction of the Federal High Court to preside over extradition cases. The argument put forth by counsel essentially posited that the competence of the Federal High Court to preside over the extradition proceedings against the Respondent was lacking, as the Extradition Act explicitly designates magistrate courts as having jurisdiction in such matters. According to the Constitution's section 251(1), the Federal High Court possesses sole authority over extradition issues, as determined by a ruling from the court. In the case of *Orhiunu v Attorney-General of Federation*,<sup>7</sup> the Court of Appeal underscored the significance of the Federal High Court's jurisdiction. It underlined that the exclusive jurisdiction granted to the Federal High Court by the Constitution cannot be restricted in any way other than by the provisions of the same Constitution.

The Federal High Court's authority to preside over extradition proceedings is contingent upon the fugitive's physical presence inside Nigerian jurisdiction. The nationality of the fugitive, whether Nigerian or elsewhere, is inconsequential. In the case of *Attorney General of the Federation v Dion Kendrick Lee*,<sup>8</sup> the individual in question was a foreign national who was apprehended within the borders of Nigeria and subsequently extradited to the United Kingdom. This extradition was authorized by the Federal High Court, which was presiding in Lagos. Extradition proceedings shall be applicable to all individuals now situated within the territorial boundaries of Nigeria, except for those individuals who possess legal immunity from the jurisdiction of Nigerian judicial processes.<sup>9</sup> Individuals who are exempt from legal proceedings encompass those who possess diplomatic immunity, as well as the President and Vice President of the Federal Republic of Nigeria, along with the Governors and Deputy Governors of the States.<sup>10</sup> Consequently, jurisdiction in extradition proceedings is established on an individual basis, rather than being contingent upon nationality or citizenship. Therefore, it is not possible to initiate legal actions under the Extradition Act against Nigerian citizens who are evading justice outside the territorial boundaries of Nigeria. Extradition proceedings, which rely on the in personam jurisdictional basis, exclusively pertain to the extradition of individuals, namely natural persons. In this regard, it is important to note that extradition proceedings cannot be initiated against a company or any other legal entity. Legal entities may potentially be subjected to alternative measures, such as the confiscation of illicitly obtained funds.

<sup>1</sup> Section 6(1) Extradition Act, 1966.

<sup>2</sup> Section 251 (1)(i) 1999 Constitution of the Federal Republic of Nigeria (as amended) see also section 7(1) (i) Federal High Court Act.

<sup>3</sup> Section 6, 7, 8 and 9 of the Extradition Act 1966 before amendment in 2014

<sup>4</sup> A.G. Abia v. A.G. Federation (2003) 12 SC 1.

<sup>5</sup> Orhiunu v. A.G. Federation (2005) 1 NWLR (906) 39.

<sup>6</sup> Attorney General of the Federation v Godwin Chiedo Nzeocha Charge No. FHC/L/335c/2011. (2005)1 NWLR (906) 39.

<sup>7</sup> Attorney General of the Federation v. Dion Kendrick Lee Charge No: FHC/L/465C/11.

<sup>8</sup> Diplomatic Immunities and Privileges Act, 1962.

<sup>9</sup> Section 308 of the CFRN 1999

### Procedural Framework for Extradition in Nigeria

The Extradition Act is the primary governing legislation that outlines the procedure for extradition in Nigeria. The technique can be succinctly summarized into thirteen steps as outlined below:

