

# LAWYERING WITH INTEGRITY

ESSAYS IN HONOUR OF  
ERNEST OJUKWU, SAN

SAM ERUGO & CHARLES O. ADEKOYA

## Chapter Seventeen

### Extradition and the Administration of Criminal Justice in Nigeria

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#### Introduction

Extradition is defined as the official surrender of an alleged criminal by one State or nation to another having jurisdiction over the crime charged, the return of a fugitive from justice, regardless of consent, by the authorities where the fugitive is found.

International extradition, in contrast to interstate extradition, is extradition in response to a demand made by the executive of one nation on the executive of another nation. The procedure is generally regulated by treaties.<sup>1</sup>

Extradition is regulated in Nigeria by the Extradition Act of 1966.<sup>2</sup> It also enjoys Constitutional recognition and backing by virtue of Section 251(1)(a)(i).<sup>3</sup>

With the increasing incidence of economic and financial crimes<sup>4</sup> and terrorism, most offenders escape justice by fleeing to countries outside Nigeria. The process of extraditing of fugitives to and from Nigeria is pretty cumbersome and in some cases impossible partly because of the judicial

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<sup>1</sup> Bryan A. Garner (Ed.), *Black's Law Dictionary*, (8<sup>th</sup> ed.) (West Publishing Co., 2009) p. 665.

<sup>2</sup> Now Cap. E25 Laws of the Federation of Nigeria, 2004

<sup>3</sup> Constitution of the Federal Republic of Nigeria, 1999

<sup>4</sup> Economic and financial Crimes is defined in Section 46 of the Economic and Financial Crimes (Establishment) Act, 2004 as the non-violent criminal and illicit activity committed with the objectives of earning of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.

process and the absence of extradition treaties or agreements between the requesting and requested State.

Mr. James Ibori, a former Governor of Delta State in Southern Nigeria fled the country to escape arrest and prosecution for cases of money laundering by the Economic and Financial Crimes Commission (EFCC). He fled to Dubai in the United Arab Emirates (UAE). He could not be extradited to Nigeria because there was no extradition treaty with the United Arab Emirates. He had to be extradited to the United Kingdom because of an existing extradition treaty between the United Arab Emirates and United Kingdom. He was subsequently tried and convicted in the United Kingdom and has served his sentence.<sup>5</sup> In another case, Mr. Kingsley Edegbe<sup>6</sup> was wanted in the Netherlands in connection with the trafficking of about six Nigerian girls, aged 25, between 2006 and 2007. A five-count charge had been filed against Mr. Edegbe at the Netherlands' District Court of Zwolle by the country's National Public Prosecutor's Office Rotterdam, National Squad Team, North and East Netherlands Unit. He was alleged to be involved in human trafficking, human smuggling, abducting minors from the lawful custody of their parents, forgery of international travel documents and participation in a criminal organization. The application for extradition to the Netherlands by the Attorney General of the Federation was refused by the Federal High Court in Nigeria because there was no evidence of any extradition treaty between Nigeria and the Netherlands. The reliance on the United Nations Convention against Transnational Organized Crime was rejected by the judge on the ground that the convention is not an extradition treaty as envisaged by section 1 of the Extradition Act of Nigeria.<sup>7</sup>

The results of these cases show the complexity of extradition process in Nigeria. The absence of extradition treaty with most countries makes them a safe haven for fugitives involved in economic and financial crimes and terrorism. Extradition is now recognized as an integral aspect of international cooperation in combating such crimes.<sup>8</sup>

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<sup>5</sup> See Ibori: Nigeria plans extradition treaty with UAE.

<<http://www.thenigerianvoice.com/movie/24210/1/ibori-nigeria-plans-extradition-treaty-with-uae.htm>> last accessed 23 April, 2015. The Nigerian authorities supported the metropolitan police in the investigation and subsequent conviction. Mr. Ibori was sentenced to 13 years' imprisonment after pleading guilty to money laundering charges.

<sup>6</sup> Suit FHC/ABJ/CS/907/2012 delivered on 1<sup>st</sup> July, 2014 by Justice A.R. Mohammed

<sup>7</sup> *Ibid* at pages 21-23

<sup>8</sup> See generally Gavan Griffith and Claire Harris: 'Recent Developments in the Law of Extradition' (2005) 6 (1) Melbourne Journal of International Law 33

International law does not establish a general duty to extradite. A legal obligation for one State (the requested State) to surrender a person wanted by another State (the requesting State) exists only on the basis of bilateral or multilateral extradition treaty or agreements, or if the requested State is a party to an international instrument which institutes a duty to extradite as is the case with respect to specific offences such as, for example, genocide or apartheid.<sup>9</sup> Other international instruments impose an obligation to extradite or prosecute – that is, if surrender is refused; the requested State must prosecute the wanted person in its own courts.

