

EXAMINING THE CHALLENGES AND IMPLICATIONS OF EXTRADITION ON NIGERIA: THE WAY FORWARD*

Abstract

Extradition, which is mostly regulated by treaty and reciprocity, has been used by states over the years to ensure the transfer of fugitives who have moved to other states in order to avoid prosecution by the relevant law enforcement agencies in the state where the offence was committed. This has helped in advancing justice by bridging the territorial gaps which ordinarily would have truncated the prosecution of such fugitives. In as much as the importance of extradition cannot be downplayed, it has faced some challenges which have hampered its effectiveness. More so, some states have at one point or the other used other ways other than extradition in returning fugitives, which undermine the sovereignty of such other states. This study examined the challenges of extradition under international law and the implications of extradition practices on Nigeria. The study recommended the need, inter alia, for sanctions on states that fail to comply with laid down extradition procedure under their domestic laws and relevant treaties, and that such non-compliance should be treated as a factor that can oust the jurisdiction of domestic courts in trying the fugitive.

Keywords: Extradition, Challenges, Implications, Way Forward, Nigeria

1. Introduction

One area of modern social organization is the emergence of sovereign states. These states have economic, social and political interactions *inter se*. Crimes may also be committed locally or transnationally and the need to bring the offenders to justice will arise. In order to bring the fugitive to justice, the host country must surrender the fugitive to his country of origin/residence. It is the reality of this situation that has given rise to the principle of extradition in international relations, law and diplomacy. According to Justice Sathasivam,¹ with the tremendous increase in the international transport and communication, extradition has become prominent since the emergence of the 21st century. It is one thing to have an extradition treaty and another thing to comply with same. The compliance or non-compliance by States are likely to have implications. According to Matorin,² extradition treaties and other conventional methods of international cooperation have proven ineffective in the fight against international terrorism and narco-terrorism. Hence, the impact and effect of extradition on transnational crimes cannot be downplayed. The extradition process is sometimes faced with challenges and several implications can be inferred. As Stefanovska has pointed out, part of the problem with extradition is trying to achieve the correct balance between allowing the free flow of fugitive offenders from States where they may be prosecuted for their crimes, and in safeguarding the fugitive from oppressive punishment or from persecution on account of his personal characteristics, beliefs and opinions.³

2. Definition of Terms

Extradition

Black's Law Dictionary⁴ defines extradition as 'the surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish the person demands the surrender'. Bassiouni⁵ defines international extradition as the process whereby one state delivers to another state, at its request, a person charged with a criminal offence against the law of the requesting state, so that he may be tried and punished. He further added three core elements: acts of sovereignty on the part of two States, a request made by one state from another for the surrender of an accused or convicted person, and lastly the surrender of the person required for trial or punishment in response to the request. Extradition laws and procedure require a great deal of attention across the globe due to the rapid increase in international crimes and even trans-national organized crimes. This is largely due to the fact that by the principle of *aut punier aut dedere*, a state is expected to either punish or surrender a fugitive to the requesting state. Extradition laws and procedure play an important role to surrender and punish a fugitive who is trying to escape from the law. It could be said that some of the problems of extradition lies in the procedure

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¹ *Abu Salem Abdul Qayoom Ansari v. State of Maharashtra* (2011)11 SCC 214

² MJ Matorin, 'Unchanging the Law: The Legality of Extraterritorial Abduction in Lieu of Extradition' (1992) 41 *Duke Law Journal*, 907

³ V Stefanovska, 'Extradition as a Tool for Inter Cooperation: Resolving Issues About the Obligation to Extradite' (2016) 2 (1) *Journal of Liberty and International Affairs*, 40

⁴ BA Garner (ed), *Black's Law Dictionary* (8th Edn: St. Paul: Thomas Reuters, 2004) p. 1760

⁵ MC Bassiouni, *International Extradition in American Practice and World Public Order*' (1968) *Tenn. L. Rev.* 1

more so when a lot of politics is played in the process. The gimmicks surrounding the extradition request for the extradition of Abba Kyari, a Nigeria Policeman whose extradition was requested by United States of America leaves much to be told as the request is yet to be granted.⁶