- i. In order to initiate the process of extraditing a fugitive criminal from any nation, it is necessary for a diplomatic official or consular officer of the requesting country to submit a written request to the Attorney-General.<sup>1</sup>
- ii. The request must be accompanied by a warrant of arrest or certificate of conviction that has been officially certified in the respective country.
- iii. In instances when an individual makes such a request, the Attorney-General has the authority to communicate to a Judge of the Federal High Court, by an order issued by the Attorney-General, that such a request has been made. Furthermore, the Attorney-General may instruct the Judge to handle the case in accordance with the requirements outlined in the Act.
- iv. In cases where multiple countries request the surrender of a fugitive criminal, either for the same offense or other offenses, it is the responsibility of the Attorney-General to assess the priority of these requests. Consequently, the Attorney-General has the authority to refuse any other request or requests that are not given priority.<sup>2</sup>
- v. Upon receiving an order from the Attorney General, the Judge possesses the authority to issue a warrant for the apprehension of a criminal who is evading capture, provided that sufficient evidence is presented to the Judge's satisfaction, thereby warranting the issuing of said merit.
- vi. The warrant issued has the potential to be executed in any location within the borders of Nigeria.
- vii. A runaway criminal who has been apprehended based on an issued warrant should be expeditiously presented before the presiding Judge subsequent to their capture.<sup>3</sup>
- viii. When a runaway criminal is presented before the Judge, the Judge will proceed with the case in a manner that closely resembles the usual proceedings, and will possess the same authority and powers as if the fugitive were brought before the Judge for an offense committed within their jurisdiction.
- ix. The presiding Judge is authorized to accept any evidence that may be presented to demonstrate that the offense for which the fugitive is accused or claimed to have been convicted does not qualify as an extradition offense, or that the extradition of the fugitive is prohibited for other reasons as stipulated by the Act or the existing extradition agreement between Nigeria and the requesting country.<sup>4</sup>
- x. In the event of a fugitive criminal who is alleged to have committed an offense that qualifies as an extradition offense, the following conditions must be met for the Judge to proceed with the case: a warrant issued from a foreign country, which falls under the jurisdiction of this Act, must be presented to authorize the arrest of the fugitive; the Judge must be convinced that the warrant is duly authenticated and pertains to the specific individual in question; the offense for which the fugitive is accused must qualify as an extradition offense in the country that issued the warrant; the evidence presented must meet the requirements set by Nigerian law, which would justify the detention of the fugitive for trial if the offense had been committed within Nigeria; and finally, the Act must not prohibit the surrender of the fugitive. If all these conditions are satisfied, and the country requesting the surrender of the fugitive falls under the jurisdiction of the Act, the Judge will proceed to commit the fugitive to prison until the Attorney-General issues an order for surrender.<sup>5</sup>
- xi. A fugitive criminal who has been committed to prison shall not be surrendered prior to the lapse of a period of fifteen days, commencing from the day of their commitment. Alternatively, if a writ of habeas corpus has been issued, the surrender shall not occur until the court has rendered its decision on the return of the writ, whichever event occurs later.<sup>6</sup>
- xii. In cases where a writ of habeas corpus has been issued, if the fugitive criminal is not released upon the court's decision regarding the writ, the Attorney-General has the authority, unless there are legal impediments to the surrender of the fugitive, to issue an order directing the surrender of the fugitive to an authorized individual from the requesting country. Subsequently, the fugitive shall be surrendered as per the order.<sup>7</sup>

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<sup>1</sup> Extradition Act, Section 6

<sup>2</sup> Ibid, section 6(4)

<sup>3</sup> Ibid, Section 7

<sup>4</sup> Supra, section 9

<sup>5</sup> Ibid, section 6(2)

<sup>6</sup> Ibid, section 10

<sup>7</sup> Supra, note 71

- xiii. In the event that a fugitive criminal, who has been incarcerated, is not extradited and transported out of Nigeria within a period of two months from the date of their commitment to prison, or if a writ of habeas corpus has been issued, within two months from the day the court renders its decision on the writ's return, whichever occurs later, the Court possesses the authority to order the release of the fugitive from custody. This order can be granted upon an application made by the fugitive or on their behalf, provided that sufficient evidence is presented to demonstrate that reasonable notice of the intention to make the application has been provided to the Attorney-General.<sup>1</sup>