This paper reveals that the absence of enabling treaties and the non-application of relevant United Nations Conventions has made it difficult for extradition of fugitives to Nigeria and from Nigeria to other countries to face trial for the crimes. It will be proposed that the Executive, Legislature and the Judiciary need to be more pro-active in domestication of the relevant treaties. This will assist in the fight against terrorism, economic and financial crimes.

### Legal Framework for Extradition in Nigeria

The Extradition Act<sup>10</sup> is the principal applicable law in Nigeria.<sup>11</sup> By section 4(1) of the 1999 Constitution, the legislative powers of the Federal Republic of Nigeria are vested in the National Assembly made up of the Senate and the House of Representatives. The National Assembly is empowered to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule.<sup>12</sup> Item 27 lists 'Extradition' as a subject which the National Assembly could legislate upon in the Exclusive Legislative list. Notably, section 251(1)(i) gives exclusive jurisdiction to the Federal High Court in respect of extradition.<sup>13</sup> Section

<sup>9</sup>See generally Sibylle Kapferer: The interface between Extradition and Asylum in Legal and Protection Policy Research Series.

<sup>10</sup>Cap. E25, Laws of the Federation of Nigeria, 2004

<sup>11</sup>The Act came into operation by Decree No. 87 of 1966. The long title states that the Act is 'to repeal the former Extradition Laws made by or applicable to Nigeria and to make more comprehensive provisions for extradition of fugitive offenders for Nigeria.'

<sup>12</sup>Section 4(2) *ibid.*

<sup>13</sup>In the case of *FRN v Orhunu* (2002) 3 FHCLR 176 at 184-1186, the Federal High Court confirmed that it has exclusive jurisdiction on extradition cases irrespective of section 6 of the Act which confers jurisdiction on the Magistrate Court. This decision was affirmed by the Court of Appeal in *Orhunu v FRN* (2004) LPELR 5880 (CA). See also *FRN v Dike* (2004) 1 FHCLR 80 at 90.

12(1) of the Constitution is also relevant as it relates to domestication of treaties and international conventions. It provides that:

No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.<sup>14</sup>

Other domestic laws regulating extradition are the Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act.<sup>15</sup>

There are various multilateral, regional and bilateral conventions and treaties. These include multilateral Conventions such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988,<sup>16</sup> United Nations Convention against Transnational Organized Crimes 2000,<sup>17</sup> the London Scheme for the Extradition within the Commonwealth 2002. The regional conventions are the ECOWAS Convention on Extradition,<sup>18</sup> ECOWAS Convention on Mutual Legal Assistance 1992,<sup>19</sup> African Union Convention on Preventing and Combating Corruption 2003.<sup>20</sup> The bilateral treaties include the bilateral Extradition Treaty between the United States of America and the United Kingdom, 1931,<sup>21</sup> Extradition (United States of America) Order,<sup>22</sup> the treaty between the Federal Republic of Nigeria and the United States of America on Mutual Legal Assistance in Criminal Matters 1987,<sup>23</sup> agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Nigeria concerning the investigation and Prosecution of Crimes 1989,<sup>24</sup> and the Extradition Treaty between the Government of the Federal Republic of Nigeria and the

<sup>14</sup>See *Abacha v Fawehinmi* (2005) 51 WRN 29 at 82-83, *Registered Trustees of National Association of Community Health Practitioners of Nigeria v Medical and Health Workers Union Of Nigeria* (2008) 3 MJSC 121 at 148-149.

<sup>15</sup>Cap. M24 Laws of Federation of Nigeria, 2004

<sup>16</sup>Otherwise known as the Vienna Convention. 1988

<sup>17</sup>It was signed in Palermo Italy in December, 2000

<sup>18</sup>It was signed in Abuja on 6 August, 1994

<sup>19</sup>It was signed on 29 July, 1992 in Dakar Senegal

<sup>20</sup>This convention was adopted by the 2<sup>nd</sup> ordinary session of the Assembly of the African Union on 11 July, 2003 in Maputo.

<sup>21</sup>This was made on 22 December, 1931 and made applicable to Nigeria on June 24, 1935 and continue to be in force as an existing law. See section 315, Constitution of the Federal Republic of Nigeria, 1999.

<sup>22</sup>1967 (Legal Notice 33 of 1967)

<sup>23</sup>Signed in Washington on 2 November, 1987.

<sup>24</sup>This was signed in London on 18 September, 1989

Government of the Republic of South Africa (Ratification) and Enforcement Act.<sup>25</sup>

### **Legal Requirements for Extradition**

Section 1 Extradition Act provides:

‘(1) Where a treaty or other agreement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment, the President may by order published in the Federal Gazette apply this Act to that country’

(2) An order under subsection (1) of this section shall recite or embody the terms of the extradition agreement, and may apply this Act to the country in question subject to such conditions, exceptions and qualifications as may be specified in the order.