International Law

Beckman and Butte defined international law to consist of rules and principles of general application dealing with the conduct of states and of international organizations in their international relations with one another and with private individuals, minority groups and transnational companies.⁷ International law is a system of treaties and agreements between nations that govern how nations interact with other nations, citizens of other nations, and businesses of other nations.⁸

3. Conditions for Extradition

Some factors are germane while considering the grant of extradition requests. These factors are as follows:

Nature of Crime must be Extraditable

The nature of the offences that a fugitive may have committed must be an extraditable offence. What constitute extraditable offences are usually spelt out in the treaties between states. Generally, states extradite only for serious crimes.⁹ The general rule is that extraditable crimes must be those commonly recognized by civilized nations as *malum in se* (acts criminal by their very nature) and not merely *malum prohibitum* (acts made crimes by statute), and must be included in the extradition treaty.

Political Offences

Some extradition treaties and municipal laws treat political offences as non-extraditable offences.¹⁰ The European Convention on Extradition¹¹ states that, 'extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence.' The Extradition Act in Nigeria also carries this restriction.¹² According to Garcia-Mora, the courts have attempted to solve the problem of determining what a political offence is by ascertaining the degree of connection between the common crime and the political act. This degree depends entirely upon the test adopted by each State.¹³

Military Offences

Military offences are also not extraditable offences, for instance, desertion. Other military offences include insubordination, neglect of duty, unbecoming conduct.¹⁴

Religious Offences

Despite the classification of these offences like homosexuality, heresy, adultery, alcoholism etc as religious offences, they can best be described as offences against morality. The grant of and procedure as to extradition are most properly left to municipal law, and does not preclude states from legislating so as to refuse the surrender by them of fugitives if it appears that the request for extradition had been made in order to prosecute the fugitive on account of race, religion, or political opinions or inclinations, or if the fugitive may be prejudiced thereby upon eventual trial by the courts of the requesting state.

Capital Offences

This condition states that where the offence for which a person is to be punished is a capital offence, extradition will not be granted. Nigeria still retains the death penalty for some offences under its criminal legislation¹⁵ and this may constitute a problem where treaties with requesting states contain this exception. It is worthy of note that scholars are divided on the question of whether or not capital punishment is outlawed under international law.¹⁶ Despite this, International Human

⁶ A Ochojila, 'Court dismisses suit for Abba Kyari's Extradition' The Guardian, 30th August, 2022. www.guardian.com/ng/news/court-dismisses-suit-for-abba-kyari's-extradition. Accessed 11 March, 2023.

⁷ R Beckham & D Butte, 'Introduction to international law'. <https://www.ilsa.org/jessup> Accessed 5 March, 2023

⁸ What is International Law. <https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/international-law.html#:~:text=International%20law%20is%20system,and%20businesses%20of%20othernations> Accessed 24 April, 2023

⁹ A Babalola, Extradition Under International Law: Tool for Apprehension of Fugitives (2014)22 *Journal of Law, Policy and Globalization*, 26

¹⁰ For example, the European Convention on Extradition

¹¹ European Convention on Extradition, 1957, Art. 3(1)

¹² Extradition Act, Cap E25, LFN, 2004, s. 3(1)

¹³ M R Garcia-Mora, 'The Nature of Political Offences: A Knotty Problem of Extradition Law' (1962) 48(7) *Virginia Law Review*, 1239

¹⁴ A Babalola, 'Extradition Under International Law: Tool for Apprehension of Fugitives' (2014)22 *Journal of Law, Policy and Globalization*, 27

¹⁵ For example, offences like treason, murder, armed robbery, treachery and kidnapping attract the death penalty. The death penalty is also recognized under Section 33 (1) of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

¹⁶ J Obonye, 'Human Rights, Extradition and the Death Penalty' <https://sur.conectas.org/en/human-rights-extradition-death-penalty> accessed 28 March, 2023

Rights Instruments like the European Convention on Human Rights and the American Convention on Human Rights outlaw the death penalty.