### **The Concept of Extradition within the Framework of International Law**

In the realm of international law, the act of extraditing someone does not carry an inherent obligation.<sup>2</sup> In the context of Nigeria, there exist several exceptions, notably pertaining to the circumstances of Commonwealth States. The regulation of extradition is primarily governed by established international law, typically through the implementation of bilateral or multilateral treaties. While the majority of international agreements on extradition are bilateral in nature, there also exist a number of multilateral conventions addressing this matter. It is important to highlight that the provisions of a certain treaty, whether it is bilateral or multilateral, only apply to the parties involved in the agreement.<sup>3</sup> In alternative terms, it might be stated that extradition is not inherently recognized as a component of international law, but rather operates solely through bilateral or multilateral agreements established between sovereign states. In the case of *George Udezor v Federal Republic of Nigeria*,<sup>4</sup> the Court of Appeal determined that the entitlement of a State (in this context, a country) to seek the extradition of a fugitive accused of a crime, as well as the obligation of the country providing asylum to surrender the fugitive, are contingent upon the existence of a treaty. In the case of *Attorney-General of the Federation v Kingsley Edegebe*, the Federal High Court dismissed an extradition application to the Netherlands on the basis that there existed no bilateral treaty of extradition between Nigeria and the Netherlands.<sup>5</sup> The grant of extradition is contingent solely upon reciprocity or politeness in the absence of a treaty or statute.<sup>6</sup> The case of *Assange vs. Swedish Prosecution Authority*<sup>7</sup> pertains to a series of judicial processes that took place in the United Kingdom. These proceedings revolved around the sought extradition of Julian Assange to Sweden for the purpose of conducting a preliminary investigation into allegations of sexual offenses. The commencement of the proceedings took place in the year 2012. The Swedish prosecutors made a public declaration on 12 August, 2015, stating that they have terminated their inquiry into three of the accusations against Assange due to the expiration of the statute of limitations. On May 19, 2017, Swedish authorities decided to terminate the investigation pertaining to the rape allegation. During the course of the hearings, Assange expressed apprehension on the potential outcome of being extradited to the United States in the event of being transported to Sweden. The case against Assange was revived by Swedish prosecutors in May 2019. The prosecution have conveyed their intention to initiate the extradition process for Assange from the United Kingdom subsequent to the completion of his 50-week prison term, which was imposed due to his violation of bail conditions. In June 2019, the Uppsala District Court declined a petition for the apprehension of Assange, therefore impeding his extradition from Sweden. According to the statement, the Swedish probe did not necessitate Assange's physical presence in Sweden.

### **Economic Community of West African States Convention on Extradition, Abuja 1994**

The primary objective behind the establishment of the Economic Community of West African States (ECOWAS) was to facilitate and promote economic integration among the member states in the West African region.<sup>8</sup> In pursuit of its objectives, the Economic Community of West African States (ECOWAS) has implemented many measures, one of which is the adoption of the Protocol on the Free Movement of Persons within the ECOWAS sub-region. On August 6, 1994, the Economic Community of West African nations (ECOWAS) member nations reached a consensus on the Economic Community of West African States Convention on Extradition in Abuja, Nigeria. The Convention establishes a multilateral framework for the process of extradition within the Economic Community of West African States (ECOWAS).<sup>9</sup> According to Article 2 (1)(2) of the Convention, it states:  
(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

<sup>1</sup> Ibid Section 12

<sup>2</sup> Blakesley Christopher L 'The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History' [1981] (49) Boston College International Law & Comparative Law Review, 41-42.

<sup>3</sup> 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.'

<sup>4</sup> *George Udezor v Federal Republic of Nigeria* CA/L/376/05.

<sup>5</sup> Suit No. FHC/ABJ/CS/907/2012, Judgment delivered on 1st July, 2014, per Mohammed

<sup>6</sup> J G Sharke, *Starke's International Law* (11th edn, OUP, 1994), 317-328.

<sup>7</sup> [2011] EWHC 2849

<sup>8</sup> ECOWAS Revised Treaty 1993 article 2

<sup>9</sup> Kassim Momodu, *Extradition: The Treaty Between Benin, Ghana, Nigeria and Togo*, Nigerian (1985) Current Law Review, 155.

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 may be authorized in accordance with the provisions outlined in Article 3, pertaining to offenses that are punishable under the legal frameworks of both the requesting State and the requested State, with penalties involving a minimum term of imprisonment of two years. Extradition shall only be allowed in cases where a conviction has been established and a jail sentence has been issued within the jurisdiction of the requesting State, provided that a minimum time of six months of the sentence remains to be served.<sup>1</sup> According to the Convention, the granting of extradition is precluded if the requested offence is considered a political offense or is associated with a political offense. Extradition shall not be granted if there exist significant reasons to believe that a request for extradition pertaining to a regular criminal offense has been initiated with the intention of prosecuting or penalizing an individual based on factors such as race, tribe, religion, nationality, political opinion, sex, or status.<sup>2</sup> Moreover, this Convention does not authorize the extradition of individuals for offenses under military law that do not qualify as offenses under regular criminal law.<sup>3</sup> The act of extraditing an individual shall be denied if the individual is accused of an offense for which an amnesty has been declared in the requested State, and if the requested State has the authority to pursue the offense under its own criminal law.<sup>4</sup> Extradition should not be granted if the requested State does not provide for the death penalty in cases where the offense for which extradition is sought is punishable by death under the law of the requesting State.<sup>5</sup>