From the above provision, for there to be any request for extradition, there must be (a) a treaty between Nigeria and the requesting country or between Nigeria and the country where the fugitive is sought to be surrendered; (b) in the absence of a treaty, there should be an extradition agreement between the two countries; (c) if the Country is not one already published in the Gazette, the President may by order so published apply the Act to that Country; (d) the fugitive must be wanted for prosecution or punishment; (e) request for surrender by a diplomatic representative or consular officer of the requesting country to the Attorney General of the Federation; and (f) Hearing by the Court.

### **A Valid Treaty or Extradition Agreement**

Section 12(1) 1999 Constitution provides that no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. It therefore means that if a treaty is not domesticated or an extradition agreement is not enacted into an Act, it will be invalid.<sup>26</sup>

<sup>25</sup>It is now a Schedule to the Extradition Act as the Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act Cap. E26. The treaty was ratified on 30 November, 2002.

<sup>26</sup>*Udezor v FRN* (2007) 15 NWLR (Pt. 1058) 499 at 522B

Presently, there are only three countries with extradition treaty domesticated in Nigeria-Liberia, United States of America and Republic of South Africa.<sup>27</sup>

In the case of *A-G of the Federation v Umoh*,<sup>28</sup> the court in making the extradition order held that by the second schedule to the Act, there is evidence of an Extradition Treaty between Nigeria and the United States of America<sup>29</sup>.

If a country enters into an Extradition Agreement, and it is enacted into law by the National Assembly, the President of Nigeria shall by order published in the Federal Gazette apply the Act to that country. The order will then be inserted in the First Schedule to the Act.<sup>30</sup> A valid extradition treaty is therefore a condition precedent to an extradition. In the case of *Udeozor v Federal Republic of Nigeria*,<sup>31</sup> the Court of Appeal stated:

The right of one state to request of another, the extradition of a fugitive accused of a crime, and the duty of the country in which the fugitive finds asylum to surrender the said fugitive, exist only when created by treaty.

Where a treaty is domesticated, our courts have not found it difficult to extradite a fugitive. Where, however, there is no express treaty but conventions to which Nigeria is a signatory, the courts are reluctant to order extradition.<sup>32</sup> It is submitted that the case of *Attorney General of the Federation v Kingsley Edegbe* was wrongly decided in view of Article

<sup>27</sup>*A-G Fed v Umoh* (2002) 1FHCLR 415; *FRN v Dike* (2004) 1FHCLR 80. See First Schedule which recites Legal notices 32 and 33 of 1967 in respect of Liberia and USA respectively. The Extradition between the Federal Republic of Nigeria and South Africa is enacted as Cap. E26, Laws of the Federation of Nigeria, 2004.

<sup>28</sup>*Ibid.* This is in contrast with the position in the case of *FRN v Kingsley Edegbe* where the court refused to order extradition to the Netherlands because there was no Extradition Treaty between Netherland and Nigeria.

<sup>29</sup>Other cases where fugitives were successfully extradited to the USA based on the Extradition Treaty are: *Attorney General of the Federation v Mustapha* Suit No:FHC/L/218c/ 2011 delivered on 30 January, 2012, *Attorney General of the Federation v Nzeocha* Suit No:FHC/L/335c/ 2011 delivered on 28 May, 2012; *Attorney General of the Federation v Olayinka Johnson* Suit No:FHC/L/16c/ 2013 delivered on 1 February, 2013.

<sup>30</sup>See the Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act Cap. E26 in the schedule.

<sup>31</sup>*Ibid* n. 23 at p. 522

<sup>32</sup>See the case of *Attorney General of the Federation v Kingsley Edegbe* Suit No: FHC/ABJ/CS/907/2012 delivered on 1 July, 2014, the Federal High Court refused to extradite Mr. Edegbe to the Netherlands because there was no Extradition treaty between Nigeria and the Netherlands and refused to apply the United Nations Convention against Transnational Organised Crime 2000.

16(4)-(5) of the United Nations Convention against Organized Crime<sup>33</sup> which provides that if the State parties do not have an extradition treaty in force between them, the Convention may be taken to operate as a legal basis for extradition.<sup>34</sup> Recently in the case of *Attorney General of the Federation v Emmanuel Okoyomon*,<sup>35</sup> the court applied the bilateral Extradition Treaty between the United States of America and the United Kingdom on December 22, 1931 and made applicable to Nigeria on June 24, 1935 to extradite Mr. Okoyomon to the United Kingdom to face corruption charges.<sup>36</sup> The request for his extradition was made to Nigeria to face corruption charges under Section 1 of the Prevention of Corruption Act, 1906 Laws of England.

### **Fugitive must be wanted for Prosecution or Punishment for an Extradition Offence**

A fugitive criminal who is subject to extradition must be wanted either for prosecution in a foreign country or to serve punishment for an extradition offence or crime.<sup>37</sup>

Section 21 of the Act defines a fugitive criminal or fugitive as (a) any person accused of an extradition offence committed within the jurisdiction of a country other than Nigeria; or (b) any other person, who, having been convicted of an extradition offence in a country other than Nigeria, is unlawfully at large before the expiration of a sentence imposed on him for that offence, being in either case a person who is, or is suspected of being in Nigeria.