Rule of Specialty

The principle of specialty provides that the requesting state may, after the fugitive has been surrendered to it, prosecute or punish the fugitive only for the crime or crimes for which extradition was sought and granted, subject to certain exceptions. A common modern formulation of this doctrine is that a person extradited under the treaty may only be detained, tried, or punished in the requesting state for:

- a. The offence for which extradition was granted or a differently denominated offence based on the same facts, provided the offence is extraditable or is a lesser included offence;
- b. An offence committed after the extradition;
- c. An offence for which the executive authority of the requested state consents.

It is generally regarded as an abuse of the principle of extradition for a state to secure the surrender of a fugitive criminal for an extraditable offence and to punish this person for an offence not included in the extradition treaty, without the consent of the State of refuge. It is noteworthy that the practice of extradition is founded on trust and reciprocity.¹⁷

Procedural and Documentation Requirements

Extradition treaties generally contain provisions that specify the documents and information required to support an extradition request, along with any translation and authentication requirements. Typically, the requesting state must provide information about the identity of the person sought (including specific descriptive information); the text of relevant laws; information about the facts and procedural history of the case; documentation relating to the charges or convictions; and any other information the parties have deemed necessary to evaluate the request. With respect to requests for extradition for a person sought from the United States, U.S. extradition Judges have interpreted U.S. extradition treaties and statutory law as requiring evidence sufficient to, at minimum, support a finding of 'probable cause' that the person is guilty of the charges pending in the requested state.

Nationality

Extradition request may be refused where the person sought to be extradited is a national of the surrendering country. Some countries refuse to extradite their own nationals, and where that position prevails in negotiations, an extradition treaty may include an exception for this policy. The U.S. government has long held the view that nationality should not operate as a bar to extradition, since the requesting state should have the right to pursue criminal charges against persons who violate its laws regardless of nationality. The U.S. government accordingly extradites its nationals and seeks to limit nationality-based denials of its outgoing requests.

Statute of Limitations

Because statutes of limitations for particular offences vary by country, many treaties include provisions specifying which country's statute of limitations will apply or, in some cases, providing that the passage of time is no bar to extradition. U.S. extradition treaties typically provide that the statute of limitations in the requesting state should be the only relevant limit.

Prior Proceedings (*non bis in idem*)

These provisions, which appear in most extradition treaties, bar extradition where the person has already been convicted or acquitted in the requested state of the offence for which extradition is requested. The concept is similar to the doctrine of prevention of double jeopardy which applies in most states including Nigeria.

Principle of Dual Criminality

What this principle entails is that the extradition crime must be a crime punishable according to the law of both the state of asylum and of the requesting state. The British Court tested this rule in *Factor v Laubensheimer*.¹⁸ It is likely that what is put into consideration is the Federal Law of the State and not the law of a State in a federation where the fugitive resides. In that case, the British authorities instituted extradition proceedings against Jacob Factor on a charge of receiving in London money which he knew was fraudulently obtained. At the time extradition was applied for, Factor was residing in the State of Illinois in USA and the offence charged was not an offence under Illinois Law. The United States Supreme Court held that this did not prevent extradition, since according to the criminal law generally (i.e. Federal Law) of the US, the offence was punishable.

Fundamental Rights Protection

Human rights protection is one of the major safeguards enshrined in constitution of states across the world. These human rights protections in national legislations and in international instruments may constitute further restrictions on extradition.

¹⁷ A Babalola, 'Extradition Under International Law: Tool for Apprehension of Fugitives' (2014) *Journal of Law, Policy and Globalization*, 27

¹⁸ (1933) 290 US 2769

Although some national legislation still permit the imposition of death penalty on certain offences, international instruments on extradition have a restriction on extradition where the offence for which a fugitive is requested carries a death penalty. In the *Soering Case*,¹⁹ the United Kingdom intended to extradite a person to the United States for a crime carrying a possible penalty of death. The European Court of Human Rights held that such circumstances, where a fugitive might spend years on ‘death row’ awaiting the result of appeals, would constitute inhuman and degrading treatment and was thus inadmissible.