According to the Convention, the granting of extradition is prohibited in cases where the individual sought for extradition would be subjected to torture, cruel, inhuman, or degrading treatment or punishment in the requesting State. Additionally, extradition shall not be granted if the individual in question has not received, or would not receive, the minimum guarantees outlined in Article 7 of the African Charter on Human and People's Rights in relation to criminal proceedings.<sup>6</sup> As a result, the State in question has the option to decline the extradition of an individual if it is determined that such extradition would contradict humanitarian principles, taking into account factors such as age or health. When the individual being sought for extradition holds citizenship in the state where the extradition is requested, the decision to extradite lies within the discretion of that state. The determination of nationality in cases of extradition is made based on the nationality of the individual at the time the offense for which extradition is sought was committed.<sup>7</sup>

The relevance of the place of commission of the alleged crime is evident in extradition proceedings under the Convention. This is due to the possibility of the requested State declining to extradite an individual for a crime that is considered to have been committed either entirely or partially within its jurisdiction or in a location deemed as its jurisdiction. Extradition may only be declined when the requested State's legislation does not permit prosecution for the same type of offense committed outside its territory, or if it does not permit extradition for the specific offense in question, when the offense for which extradition is sought has occurred outside the territory of the requesting State.<sup>8</sup> Once more, it is possible for the State in question to decline the extradition of the individual if the competent authorities of said State are already taking legal action against said individual for the offense or offenses for which extradition is being sought.<sup>9</sup>

The Convention does not provide for the occurrence of double jeopardy. Therefore, in the event that the requested State's competent authorities have already issued a final judgment on the individual in question on the offense or offenses for which extradition is being sought, extradition shall not be authorized. The refusal of extradition may occur if the competent authorities of the requested State have made a decision to either not initiate or to conclude legal procedures pertaining to the same offense or offenses.<sup>10</sup> Furthermore, in the event that the requesting State initiates new legal proceedings against the individual for whom the requested State has previously terminated proceedings related to the offense for which extradition was granted, any time spent in pretrial detention or custody in the requested State will be considered when determining the penalty involving loss of personal freedom in the requesting State.<sup>11</sup>

The formal procedure for requesting extradition under the Convention requires a written request to be

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

<sup>2</sup>Ibid article 4

<sup>3</sup>Ibid, article 7

<sup>4</sup>Ibid, article 16

<sup>5</sup>Ibid, article 17

<sup>6</sup>Supra, article 6

<sup>7</sup>Ibid, article 10

<sup>8</sup>Ibid, article 12

<sup>9</sup>Ibid, note 89

<sup>10</sup>Supra, Article 13

<sup>11</sup>Ibid, note 91

submitted by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. Nevertheless, the utilization of the Diplomatic channel is not precluded. Alternative methods of communication can be established through a mutual agreement between two or more sovereign entities. The submission must be accompanied by either the original conviction and sentence, or an authenticated copy thereof, which must be immediately enforceable. Alternatively, the submission may include the warrant of arrest or any other order that has the same effect, provided it has been issued in accordance with the procedure prescribed by the law of the requesting State.<sup>1</sup> Additionally, a statement specifying the offenses for which extradition is being sought must be included. The accurate inclusion of the time and location of their commission, along with their legal descriptions, and a citation to the pertinent legal provision, is required. Additionally, an authenticated copy of the applicable law, specifying the potential or imposed sentence for the offense, must be provided. Furthermore, a precise description of the individual in question, along with any supplementary information that aids in establishing their identity, nationality, and current location, should be included.<sup>2</sup>

The process of extradition as outlined in the Convention is exclusively regulated by the legislation of the state to which the extradition is sought. Nevertheless, it is imperative for States to guarantee a prompt extradition process, while also ensuring that the individual whose extradition is being sought is afforded the opportunity to present their case before a judicial authority. Additionally, they should be entitled to legal representation of their choosing. Furthermore, States must subject the individual's custody for extradition and the terms of their extradition to the scrutiny of a judicial authority.<sup>3</sup> In a similar vein, the costs arising from extradition activities within the jurisdiction of the requested State shall be assumed by that State. The requesting State is responsible for covering the expenses associated with transporting the individual from the territory of the requested State. The requesting State is responsible for covering the expenses that arise due to transit via the territory of a State that has been asked to grant transit.<sup>4</sup>