An extradition offence or crime is one that is punishable by imprisonment for not less than two years *both* in Nigeria and the commonwealth country seeking the surrender.<sup>38</sup> It is immaterial that such offences are of a purely fiscal nature under the laws of the country seeking the return of the

<sup>33</sup> *Ibid.*

<sup>34</sup> G. Griffith & C. Harris, *ibid* p. 3

<sup>35</sup> FHC/ABJ/CS/670/2014 delivered on 4 May, 2015

<sup>36</sup> See generally the case of *JFS Inv. Ltd v Brawal Line Ltd* (2010) 18 NWLR (Pt. 1225) 495 on the non-applicability of Section 12(1), 1999 Constitution (domestication Clause) to pre independence treaties. Contrast *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 on need to domesticate treaties for enforceability for post 1979 conventions and treaties.

<sup>37</sup> See *Udeozor v FRN* (2007) 15 NWLR (Pt.1058) 499 at 517. It is not for trial on behalf of the one country by the other.

<sup>38</sup> Section 20 (2). This is the dual criminality principle. The name of the crime may not be the same in both countries but it is for the applicant to discharge the burden of proof in showing that the elements of the offences are the same.



fugitive.<sup>39</sup> It is also called the 'returnable offence' in the Act. It is remarkable that the minimum term of imprisonment of 2 years for a returnable offence is only in respect of the commonwealth countries. If the country is not a commonwealth country, section 20(1) of the Act will be inapplicable, and the terms of the treaty between the countries will prevail.<sup>40</sup> Dongban-Mensem JCA in the case of *Udeozor v FRN*<sup>41</sup> stated as follows:

The general rule is that extraditable crimes must be those commonly recognized as *malum in se* (acts criminal by their very nature) and not those which are *malum prohibitum* (acts made crimes by statute). This, in most cases, explains why the type of crime and the punishment prescribed are included in the extradition treaty. By this principle also, it is generally regarded as an abuse of the terms of the treaty for a state to secure the surrender of a criminal for an extraditable offence and then to punish the person for an offence not included in the treaty.

Section 3 list the categories of offences for which the fugitive cannot be surrendered. They are:

- (i) offences which the Attorney-General of the Federation or the Court decides are of a political character;<sup>42</sup>
- (ii) the request for the fugitive surrender is made for the purpose of prosecuting or punishing <sup>him</sup> on account of his race, religion, nationality

<sup>39</sup> Section 20(3). See also Article 2 of the London Scheme for Extradition within the Commonwealth and Article 3, ECOWAS Convention on Corruption with similar provision.

<sup>40</sup> In the case of *Udeozor v FRN* (n.17) at p. 523, the court held that section 20 cannot be interpreted to include the United States of America as the section has specifically stated the group of nations to which the section applies - Nigeria and Commonwealth countries. In the treaty between Nigeria and South Africa, Article 2(7) provides that where extradition has been granted for an extraditable offence, it shall also be granted for any other offence specified in the request even if the latter offence is punishable by less than one year's deprivation of liberty, provided that all other requirements of extradition are met.

<sup>41</sup> Note 17 at p. 522 E-F.

<sup>42</sup> Offences which are of a political character are not defined in the Extradition Act. It is therefore to be determined based on the circumstances prevailing at the particular time and the evidence led by the fugitive in proof of his allegation. In the Mutual Assistance in Criminal Matters within the Commonwealth Act, an offence of political character is defined 'as an offence within the scope of an international convention to which both Nigeria and the requesting or requested country, as the case may be, are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence'. See *T v Immigration Officer* (1996) AC 742 at 753 and generally Geoff Gilbert, 'Terrorism and the Political Offence Exemption Reappraised' (1985) 34 *International and Comparative Law Quarterly* 695 at 703-704.

or political opinion or was otherwise not made in good faith or in the interest of justice;

- (iii) if the fugitive is surrendered, he is likely to be prejudiced at his trial, or to be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions;
- (iv) if by the trivial nature of the offence for which the surrender is sought or the passage of time since the commission of the returnable offence, it would be unjust or oppressive, or be too severe a punishment to surrender the offender;<sup>43</sup>
- (v) if the fugitive had been convicted or acquitted in Nigeria or elsewhere of the offence for which his surrender is sought;<sup>44</sup>
- (vi) if criminal proceedings are pending against the fugitive criminal in Nigeria for the (same) offence for which his surrender is sought;<sup>45</sup>
- (vii) if a fugitive criminal is charged for any offence in Nigeria, not the same offence for which his surrender is sought, or he is serving a sentence for such offence by a court in Nigeria, he shall not be surrendered until such a time as he has been discharged whether by acquittal or on the expiration of his sentence;
- (viii) the Attorney General of the Federation must be satisfied that the fugitive will not be detained or tried in the requesting country for any offence committed before his surrender other than any extradition offence which may be proved by the facts on which his surrender is granted.