4. Some Applicable Legal and Institutional Framework on Extradition in Nigeria

There is plethora of legal frameworks that regulate the extradition of fugitives in Nigeria. Apart from the municipal laws applicable within the territory of Nigeria, Nigeria is a signatory to many bilateral and multilateral treaties. The domestic legislations relating to extradition in Nigeria area as follows: Constitution of the Federal Republic of Nigeria 1999 (as amended), Extradition Act 1967, Extradition Modification Order 2014, Extradition Amendment Act 2018, Evidence Act 2011, Federal High Court Act 2019, Federal High Court (Extradition Proceeding) Rules 2015, Administration of Criminal Justice Act 2015, Immigration Act 2015, Correctional Services Act 2019. Some institutions relating to extradition in Nigeria are Federal Ministry of Justice, The Court, Nigeria Police Force, Federal Ministry of Foreign Affairs, Nigerian Immigration Service, and Nigerian Correctional Service.

5. Procedure for Extradition in Nigeria

Extradition process in Nigeria is a component of constitutional and statutory provisions, trans-border cooperation, mutual international relations and domestic treaties.²⁰ The process of extradition is commenced by the requesting state making a request through the diplomatic channel to the Attorney General of the Federation. The request by the requesting state must show the existence of an offence committed by the person sought to be extradited and thus the need for an authentication warrant of arrest or certificate of conviction issued by the requesting state.

Extradition proceedings are criminal in nature and require a proof beyond reasonable doubt. The Attorney General cannot be compelled to initiate proceedings through legal process or by an order of mandamus to do same. It is a discretionary power of the Attorney General and it is only when the Attorney General has satisfied himself that the conditions for initiating extradition proceedings have been met that he can proceed further. This position was given judicial pronouncement in the case of *Udeozor v Federal Republic of Nigeria*²¹ where the Court stated that the responsibility and power to ascertain the condition for acceding to extradition request resides in the Attorney General and no other body or Court.

The request should be made in writing as the law does not envisage a verbal request. Where there is request made by two states for the handover or surrender of a fugitive, after considering all the circumstances of the case, especially in relation to the seriousness of the offence, the date to which the request was made, in order of priority and other factors, the Attorney General may accede to any one he is disposed to. If the Attorney General decides to proceed by taking further steps on the request, he will bring an application for extradition to the Federal High Court to ensure that the fugitive is surrendered to the requesting state.²²

The application and other relevant documents must be served on the fugitive who is at liberty to engage the services of a lawyer, accept the extradition or contest it by filing the relevant counter affidavit, within the prescribed 5-day period. The office of the Attorney General may choose to file a reply on point of law within 48 hours. The Attorney General or the counsel representing the Attorney General will argue for the surrender of the fugitive and the fugitive’s counsel in reply may argue otherwise. The counsel who argued first may choose to make a reply. The Court in reaching its verdict must consider whether the offences are those extraditable within the Extradition Act amongst other exceptions provided by the Extradition Act and treaties. It is to be noted that the supporting evidence must be *prima facie* one of the allegation in the application. The application of the Attorney General is not for the trial of the fugitive on merit. Rather, the purpose is to invoke the exercise of the court’s judicial power over whether the fugitive can validly be extradited or not. On application by way of information, with the necessary evidence, a judge of the Federal High Court may issue a provisional warrant of arrest and direct that the fugitive be brought before him within 2 hours or for any such period stated by the Court. The fugitive shall be informed of the allegation against him. The fugitive may be remanded in custody or admitted to bail depending on the discretion of the court. It should be noted that the post arrest proceedings are different from arraignment proceedings. After the proceedings, the Court will transmit record of proceedings to the Attorney General who shall then file an application for extradition of the fugitive within 48 hours. The matter shall be set down for hearing within 14 days and if on the return date the Attorney General fails to inform the court of any request for extradition, the fugitive shall be discharged not on the merit or as a bar to future proceedings regarding the extradition.

