

## **International Law and Diplomatic Cooperation in The Enforcement of Extradition Laws: Nigeria's Experiences**

**Odoh Samuel Ituma**

**Department of Political Science, Ebonyi State University Abakaliki**

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### **ABSTRACT**

Diplomatic cooperation across societies is challenging and always hampered by seemingly insurmountable political differences between governments. Yet, it remains one of the traditional means of solving global problems, whether in settling political disputes, improving commerce or curbing translations crimes. Diplomatic cooperation is very essential for enforcing extradition laws since it involves two interest-driven state actors. The goal of extradition is to check transnational crimes by ensuring that criminals wherever they run to do not escape the long arm of the law; in other words, that they are brought to book by compelling their return to their home state for prosecution in accordance with their national laws. Chapter IV of the 1999 Constitution provides extradition criminals from Nigeria. However, while Nigeria extradites criminals to their home countries, in most cases other countries do not reciprocate this gesture by having her wanted criminals or nationals being prosecuted abroad for one offence or the other extradited to Nigeria. The reason often adduced by such countries for their refusal to extradite criminals to Nigeria is usually their lack of trust for Nigeria's criminal justice system. Therefore, besides the fact that the enforcement of extradition laws depend on the level of diplomatic cooperation between two countries, the credibility of the criminal justice system also matters. The paper recommends the improving the criminal justice system by eliminating undue political interferences in the trial of criminals so as to earn the trust of other members of the international community.

**Key words:** extradition, criminal, justice, law, diplomatic, cooperation.

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### **INTRODUCTION**

It is an often quoted maxim that no state can afford to be an island in an international community where cooperation is the grand norm. Diplomacy aims at promoting a country's image abroad. Diplomatic cooperation therefore entails sets of activities carried out by various institutions of the government and the civil society with

other countries in the development and respect of international law as part of the whole dynamics of development promoting a country's image and maintaining friendly relations. Extradition comes into play when a person charged with a crime under state statutes flees the state. Under international law it is expected that the state (Asylum

state) to which a person charged with a crime has fled must release the accused "to the state having Jurisdiction of the Crime" (home state). Extradition therefore refers to the surrender of an alleged criminal usually under provisions of a treaty or statute by one authority (as a state) to another having jurisdiction to try the charged. Or put differently, it is a formal process whereby States grant each other mutual judicial assistance in criminal matters on the basis of bilateral or multilateral treaties or an ad hoc basis [1].

Extradition law essentially defines the act of sending, by authority of law, a person accused of a crime to a foreign jurisdiction where it was committed, in order that he may be tried there. [1], noted that extradition has undergone significant legal and practical developments in last three centuries. According to him, since the 18th century, extradition has evolved from being regarded as a matter of state practice, and entirely within the discretion of sovereign rules, into a concept in law. Thus, extradition came to be governed by a body which for the most part reflect a consensus among states, and which have changed substantially in response to new types of crime and security concerns, such as, in particular, the emergence of a threat of international terrorism. However, developments in various areas of international law from 1945 onward have had a significant impact on the legal framework for extradition. International criminal, humanitarian and human rights law provides a basis for extradition in the absence of inter-state agreements with

respect to certain crimes, and in some cases even impose an obligation on states to extradite or persecute the alleged perpetrators of such crimes. At the same time, international human rights law has strengthened the position of the individual in the extradition procedure and established bars to the surrender of a wanted person if this would expose him or her to a risk of serious human rights violations.

Nigeria maintains formal diplomatic relations with many countries of the world, sometimes the relations are strained owing to the fact that cooperation across societies is challenging and always hampered by seemingly insurmountable political differences between governments. However, diplomatic relations has become unprecedentedly' important for Nigerians faced with the problem of terrorism. The Nigerian government has continuously urged its allies especially neighbouring countries never to allow their territory to become a safe haven for terrorists or a base for the destabilization of Nigeria. What this entails is that in the interest of harmonious friendly relations, all countries must assist Nigeria in countering insurgency, particularly by not harbouring criminals trying to evade justice in Nigeria. Chapter IV of the 1999 Constitution provides for the extradition of criminals from Nigeria where it stipulates that: "for the purpose of preventing the unlawful entry of any person into Nigeria or of affecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto".