The above facts must be disclosed in the affidavit of the Attorney General to support the request for extradition. If the fugitive intends to oppose the application, he must also depose to facts that will bring the case within section 3 (1) to (7) of the Act.

### **Request for Surrender**

By section 6(1) of the Extradition Act, a request for the surrender of a fugitive criminal shall be made in writing to the Attorney-General of the Federation by a diplomatic representative or consular officer of the

<sup>43</sup> In *Udeozor's* case at p. 522, the Court opined that an offence which carries a maximum sentence of over five years cannot by any stretch of the imagination be described as trivial.

<sup>44</sup> This is the bar plea of *autrefois convict or acquit* as guaranteed in section 36(9), 1999 Constitution. In case of previous conviction under section 3(4)(a), the criminal must 'not be unlawfully at large.'

<sup>45</sup> See section 5 of the Act

requesting country. The application shall be accompanied by a duly authenticated warrant of arrest, if the fugitive is wanted for prosecution,<sup>46</sup> or certificate of conviction issued in the requesting country, if the fugitive is wanted for punishment.

The Attorney-General is expected to make an order under his hand to the court<sup>47</sup> for proceedings to be held to determine whether the fugitive should be extradited. Before the Attorney-General can make an order, he must be satisfied that the surrender is not precluded by any provisions of the Act.<sup>48</sup> In some cases, the request for the surrender of a fugitive criminal may be made by more than one country, whether for the same or different returnable offences. In that case, the Attorney-General shall determine which request to be accorded priority and accordingly may refuse the other request or requests. The decision of the Attorney General will be dependent on the circumstances of the case especially the relative seriousness of the offences, if different; the relative dates on which the requests were made; and the nationality of the fugitive and the place where he is ordinarily resident.<sup>49</sup>

### Procedure

The request for extradition must be in writing from the consular officer or a diplomatic representative of the requesting country to the Attorney General of the Federation and shall be supported by-

- (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
- (b) a statement of the facts of the offence and the procedural history of the case;
- (c) a statement of the provisions of the law describing the essential elements of the offence for which extradition is requested;
- (d) a statement of the provisions of law describing the punishment for the offence;

<sup>46</sup> By sections 7 and 8, the Federal High Court is empowered to issue warrant for the arrest of a fugitive upon application by the Attorney General; a provisional warrant may also be issued after conviction by the judge without an application by the Attorney General.

<sup>47</sup> Although section 6(2) refers to a magistrate and section 21 defines a magistrate to mean a Chief Magistrate, Senior Magistrate or Magistrate grade 1 or grade 11, the courts have held that reading section 6(1) and (2), Extradition Act and section 251(1)(i) 1999 Constitution, the court that has jurisdiction is Federal High Court. See *FRN v Orhiumu and FRN v Dike* (n. 13) and *Orhiumu v FRN* (2004) LPELR 5880(CA).

<sup>48</sup> Sections 3(1) to (7) and comments above

<sup>49</sup> Section 6(4)

- (e) a statement of the provisions of the law describing any statute of limitation on the prosecution which shall be conclusive; and
- (f) the documents, statements or other information whether the fugitive is wanted for prosecution or punishment.

If the fugitive criminal is wanted for prosecution, the request shall be supported by the following documents-

- (a) a copy of the warrant or order of arrest, or any document having the same force or effect, if any, issued by a judge or other competent authority;<sup>50</sup>
- (b) a copy of the indictment, charge sheet or other charging document, if any; and
- (c) such other information as would justify the committal for trial of the person if the offence had been committed in the requested State, but neither State is required to establish a *prima facie* case.

In the case of a fugitive criminal wanted for punishment, the request shall be supported by-

- (a) a copy of the judgment of conviction, if available, or a statement by the judicial officer or other competent authority that the person sought has been convicted or a certified copy of any record of conviction that reflects the charge and the conviction;
- (b) information establishing that the person sought is the person to whom the conviction refers; and
- (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out.

### Hearing of the case

Although the hearing is before the court, it is not in the nature of a criminal trial requiring 'arraignment'.<sup>51</sup> This is so even in the face of section 9(1) which states in part that the court 'shall proceed with the case in the same manner, as nearly as may be, and shall have the same jurisdiction and powers, as if the fugitive were brought before him charged with an offence committed within his jurisdiction'. The fugitive criminal is not standing trial

<sup>50</sup> Section 21 defines a 'warrant' to include any judicial document authorizing the arrest of a person accused or convicted of an offence.

<sup>51</sup> *Udeozor v FRN* n. 17 at p. 517

for the extradition offence for which the extradition order is sought but the court is only performing the preliminary judicial functions necessary to give effect to the order of the Attorney-General to surrender the alleged fugitive to the requesting country.<sup>52</sup>

By section 9(2), the court is entitled to receive evidence which may be tendered by the fugitive to show that the offence of which he is accused or alleged to have been committed is not an extradition offence or that his surrender is for some other reason precluded by the Act especially under section 3(1) to (7) or by the extradition agreement (if any) in force between Nigeria and the requesting country seeking his surrender. The Extradition Treaty usually has a list of Extraditable offences.<sup>53</sup> The Attorney-General must show that the order relates to any of the offences and the fugitive must be able to show that the order is unrelated to the treaty.