¹⁹ (1989) EHRR 430

²⁰ U Chioma, ‘Extradition Process in Nigeria’ <https://www.thenigerianlawyer.com/extradition-process-in-Nigeria> Accessed 30 March, 2023

²¹ (2007) LCN/2249 (CA)

²² U Chioma, ‘Extradition Process in Nigeria’ <https://www.thenigerianlawyer.com/extradition-process-in-Nigeria> Accessed 31 March, 2023

The purpose of a hearing which is purely at the discretion of the Attorney General is not to ask the fugitive if he desires to be extradited. That will be ridiculous. The purpose is to determine whether the requisition made shows sufficient cause to warrant extradition. To hold otherwise will be ridiculous. It is not a criminal trial but a preliminary to such trial which shall take place where the offences are alleged to have been committed.²³

6. Challenges to Extradition

Some of the challenges to extradition are as follows:

Political Offences

One of the improvements in domestic legislations and treaties in international law is the political offence exemption. The Extradition Act²⁴ provides that a fugitive shall not be surrendered where the reason is an offence of political character. The Act did not define what constitutes 'political character' thereby leaving that area ambiguous and can be open to abuse by fugitive criminals and various interpretations of political character.²⁵ The absence of the definition of political character is not peculiar to Nigeria as countries like Columbia, United Kingdom and Ghana have similar provision thus displaying an inherent problem with these laws. Originally, the political offence exception was for protecting revolutionaries from being returned to their countries to face prosecution for crimes committed against their governments.²⁶ Some states try to bring a solution to this problem by adopting a system of pre-dominance. For example, the Switzerland extradition law states that:

Extradition is not granted for political offences. It is granted, however, even when the guilty person alleges a political motive or end, if the act for which it has been requested constitutes primarily a common offence.

The Federal Tribunal decides liberally in each particular instance upon the character of the infraction according to the facts of the case.²⁷

Granting of Asylum

It can well be argued that granting of asylum is one of the challenges to extradition although in an indirect way. Territorial states grant asylum to political offenders, military offenders and religious offenders thereby protecting them. One of the accepted principles under international public law is to the effect that persons who are citizens of asylum country are excluded from extradition.

Irregular/Extraordinary Rendition

Extradition involves the transfer from one jurisdiction to another and the act of handing over, both after legal proceedings and according to law. When it comes to irregular rendition, the process is not carried out in consideration of the law. This process has been used by the United States of America and has been followed by other countries in the world. Extraordinary rendition denies a person of the right to challenge his transfer to the requesting or receiving state. This can be seen in the Dikko Affair of 1984 which is an example of an attempted unlawful rendition. After a coup *d'etat* in 1983, Umar Dikko, a former Minister alleged to have been involved in corrupt practices, was requested by the Federal Military Government of Nigeria from Britain. Before the British government responded to the request, an intelligence officer from the Nigerian security forces with three Israeli nationals abducted Mr. Dikko and attempted to take him to Nigeria in a crate. This attempt did not succeed and was foiled by the British Government and it strained the relationship between Nigeria and Britain.²⁸ Such practice undermines the importance of treaties and the obligations therein. It further strains the relationship between states which may to a large extent affect the granting of extradition requests made. It also affects the international profile of countries who engage in such practices.

Human Rights Issues

Human Rights law does not treat the extradition as human rights violation even though in the process of extradition, there is a probability of human rights violation while detaining, prosecuting and imposing punishment. There is need to strike a balance in the extradition process between the sovereignty of states and the protection of individual's human and civil rights. Despite the human rights safeguards such as refrain from imposing capital punishment for extradited offenders, political offence exceptions, double criminality, principle of specialty, the enforceability of these safeguards of the requesting states becomes an issue. It would appear that most of the exceptions to extradition are targeted at attaining fairness in extradition while protecting the rights of the fugitive but these factors are sometimes sidelined with the use of irregular rendition, kidnapping *et cetera*.