### **Nature of the International Extradition Process**

Extradition simply refers to the transfer of an accused from one state or country to another state or country that seeks to place the accused on trial. Extradition from one state to another takes place on the order of the political leadership of the Asylum state (the state where the accused is located). In a similar vein, the head of state of the country demanding return of a fugitive who is alleged to have committed a crime in that country is expected to issue a formal request. Extradition between nations is usually based on a treaty or laws between country where the accused is currently located, and the countries seeking to place him or her on trial for an alleged crime. The United State for instance, has entered into extradition treaties with most countries Europe and Latin America, and with a few countries in Africa and Asia.

Extradition treaties, often provide exception under which a nation can refuse to surrender a fugitive sought by another nation. Many nations will not extradite persons charged with certain political offenses, such as treason, sedition and espionage. Refusal to extradite under such circumstances is based on the policies that a nation that disagrees with or disapproves of another nation's political system will be reluctant to return for prosecution a dissident who likewise has been critical of the other nation. Moreover, 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) exist only on the basis of bilateral or multilateral extradition agreements, or if the requested State is a party to an international instrument which institutes a duty to extradite [1]. But, of course, not every criminal act will necessarily be protected. For example, some treaties provide that certain crimes, such as the assassination of a head of a foreign government, do not constitute political offenses that are exempt from extradition. The rise in airplane hijacking or terrorism and hostage taking in the late twentieth century led many nations to enter into multilateral conventions in which the signing countries mutually agree to extradite individuals who committed such crimes.

While international law leaves States considerable latitude to establish their national legal framework for extradition conditions and requirements may vary significantly from one country to another.

However, it is possible to identify certain general principles and requirements, including the following:

1. The State seeking the surrender of a person must present a formal extradition request, which must identify the wanted person and the offence imputed to him or her. The requesting State is also regularly required to submit certain documents in support of the request. The kind and format of the evidence needed as well

as the standard of proof applied by the requested State may differ significantly from one country to another. The formal extradition request may be preceded by a provisional arrest warrant.

2. Extradition may only be granted if the conduct imputed to the wanted person constitutes an extraditable offence under the applicable extradition agreement or legislation. Certain acts - e.g. military, political or fiscal offences - have traditionally been deemed outside the realm of extraditable offences, although recent developments have brought about significant changes in this respect, most notably with regard to the so-called "political offence exemption".
3. Generally, extradition will be granted only if the offence imputed to the wanted person is a criminal offence under the jurisdiction of both the requesting and requested State. This is known as the principle of double criminality.
4. Under the rule of specialty, the requesting State may prosecute an extradited person only for the offence(s) specified in the extradition request, unless the requested State consents. Similarly, the requesting State may not re-extradite the person to a third State without the agreement of the requested State. Recent developments in Europe have

significantly amended the traditional practice with regard to both the double criminality requirement and the specialty rule [1],

Overall, international extradition is more difficult and is governed in many cases by treaty or laws. While most countries will extradite persons charged with serious crimes, some will not, others refuse to extradite for certain crimes, set up legal roadblocks, or, as in Canada's case, will not extradite if he accused may get the death penalty. For example, in 2000, officials in Britain refused to extradite former Chilean Augusto Pinochet to Spain where he would face trial for thousands of murders and other atrocities during his rule from 1973 to 1990. While, Pinochet had absolute immunity from prosecution in Chile, other nations, including Spain, were free to charge him for his alleged crimes.

When Britain refused to extradite him, he was able to return to Chile and avoid prosecution.

It is however worthy to note that international law provides grounds for refusal of extradition based on the principles of "political offence exemption" and "discrimination clause". This principle maintains that the requested State can refuse extradition if the offence for which it was sought was deemed to be of a political nature while that at the same time enabling States to maintain friendly relations, as the refusal of extradition on this ground would not be considered as an undue interference with the internal affairs of the requesting

Stale. On the other hand, the so - called "discrimination clause", according to which extradition may be refused if the requested State considers that it is sought with a persecutory and/or discriminatory intent, is a more recent development [1]. Extradition legislation in many States also provides for the refusal of extradition if the wanted person is a refugee or asylum-seeker.

