

A Comparative Examination of the Nigerian and Kenyan Extradition Laws

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DOI: 10.55662/AJMRR.2024.5305

Abstract

The paper examined international law, treaties and conventions on interstate relations as regards rendition of fugitive criminals as well as the various legislative and judicial practices on extradition laws in Nigeria and Kenya. This was with a view to juxtaposing the nature of the treaty agreements with procedures statutorily stipulated for valid enforcement in these jurisdictions to ensure formidable reform as may be appropriate. The study employed primary and secondary methodology comprising treaties, extradition laws in Nigeria and Kenya, judicial precedents; and scholarly texts, journal articles and the internet respectively. The paper found that two Kenyan laws for treatment of extradition matters are subsumed in the Nigerian Extradition Act; and that, despite the extensive modification made under extant laws, extradition matters continued to be handled by magistrate courts in Kenya. The paper, therefore, recommended a shared law reform for actualisation of the noble objectives of extradition laws in Nigeria and Kenya.

Keywords: Extradition; Fugitive Criminal; Requesting State; Requested State; Extradition Offences.

Introduction

Globalisation opens wide the doors for positive advancement of technology and enhanced international relations as well as negative itinerant malfeasance harping on advantages of legal protection availed to prospective emigrants who escape beyond the shores of application of territorial laws after commission of crime. Usually, the absconding is to void the process for trial or punishment by the state where they have committed the crime. Against the tide of these negative impacts, the world has witnessed a steady upsurge in international and transnational organised crimes, varying in descriptions and nomenclature, ranging from global terrorism to the least of heinous criminal activities.ⁱ Theoretically in criminological enterprise, Rational Choice Theory, developed by Cesare Beccaria whose utilitarian approach overwhelmingly influenced the criminal justice system across the globe,ⁱⁱ postulates that criminality is an active consciousness which can only be reduced by speedy administration and prompt enforcement of law on culprits caught committing crime.ⁱⁱⁱ Absconding felons constitute a specie of threat, not only to the internal security of the felons' home states, but also to the international community at large.^{iv} Unless swiftly repatriated for trial and punishment, the escape of the fugitive criminals to a foreign land cannot attract the needed effective enforcement of law; neither can it leave on the mind of potential offenders, the deterrence of abstaining from similar criminal ventures in the future. It behoves, essentially, that the fugitive criminals be repatriated to the country to receive just recompense for their action.^v

Returning the fleeing offenders or convicts from the land of sojourn to the state of commission of crime has become a major concern in international criminal jurisprudence on twin-contending dilemmas.^{vi} Firstly, on account of sovereignty. The state where the offences were committed cannot extend its enforcement powers or rule to the felon's newly-found haven. Secondly, the receiving state of the felon, that is, the country of his domiciliary, cannot exercise its powers over those offences earlier committed on foreign shore before the eventual settlement of the felon on its land for lack of territorial jurisdiction on the crime.^{vii} Worse still expectedly, customary international law does not place an obligation on states to extradite a suspected criminal.^{viii} Although in fulfilling the object of promoting speedy dispensation of justice prescribed by the criminal justice system, the international criminal law supports that the long arm of the law be strengthened by states to apprehend the fleeing criminals, it holds

in high esteem the territorial sovereignty of each state.^{ix} The absence of competent sovereign body conferred with regulatory powers on trans-border enforcement mechanisms propels the necessity for states' collaboration in the domain of international relations, law and diplomacy in ensuring the tracking and returning of fleeing criminals to the state of commission of crime through phenomenal request for extradition^x based on bilateral or multilateral understanding. The practice and enforcement of this contractual relationship is the regime of extradition law.^{xi}

Extradition, according to *Black's Law Dictionary*, is the official surrender of an alleged criminal by one state to another having jurisdiction over the crime charged; the return of a fugitive for justice regardless of consent, by authorities where the fugitive is found.^{xii} Though extradition is founded on treaty agreement entered into by state parties, indicating the processes and the procedures by which fugitive criminal would be returned at the request of one party to the other party's territory, legal development, however, resulted in enactment of statutes, by each state, to regulate appropriately, acceptable norms and procedures for its enforcement while acceding to request for rendition.^{xiii}

This discourse, therefore, interrogates the various extradition treaties and statutes regulating the extradition of fugitive criminals, in Nigeria and Kenya, with a view to juxtaposing the nature of the treaty agreements against the procedures statutorily stipulated in these jurisdictions to accommodate a formidable reform as may be appropriate in the pursuit of justice. To accomplish this objective, this paper is divided into five parts. In addition to the introductory part, hereinbefore set out in the first section, the second part of this work examines the legal instruments for lawful extradition of fugitive criminals in Nigeria and Kenya. The third part discusses the extradition's principles and state responsibilities in fugitives' rights' protection under the Nigerian and Kenyan extradition laws. Part four evaluates the wholesome procedures for fugitives' extradition under the Nigerian and Kenyan extradition laws while the concluding part proffers recommendations on the needed reform.