²³ *Udezor v FRN* (2007) LPELR-CA/L/376/05

²⁴ Extradition Act, Cap E25 LFN, 2004, s. 3(1)

²⁵ C Adeogun- Philips, 'Adhering to the Rule of Law in Investigation and Prosecution National Workshop for Investigators and Prosecutors held on the 26th- 30th August, 2019 at the Andrews Otutu Obaseki Auditorium, National Judicial Institute, Abuja, p 6

²⁶ AJ Buckland, 'Offending Officials: Former Government Actors and the Political Offence Exception to Extradition' (2006) 94 *California Law Review*, 423

²⁷ Extradition Treaty with Switzerland, 1996, Article 10

²⁸ K-M Momodu, 'Extradition of Fugitives by Nigeria' (1986) 35 (3) *The International and Comparative Law Quarterly*, 526-527

Lack of Commitment

One of the challenges to extradition is the lack of commitment among states. One of the indices of commitment is being signatory to extradition treaties because commitment is equated with signature to bilateral treaties. States are more likely to commit to treaties when it will enhance their perceived security interests. Whether or not states show this commitment is dependent on some factors one of which is that a state is more likely to use the tool of extradition when the potential extradition partners have similar political, economic, or cultural institutions because doing so allows it to reap the security benefits without concern or threat of other dimension.

Politics of National Interest

Nigeria has signed extradition treaties with several countries of the world prominent amongst which are the United States of America, South Africa, Liberia and United Kingdom. Nigeria's Extradition Treaty with the United States was signed by the colonial government on behalf of the Nigerian people on the 22nd of December 1931 and entered into force on 24th June 1935. Since the commencement of this treaty, Nigeria has extradited several fugitive criminals to the United States but there is no public record showing the extradition of any United States citizen or resident to face trial or punishment in Nigeria. Does this mean that Americans have not committed crimes in Nigeria for which they could be extradited to Nigeria? Most requests for extradition of fugitive criminals to Nigeria are usually turned down on the basis of lack of assurance that the fugitive will be given a fair trial in Nigeria or that the offences for which Nigeria is requesting the extradition of the fugitive criminals are of a political character. Unfortunately, this is not always the case. Some politicians who have looted the Nigerian treasury often use this cover of these misgivings by the advanced countries to escape extradition back to Nigeria to face the Economic and Financial Crimes Commission (EFCC).

Powers of the Attorney General

The powers of the Attorney General in matters of extradition in Nigeria are not only enormous but also overwhelming. For example, the Extradition Act states 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.'²⁹ Although this provision is *in tandem* with the generally accepted principle on extradition under international law, it could create certain problems. Gasiokwu has stated that the only worrisome aspect of the provision is the part that also empowers the Attorney General to determine when the offence is an offence of a political character.³⁰ The reason, according to Gasiokwu, is that the Attorney General is a political appointee and that his judgment is likely to be influenced by other political or extraneous considerations.³¹ The Attorney General may also order all proceedings for the surrender of that fugitive to the country in question to be discontinued and the fugitive if in custody released where a request for his surrender is not forthcoming.³² The Attorney General being a member of the government, his judgment is likely to be influenced by political considerations such as the political dispensation towards the requesting state. The task which requires a sincerity of purpose and fairness ought to have been left solely to the courts.

Citizen Exception to Extradition

There have been differences in legislation amongst nations as to whether states should allow the extradition of their own citizens. Some countries' laws express restriction on the extradition of their citizens. For example, while the constitution of Italy states that 'extradition of citizens is permitted only in cases expressly provided for in international conventions',³³ the Swiss law similarly prohibits the extradition of Swiss citizens and provides for their prosecution in Switzerland for crimes committed abroad.³⁴ This is a big challenge as it may likely affect the battle against transnational crimes and may more be construed as a country's way of protecting its citizens amid the attendant negative consequences it creates.