### **Extradition Laws and Nigeria's Diplomatic Relations**

Successive Nigerian Government, from that of Alhaji Sir Abubakar Tafawa Balewa, the first Prime Minister of Nigeria, to the immediate past Government of President Goodluck Jonathan have demonstrated commitment to enhancing the country's diplomatic clout. Enhancing Nigeria's image and status in the world is core value imbued in Nigeria's foreign policy since independence. In Nigeria's practice of extradition, the case of Umaru Diko is instructive, following the sacking of the government of Alhaji Shehu Shagari in 1993 by a military coup, hundreds of politicians and public servants were arrested and detained including the former president and vice - president and former ministers, governors and legislative leaders.

Several leading figures of Shagari's party and government, including Umaru Dikko former minister of Aviation and Transport and Presidential Campaign Chairman fled the country into exile in Britain. In July 1984, Mr. Umaru Dikko was kidnapped in London, drugged and unconscious in a crate to be placed in a Lagos - bound plane as diplomatic baggage at Stansted Airport. This

singular incident plunged Nigeria's relation with Britain into crisis. The immediate arrest of three Israelis and a Nigerian by British authorities led to press speculation about a plot between intelligence and certain elements of the Nigerian government. Nigerian government denied allegation of involvement in the kidnapping plot. In February 1985, the Dikko's abductors (three Israelis and a Nigerian) were convicted in Britain and each of the four got ten years jail term. By 1985, prospects for normalization of relations improved when Britain denied Dikko's request for political asylum. Nigeria requested his extradition.

Chief Anthony Enahoro of Nigeria was twice a fugitive. In people's opinion, he committed no offence. But in the jaundiced eyes of the authority, he committed an offence against the state for holding firm to his political, ideological and moral beliefs, even when they were in conflict with those of the powers that be. Those beliefs centered on true Federalism, recognition of the rights of minorities, and equitable distribution of national resources. So he fled to exile in Britain in 1963 when the Tafawa Balewa government charged him with treason. The British government returned him and he was subsequently sentenced to 15 years in prison, General Yakubu Gowon released him in 1966 to serve in his government. In 1976, the leader of a bloody coup attempt Lieutenant Colonel B. S. Dimka of Nigeria confesses to a military tribunal that he acted on behalf of his brother - in - law, the exiled former head of State General Yakubu Gowon. Gowon denied complicity in the plot,

Nigerian government demanded the extradition of Gowon from Britain. The British government's refusal was regarded in Lagos as an "unfriendly" act. In 2008, The Angolan government arrested Henry Okah, the spokesman of the Movement for the Emancipation of Niger Delta (MEND), the largest rebel group in Nigeria, in September 2007 on arms trafficking charges. Okah had tried to board a plane at Luanda airport bound for South Africa when authorities apprehended him. Angola and Nigeria have not signed an extradition treaty, partly because Nigeria still uses capital punishment and Angolan law forbids extraditing suspects to nations in which they may face the punishment of death. Angolan President Jose Eduardo dos Santos agreed to extradite Okah on 21 November, but his lawyers asked the government to reconsider. In January 2008, Attorney General Joao Maria de Sousa said the Angolan government had not yet decided whether it would extradite Okah. Okah was finally extradited on 15 February, 2008.

A Federal High Court in Lagos Nigeria refused the extradition of an American born Nigerian by naturalization, Mr. James Tillery. Justice Mohammed Idris had in his judgment on Tillery's application challenging the propriety, of his attempted extradition, faulted the action of the operatives of the United States Federal Bureau of Investigation to extradite him without following due process. The judge further directed the police to release Tillery forthwith and awarded N10 million damages to Tillery against the Police for unlawful detention.

Nigeria recorded a large harvest of extradition cases in recent time. For instance, a court in Nigeria on 28<sup>th</sup> August, 2013 ordered the extradition to the United States of America of a man (Lawal Olaniyi Babafemi a.k.a Ayatollah Mustapha) accused of having links with al-Qaeda Mr. Babafemi did not challenge his extradition when he appeared in court in Abuja.