Legal Instruments for Extradition and Rendition of Fugitive Criminals

Extradition and rendition of fugitive criminals are governed, in Nigeria and Kenya, by international law and conventions, various bilateral and multilateral treaties and several domestic laws which shall be discussed hereunder.

The International Law and Treaties

There is no obligation in customary international law for extradition of fugitive offenders. Extradition is regulated by conventional international law by way of state parties' contractual relationship with one another. Such extradition treaties occurred bilaterally, except where it arose in continuing relationship after independence of former colonial states thereby allowing previous treaties of the coloniser to apply to their former colonies even after their independence. Nigeria and Kenya are, by virtue of being former colonies of Britain, parties to the London Scheme of Extradition within the Commonwealth,^{xiv} which has since been domesticated as extradition laws in Nigeria,^{xv} and Kenya.^{xvi} Although both countries, as commonwealth countries, have some treaties binding them together in multilateral extradition treaty's agreements contained in the Mutual Assistance in Criminal Matters^{xvii} which listed Commonwealth countries with which the treaty agreement was contracted, each is a signatory to other international conventions, protocols and treaties which by their provisions also regulate extradition and rendition of fugitive criminals in their respective states.^{xviii}

The Domestic Laws

In addition to the above international laws, conventions and treaties which create state obligations on extradition and rendition of fugitive criminals, domestic laws are available also in both Nigeria and Kenya which give effect to the intended procedures and processes of extraditing the fugitive criminals as appropriately required in accordance with international best practices. The domestic laws of both countries are in two folds; these are the Constitution of the individual country and the domestic statutory laws. The Nigerian Constitution^{xix} and Kenyan Constitution^{xx} play a pivotal role in matters relating to extradition of fugitives. Both Constitutions make extensive provisions for constitutional supremacy^{xxi} as well as create, in Chapter IV, room for the fundamental rights of the citizens and residents in their respective countries; fugitives inclusive.^{xxii} The unique aspect of the Kenya Constitution is its preservation of the general rules of international law which the Constitution prescribes as forming part of

the laws of Kenya.^{xxiii} Beyond the operation of the Nigeria Constitution, the Kenyan Constitution preserves, as part of the laws of Kenya recognised by the Constitution, any treaty or convention ratified by Kenya.^{xxiv} The combined effect of the foregoing is that there is constitutional approval and preservation for extradition treaties entered into by the government of the Republic of Kenya as being part of the Kenyan Constitution. Both Constitutions confer on the parliament the power to make law for the peace, order and good government in their respective countries.^{xxv} They also concede the adjudicatory functions of the states on the courts.^{xxvi} Under the Kenyan Constitution 2010, though, the responsibility for criminal prosecution, including extradition causes, is invested in the Director of Public Prosecutions,^{xxvii} the responsibility for treatment and enforcement of extradition laws is, nonetheless, shared between the Attorney-General^{xxviii} and the Director of Public Prosecutions.^{xxix} It is the Attorney-General, however, that bears both responsibilities in Nigeria. Other distinctive features of the both Constitutions relate to the jurisdiction of courts and judges. While the magistrates in the magistrate courts of Kenya continue to handle matters relating to extradition issues, such matters are now within the domain of judges in the Federal High Courts in Nigeria.^{xxx}

Although the two countries' Constitutions are the grundnorm of both countries, the extradition laws of each country operates as the specific legal instrument prescribing the validity or legality of actions relating to extradition procedures and processes for enforcement of extradition agreements. The Federal Republic of Nigeria^{xxxi} and the Republic of Kenya^{xxxii} put in place extradition law for regulating the extradition of fugitive criminals. Except for some variations in the form, the substance of extradition laws of both countries are similar, to a large extent, in their provisions. Against the Kenyan's three operative sets of extradition laws,^{xxxiii} the Nigerian's only one substantive law on extradition, the Extradition Act,^{xxxiv} is supplemented by several instruments on matters relating to its adjudication and procedures as could be found in the Extradition Act (Modification) Order, 2014 and the Federal High Court (Extradition Proceedings) Rules, 2015.^{xxxv} The provisions of the Extradition Act (Modification) Order, 2014 have since been incorporated in the Nigerian Extradition Act 2018.