### **Extradition and Terrorism**

Section 18(1) of the Terrorism (Prevention) Act<sup>54</sup> provides that where a foreign state makes a request<sup>55</sup> for assistance in the investigation or prosecution and even extradition where there is mutual treaty of an offence related to terrorism, after due consideration, the Attorney General may-(a) execute the request; or (b) inform the foreign state making the request of any reason for: (i) not executing the requests, or (ii) delaying the execution of the requests.

By Section 19(1), the Attorney General may make a request to any foreign State to extradite a suspect if there is mutual extradition treaty, and/or-

- (a) to provide evidence or information relevant to an offence under this Act; or
  - (b) for the restraint and forfeiture of property located in that State and which are liable to be forfeited for being a terrorist property.
- (2) the Attorney-General may, in respect of any proceedings for an offence under this Act, apply to a judge in Chambers for an order directed to any person resident in a foreign state to deliver himself

<sup>52</sup> *Udeozor v FRN (supra)*

<sup>53</sup> See Article 2 of the Extradition Treaty between Nigeria and South Africa Cap. E26, which lists 7 extraditable offences. The bilateral Extradition Treaty between the United States of America and the United Kingdom of 22 December 1931 list 27 returnable offences in Article 3.

<sup>54</sup> 2011. This Act was amended by the Terrorism (Prevention) (Amendment) Act, 2013.

<sup>55</sup> Section 21 states that the request under section 18 or 19 shall be in writing, dated and signed by or on behalf of the person making the request. It may be transmitted by facsimile or any electronic device or means.

or any document or material in his possession or under his control to the jurisdiction of the court or, subject to the approval of the foreign State for the purpose of giving evidence in relation to the proceedings.

Section 22 provides that Offences under sections 1, 2, 3, 4, 5, 6, 10, 11, 13 and 14 of this Act are considered to be extradition crimes for which extradition may be requested, granted or obtained under the Extradition Act.

The effect of the above provisions is that a terrorist<sup>56</sup> can only be extradited where there is an Extradition Treaty between Nigeria and the State where the fugitive criminal is hiding. The result of this is that terrorists have found safe haven in most countries in Africa and Europe because of the absence of Extradition Treaty with those countries.<sup>57</sup> This is a challenge to the fight against terrorism in view of the trans-border nature of the crime.

It is submitted that although a foreign (requested) State may not have an Extradition Treaty with Nigeria, if the country is a signatory to various United Nations Conventions related to terrorism such as the International Convention for the Suppression of Terrorist Bombing, 1998,<sup>58</sup> the International Convention for the Suppression of the Financing of Terrorism, 1999,<sup>59</sup> International Convention against the taking of Hostages, 1979 or the United Nations Convention against Transnational Organized Crime, etc., it can rely on such conventions to seek extradition.<sup>60</sup> It will therefore not be correct to assert that only countries with an extant extradition treaty can benefit. It is my contention that Judges in Nigeria can

<sup>56</sup> A 'terrorist' is defined in section 40 of the Terrorism (Prevention) Act as amended as any natural person who commits any of the following acts: - i.) commission or attempting to commit, terrorist acts intentionally by any means, either directly or indirectly; (ii) participation as an accomplice in terrorist acts; or (iii) organizing terrorist acts or directing others to commit such acts; (iv) contributing to the commission of terrorist acts with a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act. See also section 15, EFCC (Establishment) Act, 2004.

<sup>57</sup> Note the *Kingsley Edegbe's case* where the Court refused to make an order of surrender to Netherlands because there was no Extradition Treaty or Agreement with the Country.

<sup>58</sup> Articles 6 (4) and 8(1) deal with extradition. By Article 9(1), Offences in Article 2 are extraditable offences.

<sup>59</sup> Articles 10 -15 deal with extradition and mutual legal assistance in the fight against terrorism.

<sup>60</sup> Section 40 Terrorism Act (as amended) on what constitutes 'terrorist act' includes offences under the listed Conventions and Protocols. See also the United Nations Convention against Transnational Organised Crime.

rely on Conventions in which Nigeria is a signatory to assume jurisdiction and make an order of surrender in terrorism cases.<sup>61</sup>

### **Extradition and Economic and Financial Crimes**

Section 6(k), Economic and Financial Crimes Commission (Establishment) Act, 2004 provides that the Commission shall be responsible for dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes. In the discharge of this function, a General and Assets Investigation Unit is to be set up and charged with responsibility for dealing with matters connected with extradition and mutual assistance in criminal matters involving economic and financial crimes.<sup>62</sup>

The effect of these powers and provisions are that the Commission may request for the extradition of a person engaged in economic and financial crimes. However, there must be an existing treaty with that country or an extradition agreement.