### **The Practice of International Extradition among Commonwealth States**

Typically, the Extradition Act exclusively applies to a State that has established a formal extradition agreement with Nigeria. Nevertheless, it is important to note that the Extradition Act contains a provision that grants an exemption to Commonwealth States, insofar as the Act is deemed applicable to each distinct country within the Commonwealth.<sup>5</sup> In the context of the Extradition Act, a separate country within the Commonwealth<sup>6</sup> is defined as "each sovereign and independent country that is a member of the Commonwealth." In the event that a sovereign and independent country within the Commonwealth possesses a dependent territory, said territory will be considered as an integral component of the Commonwealth for the purposes of extradition proceedings, provided that the President of the Federal Republic of Nigeria issues an order, which is subsequently published in the Federal Gazette, designating said territory as a constituent part of the Commonwealth country in question.<sup>7</sup>

Nevertheless, the President will issue such an order solely upon receiving notification from the country to which the dependent territory is affiliated, expressing its intention for the dependent territory to be recognized as part of the Commonwealth for extradition purposes. In the event that the President perceives that a Commonwealth nation, to which section 2 of the Extradition Act is relevant, no longer possesses provisions that are essentially similar to those outlined in the Extradition Act, the President has the authority to modify the application of the Extradition Act to that particular country.<sup>8</sup> This modification can be achieved through an order that is published in the Federal Gazette. The order may specify modifications in the form of additions, alterations, or omissions.<sup>9</sup> Nevertheless, it is possible for a nation within the Commonwealth to establish an extradition agreement with Nigeria. In the present circumstance, the extradition arrangement between Nigeria and the aforementioned country will no longer be regulated by section 2 of the Extradition Act. Instead, the relationship will be founded upon the extradition treaty established between Nigeria and the said country.<sup>10</sup> International extradition is contingent upon the existence of treaties or bilateral agreements between governments in all instances except for those that fall beyond this framework.

### **Conclusion/Recommendations**

Contemporary civilization is experiencing significant repercussions stemming from the various expressions of transnational criminal activities, which detrimentally impact social dynamics across political, economic, social,

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<sup>1</sup> Ibid, article 18

<sup>2</sup> Ibid, article 27

<sup>3</sup> Ibid, article 28

<sup>4</sup> Supra, article 30

<sup>5</sup> Section 2(1), Extradition Act.

<sup>6</sup> Ibid, Section 2(2)(a)

<sup>7</sup> Ibid, note 98

<sup>8</sup> Ibid, Section 2(4)

<sup>9</sup> Ibid, note 100

<sup>10</sup> Supra, note 101

and spiritual domains. Despite extensive endeavors, no nation in the global community possesses the capability to combat crime autonomously. The ease of suspects fleeing to another country is attributed to the accessibility of contemporary modes of transportation. Furthermore, the global interconnectedness has facilitated the proliferation of illegal endeavors outside the confines of national borders. Hence, it is imperative to underscore the significance of collaborative joint endeavors and international collaboration among nations in effectively tackling global security concerns. The evasion of justice by a convict or suspect through international flight should not be permitted. The implementation of extradition, without of bias, holds significant potential in its contribution to international criminal justice. However, the lack of a binding requirement to extradite under international customary law poses a significant constraint on the utilization of extradition. The lack of a comprehensive multinational treaty on extradition further exacerbates this issue. The dependence on bilateral extradition agreements suggests that individuals accused of illegal activities can potentially evade legal consequences by seeking refuge in a jurisdiction that lacks an extradition treaty with the state where the offense occurred.

One of the five primary areas of focus within the United Nations Convention against Corruption pertains to international cooperation. This aspect emphasizes the obligation of member nations to enhance the provision of mutual legal assistance, particularly in the areas of evidence gathering and transfer for use in court proceedings and the extradition of offenders. Hence, it is highly advisable to establish an international Extradition Convention at the United Nations level that encompasses a significant number of governments. The treaty ought to establish the structural basis for the process of international extradition, encompassing fundamental concepts and procedural matters. The implementation of consistent principles and procedures will enhance the applicability of extradition among states and alleviate the procedural obstacles that arise from relying on individual state regulations in extradition processes.