In addition to the above substantive legislations, several provisions of various procedural laws govern the enforcement and regulation of extradition in both countries. In Nigeria, the Federal

High Court (Extradition Proceedings) Rules, 2015 which ensures clarity in extradition proceedings which regulates the proceedings in the Federal High Court on extradition matter; the provisions of the Evidence Act, 2011 particularly on matters relating to admissibility and ways of proving evidence, burden of proof, status of witnesses; and the provisions of the Administration of Criminal Justice Act, 2015 [ACJA 2015]; Criminal Code;^{xxxvi} Penal Code;^{xxxvii} and other penal laws or offences creating instruments, at the federal or state levels, are equally applicable, in addition to rules relating to fundamental rights of the people.^{xxxviii} Like the Nigerian procedural practice, the Kenya Evidence Act^{xxxix} and Criminal Procedure Code^{xl} with Magistrate's laws and rules are the applicable procedural law for extradition. However, unlike the Nigerian practice, proceedings and enforcement of extradition treaties are left with the magistrate to try under the Magistrate's Court Act^{xli} and Rules in Kenya, so, no High Court Rule nor proceedings necessary except when the high court's supervisory jurisdiction is invoked. It is sufficient to note that, despite the absence of court rules in Kenya, the rules relating to admissibility of evidence, calling of evidence and witnesses, receiving of deposition evidence, service of processes, detention and release on bail and so on, as contained in the Kenyan Criminal Procedure Code^{xlii} and the Evidence Act,^{xliii} which are provisions applicable to extradition proceedings and are additional to the Kenyan Magistrate Court Rules.

In the whole, and comparatively, however, the provisions of the first major two sets of Kenyan Extradition Acts are subsumed in the provisions contained in the Nigerian Extradition Act (as amended),^{xliv} except in their distinctive specificity and application of each of the two Acts to different categories of countries. However, the Nigeria Extradition Act 2004 (as amended) combined the provisions of the two Kenyan distinct extradition laws in its provisions. Besides, while jurisdictions on matters relating to extradition of fugitive criminals and related incidental matters are, in Kenya, conferred on the Magistrate Court exclusively, subject to the High Court's supervision, the extradition law and practice in Nigeria has since been removed from the magistrate courts, the exclusive jurisdiction on extradition matters and transferred same to the Federal High Court. Again, in Kenya, the procedure of the proceedings in extradition causes are left entirely to provisions of the two extradition laws, but this is no longer so in Nigeria where the Nigerian extradition laws has progressively formulated special rules of courts to be applied strictly to extradition matters in the Nigerian Federal High Court.^{xlv} It is also worthy to

note that, in Kenya, it takes a magistrate presiding over a Magistrate Court to deal with extradition matters and enforcement of extradition treaties in the whole,^{xlvi} while in Nigeria, it is a judge of the Federal High Court who attends to such matters.^{xlvii} Aside from the extradition law, the Magistrate Court Law of the National and County Councils are also applicable. Other statutes which apply to extradition matters are various Penal Codes with other Penal Laws including offence-creating instruments at the national or county level.

The Extradition's Principles and State Responsibilities in Fugitives' Rights Protection under the Nigerian and Kenyan Extradition Law

Both the CFRN 1999 and the Kenyan Constitution guarantee lawful process aimed at protecting rights of citizens in their respective countries either in time of war or in peace time. The constitutional provisions so protecting, extend to persons lawfully domiciled in these countries, either as sojourners or as refugees. Beyond the general protection of peoples' rights to freedom of movement,^{xlvi} liberty,^{xlvi} dignity of human persons^l and fair hearing,^{li} persons who are fugitive criminals are, nonetheless, further entitled to protection from forcible extradition under the respective extradition laws.^{lii}

Extensive principles are, thus, provided in treaty agreements and extradition laws strengthening the rights of fugitives during extradition. This part will examine some of these established principles contained in the Nigerian and Kenyan extradition laws.

The Principle of Non-Extradition Except for Commission of Criminal Offences

Under the Nigerian and Kenyan Constitutions, a requested person is protected from extradition except for commission of criminal offence.^{liii} This implies that no person shall be extradited on the basis of civil wrong except such wrong also constitutes a gross criminal infraction against a written law.^{liv} The person against whom extradition proceeding is to be undertaken must have committed an offence known to law, for which he or she is declared wanted or has been convicted.^{lv} This is because the recognised issue at extradition proceedings is the existence of a pending criminal case,^{lvi} criminal prosecution or pending sentence to be served by the person

sought for extradition.^{lvii} These facts would need to be proved by evidence establishing their existence which should be supplied by the requesting state.^{lviii}