### **Application of International Conventions and Multilateral Treaties/Agreements (MLA)**

The Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act<sup>63</sup> gives legal force to the Scheme for Mutual Assistance in Criminal Matters within the Commonwealth.<sup>64</sup> The Central Authority Unit is the body entrusted with responsibility to enforce the Act. The grounds of refusal of assistance are stated in section 6 as follows:

- (a) if the conduct does not constitute an offence under any law in force in Nigeria
- (b) if an offence or proceedings is of a political character
- (c) if conduct which in the requesting State is an offence only under military law or relating to military obligations
- (d) if conduct in relation to which the person now accused or suspected of having committed an offence had previously been acquitted or convicted by a court in Nigeria.

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<sup>61</sup> Article 16 of the United Nations Convention against Transnational Organised Crime deals with Extradition Article 16(3) provides that each of the offences to which the article applies shall be deemed to be included as extraditable offences in any extradition treaty; Articles 10-15, International Convention for the Suppression of the Financing of Terrorism.

<sup>62</sup> Section 13(1) (e), EFCC Act.

<sup>63</sup> Cap. M24, Laws of the Federation of Nigeria 2004

<sup>64</sup> A list of the Commonwealth countries are in the Schedule.

It is submitted that other conventions and bilateral treaties will be applicable for purpose of extradition.<sup>65</sup> However, they must be domesticated. Each of the conventions urge each State Party to take legislative measures, in accordance with fundamental principles of its domestic law to establish as criminal offences those offences covered by the convention and also make them extraditable.<sup>66</sup> It is therefore my contention that irrespective of being a State Party to a convention, domestication is still mandatory. Remarkably, these conventions although not domesticated, provide the basis for local statutes dealing with the related subjects.<sup>67</sup>

### **Bilateral Extradition Treaty between United States of America and the United Kingdom signed at London on December 22, 1931 - Applicability to Nigeria**

Fundamental to any extradition in Nigeria is the existence of an extradition treaty or agreement.<sup>68</sup> It is also established that by section 12(1), 1999 Constitution, that no treaty shall have effect except it is domesticated. The argument therefore has always been made in several cases coming before the Court in Nigeria,<sup>69</sup> that there is no extradition treaty between Nigeria and the United Kingdom. The argument is that there is no order of the President of Nigeria published in the Federal Gazette applying the provisions of the Extradition Act to the United Kingdom. A further argument is that there is no domestication of the bilateral treaty between the United States of America and United Kingdom of 1931,<sup>70</sup> as required by section 12(1), 1999 Constitution. This treaty was made applicable to Nigeria on June 24, 1935.<sup>71</sup>

The controversy as to the existence of a bilateral treaty between Nigeria and the United Kingdom has for now been answered in the case of *Attorney General of the Federation v Emmanuel Okoyomon*.<sup>72</sup> In this case, the United Kingdom sought the surrender of Mr. Okoyomon upon a 7-count indictment of corruption contrary to Section 1 of the Prevention of Corruption Act 1906. The Respondent filed a preliminary objection seeking an order

<sup>65</sup>These conventions and bilateral agreements are discussed above.

<sup>66</sup>See Article 6, United Nations Convention against Transnational Organized Crime, Article 16 deals with extradition and that the offences created under the convention shall be deemed extraditable offences.

<sup>67</sup>United Nations Convention against Corruption is the basis of our Independent Corrupt Practices & other related offences Commission Act, 2000.

<sup>68</sup>Section 1(1), Extradition Act.

<sup>69</sup>See *Attorney General of the Federation v Okoyomon* n. 34.

<sup>70</sup>This treaty was made applicable to Nigeria on June 24, 1935.

<sup>71</sup>At all material times, Nigeria was a colony of the United Kingdom.

<sup>72</sup>See n. 34.



striking out the suit for want of jurisdiction contending *inter alia* that Extradition Treaty between the United States of America and United Kingdom 1931 is unenforceable and inapplicable to Nigeria as there is no Act of the National Assembly domesticating the treaty making it applicable to Nigeria in violation of Section 12(1), 1999 Constitution. The Applicant in opposing the preliminary objection submitted *inter alia* that the treaty is a legal instrument and existing law under Section 315(4), 1999 Constitution and it is deemed to be an Act of the National Assembly under Section 315(1)(a) and does not require domestication under Section 12(1).