Also, in September, 2013 an extradited Nigerian was jailed in the U.S over \$1 I million fraud. The 42 year old Edo - State born Emmanuel Ehkator was extradited to United States of America in 2011 over allegation of mail and wire fraud, he was sentence in September 2013 to 3 years jail term and also ordered to pay \$11,092,028 in restitution to his victim. Ehkator was arrested by the Economic and Financial Crimes Commission (EFCC) in Nigeria before his extradition. Despite this commendable stance of the Nigerian Government on extradition, it is curious that the so much celebrated Deprieve Alamieyeseigha (impeached ex-governor of Bayelsa - State of Nigeria) who jumped bail form United Kingdom prison was not surrendered or extradited by the Federal Government of Nigeria [2].

Fugitive former Governor of Delta State of Nigeria Mr. James Ibori is also a very celebrated extradition resistor. Ibori escaped from Nigeria to avoid arrest by the Metropolitan Police to face money laundering charges in the UK. In May 2010, Ibori was sighted in United Arab Emirates (UAB) where he was arrested. Upon his arrest the Nigerian anti-grated body Economic and

Financial Crimes Commission (EFCC) wished him extradited to Nigeria while UK also requested for his extradition. Nigeria's wish was stalled by lack of extradition treaty between Nigeria and the UAE. The Dubai Court of first instance ruled in October 2010 that Ibori be extradited to UK but Ibori appealed against the ruling [2].

On Monday December 14, 2010 another Dubai Appellate Court of Cessation ruled that Ibori be extradited to UK. Consequently, Ibori was flown to UK to face trial where he was subsequently convicted and sentenced to jail term which he is presently serving in London prison. Also, in July 2014, Police in Abuja have taken custody of Aminu Sadiq Ogwuche the man suspected of being the mastermind behind the ghastly bombing of the Federal Capital Territory satellite town Nyanya in April which killed about 75 people after being extradited from Sudan. Despite his arrest in Sudan after the authorities there acted on an international red notice issued for his arrest by the Nigeria National

Bureau of Interpol shortly after committing his heinous crime. Mr. Ogwuche could not be extradited immediately as the police needed to complete the necessary processes involved in transferring suspects from one country to another [3].

Based on the foregoing, it is evident that enforcing extradition laws involves lot of politics and intrigues. Hence, some states adduce 'flimsy' excuses to refuse extradition even in deserving cases. For instance, in this case of Ibori, he was initially arrested, quizzed and granted bail by a Dubai Court. The Federal Government of Nigeria reportedly threatened to revoke the operational license of Emirates Airlines in Nigeria following the UAE authority's alleged lack of interest in cooperating with Nigeria to extradite Ibori to UK. Nigeria's capacity to cause extradition from other nations needs to be improved as that will also enhance her soil power status in the international community [4].

### CONCLUSION

Diplomatic relations have largely determined the process of extradition, which entails the transfer of an accused from one country to another country that seeks to place the accused on trial. As a legal surrender of a fugitive to the jurisdiction of another state or government for trial, extradition between nations is regulated by extradition laws or diplomatic treaties between the country where the accused is currently located and the country seeking to place him or her on trial for an alleged crime. Extradition laws specify the crimes

that are extraditable, clarify extradition procedures and safeguards, and stipulate the relationship between the law and international treaties. National laws differ greatly regarding the relationship between extradition laws. Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria recognizes extradition part of the country's civil laws.

Extradition laws are basically enacted to facilitate the trial of suspects physically outside the boundaries of the state asserting criminal jurisdiction. However, in the Nigeria's case, the procedure for extradition

has proven to be cumbersome, complicated, technical, less expensive and less political. Cumbersome procedure constitutes a serious setback to the practice of extradition and its frequent failure to bring fugitives to justice necessitating the resort to abduction to bring fugitives to justice as the Nigerian experience has shown. In conclusion, therefore Nigeria needs improved diplomatic cooperation with its allies in this period she is confronted with the threat of terrorism

and trans-national organized crime. The stakes are enormous. If Nigeria must succeed in combating the myriad of crimes in its territory, the various nations to which its criminals escape to must cooperate with Nigeria in bringing such persons to book. Above all, the government should improve the criminal justice system by eliminating undue political interferences in the trial of criminals so as to earn the trust of other members of the international community.

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