7. Implication of Extradition under International Law on Nigeria

There is no doubt that the laws, practices, aims and principles of extradition under international law have impact on Nigeria. These have far reaching implications which would be discussed below:

Implication on Jurisdiction

The Constitution of Nigeria empowers the Federal High Court to assume jurisdiction on matters bothering on extradition.³⁵ Extradition does not entail or envisage state sponsored abduction of wanted persons, which is a clear violation of the long established principles of international law which hinges extradition on the rule of reciprocity and treaty obligations. Unfortunately, states do sometimes enter into the territory of other states without permission to get fugitives and/or

²⁹ Extradition Act, Cap E25, LFN, 2004, s. 3(1)

³⁰ MOU Gasiokwu, *International Law and Diplomacy: Selected Essays* (Chenglo Limited, 2004) p. 92

³¹ *Ibid*, 92

³² Extradition Act, Cap E25, LFN, 2004, s. 14

³³ Constitution of the Italian Republic, 1948, Art. 26

³⁴ Federal Constitution of the Swiss Confederation, 1999, Art. 25

³⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Cap C23, LFN, 2004

prosecute fugitives that have been illegally obtained. As far as domestic law is concerned, the judicial branch will have the authority to prosecute and punish an individual even if that individual is obtained in violation of international law. This practice has further encouraged the use of extraordinary rendition and other ways of returning fugitives outside extradition as the domestic courts in Nigeria do not investigate or inquire if the right procedure was followed in bringing the fugitive before them. Interestingly, under international law the individual has no right to contest the court's authority or the domestic legislation; only the state whose rights have been violated may make a claim. In the Nigerian case of *Madukolu v Nkemdilim*,³⁶ the Supreme Court listed the factors that will make a court have jurisdiction to entertain a suit. The court stated thus:

Where a court is constituted and none of the members is disqualified by qualification and the quorum is present and the subject matter is within jurisdiction and all the conditions precedent for assumption of jurisdiction such as the appropriate notices have not been breached, then a court is competent.

The above *locus classicus* on jurisdiction in Nigeria does not expressly state that such irregularity in bringing a person before it can amount to depriving a court of the jurisdiction to hear the case. The Extradition Act and the Nigerian Constitution also do not state any consequence for illegally obtaining a fugitive from another country. It can well be argued that this irregularity in procedure of bringing a fugitive before the court can be classified under the arm which requires that 'all conditions precedent for assumption of jurisdiction...have not been breached'. Whether or not this argument can hold water is a matter for determination by the courts. The implication is that the Nigerian Government must ensure to always follow the laid down rules and procedure provided in extradition treaties and domestic legislations in order not to put itself in a situation where the country from which the fugitive was illegally gotten may raise objections.

Implication on External Relations

There is no gainsaying that for a Nigerian or any fugitive to be successfully extradited to a foreign country, that country must have an extradition agreement with Nigeria. This also applies where Nigeria is making an extradition request to another country. This does not rule out the fact that extradition can still be done on basis of reciprocity. This goes to show that extradition agreement or treaty is a *sine qua non* for a successful surrender of a fugitive to a foreign prosecuting country. The Extradition Act³⁷ states that the Act shall apply to every separate country within the commonwealth. Nigeria also has agreement on extradition with the United States of America, Benin Republic and others. There is need for Nigeria to maintain peaceful and cordial relationships with countries notwithstanding whether or not it has extradition treaties with them. Obviously, adverse relationships between states could frustrate an extradition process. For example, the US and Cuba have an extradition treaty, but have over the years had strained diplomatic relations since 1959 when Fidel Castro overthrew a US backed regime in Havana and established a socialist state allied with the Soviet Union.³⁸ The likely implication of this is that extradition treaties between them may rarely be utilized.

Implication on Crime Prevention

The framework of international co-operation in the suppression of international and cross-border crime consists mainly of binding international commitments, which are based on a treaty, bilateral or a multilateral. The viability of these instruments is of the utmost importance in the present state of extradition law and practice. All developed and most developing states are parties to at least some bilateral treaties. A fundamental principle of sovereignty declares that every state has the legal authority over persons within its territory. It is, therefore, desirable that extraditable crimes are punishable and this is the principal rationale for the practice of extradition. Indeed, extradition agreements to which Nigeria is party are now mainly used to suppress international and cross-border crimes. Despite the sovereignty of states, states and Nigeria in particular may not harbour criminals in their territories. International law makes it a requirement for states to either exercise jurisdiction over the alleged suspects of certain categories of crimes or to extradite them to a state able and willing to prosecute or alternatively to surrender the alleged suspect to an international tribunal with jurisdiction over the suspect and the crime. This is the *raison d'être* of the phrase *aut dedere aut judicare*.³⁹ The obligation to prosecute or extradite, unlike universal jurisdiction which is permissive, is mandatory.⁴⁰ Hence, Nigeria is obligated to either prosecute or extradite certain alleged suspects, and failure to do so results in an internationally wrongful act. The *aut dedere aut judicare* maxim finds expression in multilateral treaties aimed at promoting or securing international cooperation in law enforcement and the suppression of certain criminal acts. With various bilateral and multilateral treaties being entered to by nations, Nigeria must take advantage of same to ensure that it is not left behind in the scheme of affairs with regard to bringing fugitives to face the law which in turn would have a deterrence effect.