The Court following the Supreme Court case of *JFS Investment Ltd. v Brawal Line Ltd.*<sup>73</sup> held that the Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1931 and made applicable to Nigeria by a legal instrument on June 24, 1935 is an existing law by virtue of the provisions of Section 315(4)(b) and that it does not require further domestication.<sup>74</sup> The Court ordered that Mr. Okoyomon be committed to prison for Extradition to the United Kingdom to face trial for the crimes alleged.<sup>75</sup>

The Supreme Court in the case of *JFS Investment Ltd. v Brawal Line Ltd* while considering the applicability of the Hague Rules ,1914 which was not domesticated, drew a distinction between international instruments pre 1979 and post 1979 as follows:

I absolutely agree that the Hague Rules 1924, being a pre-1960 Treaty/Convention and therefore an existing law in Nigeria at the time the 1979 Constitution came into force, section 12 (1) of the constitution cannot operate to affect its application. The reason being that by October 1st 1960 at the Nigeria Independence the Government of the Federation assumed all obligations and responsibilities of the colonial regime of the government which arose from valid international instruments such as The Hague Rules, 1924. Nigeria became a party through exchange of letters between Hague, the United Kingdom and the Government of Nigeria on October 1, 1960. The Hague Rules 1924 was extended to Nigeria as a legislation which formed part of our laws before independence, and was received as our laws

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<sup>73</sup> (2010) 18 NWLR (Pt. 1225) 495

<sup>74</sup> See pp. 20-21 of the Judgment

<sup>75</sup> P. 49 of the Judgment

after independence. It does not require any further ratification as stipulated in Section 12 of the 1979 Constitution before it can be applicable (same as Section 12 of the 1999 Constitution). In other words, The Hague Rules, 1924, having assumed the force of law in Nigeria - thereby an existing law must be deemed to be an Act of the National Assembly by virtue of sections 274(1) and 277 of the 1979 Constitution. In short, *Abacha's* and *Hague's* cases cited are applicable to all post 1979 treaties or conventions which would need to be enacted to become part of our municipal laws, but surely this is not applicable to Pre 1960 treaties and conventions.<sup>76</sup>

It is submitted that from the decisions in *JFS Inv. Ltd v Brawal Line Ltd* and *Attorney General of the Federation v Mr. Emmanuel Okoyomon* there exist an Extradition Treaty between Nigeria and United Kingdom and there is no necessity for domestication because it is a pre-1979 treaty. Where any treaty is post 1979, domestication is a condition precedent to application of the treaty.<sup>77</sup>

### **Extradition and Human Rights**

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) makes elaborate provisions to protect the fundamental human rights of the fugitive. Section 35(f) provides for the right to personal liberty which can only be derogated in cases of extradition. Section 41(1) (2)(b) guarantees freedom of movement and no citizen of Nigeria shall be removed (extradited) from the country to another country except for trial or to serve imprisonment subject to existing reciprocal agreement (treaty). A fugitive who is arrested under a warrant of arrest may seek to enforce his fundamental rights to freedom of movement in our courts.<sup>78</sup>

In fact, Sections 3(8), (9) and 10 of the Extradition Act contemplates that a fugitive criminal could apply for a writ of *habeas corpus*. At all stages of the extradition process, including post arrest or post committal, the person sought to be extradited has a right to apply for bail.

<sup>76</sup> *Ibid* Per Adekeye, JSC at p. 535

<sup>77</sup> *Abacha v Fawehinmi* (2000) 6NWLR (Pt. 660) 228

<sup>78</sup> Mr. Emmanuel Okoyomon who was facing an extradition hearing to the United Kingdom in Suit No. FHC/ABJ/CS/670/2014 brought an application for the enforcement of his fundamental rights in Suit No. FHC/ABJ/CS/687/2014 alleging that the Government intended to extradite him without a valid order of surrender.

### **Challenges of Extradition in Nigeria**

The challenges to extradition in Nigeria can be categorised as follows:

- (a) Absence of bilateral agreements or treaties with various countries, especially outside the Commonwealth.
- (b) Legislative slowness in domesticating existing bilateral treaties and agreements.
- (c) Poor communication between the requesting and the requested States, especially when diplomatic relations are not cordial.
- (d) Dual criminality requirement, especially the burden of proof of corresponding offence in the requesting State as well as the requested State.
- (e) Inadequate capacity of Judges, Prosecutors and Investigators involved in extradition cases.

### **Suggested Solutions**

- (a) There is an urgent need to review, update and domesticate existing bilateral agreements and treaties.
- (b) Capacity building in Judges, Prosecutors and Investigators involved in extradition cases.
- (c) Confidence building among nations to remove the element of distrust.
- (d) A review of the Extradition Act in line with recent developments in other jurisdictions.
- (e) A proactive Executive, Legislature and Judiciary in extradition issues and cases.

### **Conclusion**

The world is a global village and with the increasing incidence of transnational organised crimes, especially terrorism, economic and financial crimes, it has become increasingly imperative for nations to cooperate in the fight against such crimes. Extradition of offenders to requesting nations is a necessary machinery to accomplish this objective. Nigeria has a duty to implement extant Extradition Laws and international conventions and bilateral treaties to meet this objective. The legislature should be proactive in the domestication of treaties and the judiciary should be liberal in the application of the existing treaties to deserving cases. Capacity need to be developed especially by prosecutors and persons charged with the responsibility of implementing our extradition statutes.