³⁶ (1962)2 SCNLR 341

³⁷ Extradition Act, Cap E25, LFN, 2004, s. 2

³⁸ US-Cuba Relations. <https://www.cfr.org/background/us-cuba-relations>> Accessed on 15 April, 2023

³⁹ Latin phrase meaning 'Surrender or try'

⁴⁰ UM Mokoena & EC Lubaale, Extradition in the Absence of State Arrangements Provisions in International Treaties on Extradition, p. 34 <https://dx.doi.org/10.17159/2413-3108/2019/von67a4927>> Accessed 15 April, 2023.

Implication on Nigeria's Human Rights Profile

Stefanovska has stated that extradition has another function and that function consists in protecting the fugitive rights.⁴¹ It is obvious that the Nigerian Courts are obligated to protect the fundamental rights of persons whose extradition is sought. The Nigerian Constitution contains provisions on the protection of individual rights. A fugitive can institute an action for the enforcement of his fundamental rights. It is submitted that Nigeria's international human right protection profile may influence the grant of extradition request especially where the fugitive raises objection based on likelihood of violation of his fundamental rights. Nigeria needs to sustain a high profile for protection of right of its citizens and even of non-citizens generally notwithstanding the circumstances that require such protection. This is true as negative profile is likely to affect successful grant of extradition requests.

8. Conclusion and Recommendations

The practice of extradition predated the emergence of modern sovereign states. Today, states utilize bilateral or multilateral treaties between/among nations of the world to aid in the quest to extradite fugitives. Many treaties and domestic legislation on extradition contain certain exceptions to extradition. This creates a situation where these exceptions become hindrances to the granting of some extradition requests. The practice of extradition is plagued with the global politics of superiority and inferiority amongst the nations of the world. This explains why since 1935 when Nigeria signed an extradition treaty with the United States of America, no fugitive criminal from that country has ever been extradited to Nigeria for trial or punishment despite several demands that have been made over the years. Conversely, Nigeria has severally honoured the requests of the American Government for the extradition of fugitives under this Extradition Treaty amid few cases of refusal. Resort to other unconventional ways of getting fugitives has been employed by states including Nigeria thereby undermining the essence of extradition treaties and the rule of reciprocity.

It is recommended that once a fugitive established that the process and conditions for extradition are not followed, it should be a ground to oust the jurisdiction of the requesting state. This would entail that domestic laws on extradition and extradition treaties should make provisions for the right of a fugitive to demand a summary hearing to determine whether the extradition procedure was followed. When the issue whether the correct procedure was followed is determined and it is found to have been followed, only then can the court assume jurisdiction. It is also recommended that there should be sanctions on states that engage in extraordinary rendition or other unlawful ways of getting fugitives. These sanctions should also extend to states that refuse to comply with extradition requests for unjust cause. Treaties can make provision for remedies and sanctions for non-compliance and violation of extradition agreements. This would definitely improve the practice on extradition amongst states. It is also recommended that there should be checks to regulate the enormous powers vested in the Attorney General of the Federation of Nigeria. The Attorney General as a political appointee is likely to be influenced by political considerations in matters of extradition. Such powers and responsibilities ought to be left to the court such that any decision reached can be appealed against before an appellate court.

⁴¹ V Stefanovska, 'Extradition as a Tool for Inter-State Cooperation: Resolving Issues About the Obligation to Extradite' (2016) 2 (1) *Journal for Liberty and International Affairs*, 40