Beyond the requirement of commission of offences, the allegation against the requested person must be shown to be an extradition offence.^{lix} Extraditable offences are, at the extradition contractual treaty agreements, listed as being extraditable offences.^{lx} Offences not so listed cannot be smuggled to the list thereafter.^{lxi} The requesting state should indicate in the request that the offences were among those listed expressly as extradited offences by the parties in the extradition agreement,^{lxii} or as may be contained in the requesting state's extradition law. A request letter requesting for extradition of a fugitive offender on grounds of extradition offences would be refused if indeed, such request was aimed at prosecuting or punishing the fugitive on the bases of non-extraditable offences.^{lxiii}

The Principle of No Discriminatory Extradition on the Bases of Race, Religion, Nationality and Political Opinions

Both the Nigerian and Kenyan Constitutions,^{lxiv} domestic laws, international conventions and extradition agreements entered into by the two countries preserve the requested persons' freedom from discrimination on the bases of race, religion, nationality and political opinions.^{lxv} Where the offences for which the request is made is for the purpose of prosecuting or punishing the fugitive by reason of his race or nationality, it is the obligation of the requested state to refuse the application for such extradition;^{lxvi} so also would the extradition predicated on religious belief or political affiliation be refused^{lxvii} since every person is entitled to a right to express a political opinion^{lxviii} and to hold a thought, conscience and belief.^{lxix} Political offences, either pure or relative, are not extraditable.^{lxx} Acts and conducts directed at government or sovereign authority of a state without elements of common crime are categorised as pure political offences.^{lxxi} In identifying some of the political offences, Kenelly listed some of these political offences as treason, sedition, espionage and, to a large extent, disagreement to a state ideology.^{lxxii}

The Principle of Protection from Double Jeopardy

Requested persons in extradition proceeding are protected from double jeopardy under the Nigerian^{lxxiii} and Kenyan^{lxxiv} Constitutions. Aside from those provisions of the Constitutions, the terms of extradition treaty agreements should also contain provisions protecting the fugitive

criminals from double jeopardy, in that, the requested person must not have been tried and discharged or convicted^{lxxxv} for the same offence in earlier proceedings in a court of competent jurisdiction before the commencement of the extradition proceedings. Except in cases, where the requested person escaped from previous sentence or is otherwise unlawfully at large,^{lxxxvi} the principle of double jeopardy under the extradition law prohibits the surrender or rendition of the requested person by the requested state where there is previous discharge or conviction for the crime on which the extradition request is predicated.^{lxxxvii}

The Principle of Protection from Presumed Involvement in Extraditable Crime

The CFRN 1999 and Kenyan Constitutions secure the protection of the requested person alleged of the commission of a crime from presumed involvement in the crime;^{lxxxviii} and is rather presumed innocent until a nexus with the offence is established.^{lxxxix} The requested states cannot act on mere speculations.^{lxxx} Statutory provision and terms of extradition treaty agreements impose the duty on the requesting state, to establish a *prima facie* case of involvement in a crime against the requested person before the requested state.^{lxxxxi} Though the standard of proof necessary for rebutting innocence of the requested person is not that which is beyond reasonable doubt, it demands a proof that the requested fugitive was the person accused of the crime in the requesting state upon which the extradition request is being predicated.^{lxxxii} Such standard is on the preponderance of evidence.^{lxxxiii} The requested person, until this duty is wholly discharged, cannot be surrendered to the requesting state, since no law imposes an obligation on the requested person to furnish the evidence of his innocence against the said allegation. Evidence is, therefore, expected from the requesting state, in proving the *prima facie* case. Such evidence is however, sufficient with the presentation, before the court, of evidence relating to issuance of an authenticated warrant for the alleged offence; or in the event of accusation of escaping from serving a conviction by the alleged fugitive criminal, the presentation of certificate of conviction.^{lxxxiv} Even where the involvement of the requested person in a crime has been established, it must be shown that such crime was listed among the extraditable offences for which the requested person can be extradited.^{lxxxv}

The Principle of Protection from Foreseeable Torture and Degrading Treatment

A cardinal principle in extradition law is the enjoyment of rights protected by domestic law of party states. Both the Nigerian^{lxxxvi} and Kenyan^{lxxxvii} Constitutions make extensive provisions

for citizen protection from torture or degrading treatment. It is expected that the requesting state is a state party to the United Nations Convention Against Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment which prohibits extradition to a state notoriously known for poor human rights index.^{lxxxviii} Requests for extradition are expectedly denied requesting states known for a negative record of breaches of fundamental rights or are, on substantial grounds, believed to be involved in inflicting severe pains, whether physical or mental, on persons undergoing investigation as a means for eliciting incriminating evidence^{lxxxix} or using coercion on inmates or otherwise exposing them to pressure or intimidating coercion either on its own account or on the account of other persons.^{xc}

The Principle of Protection from Extradition for Offences under Military Law

Requested persons are generally protected under the United Nations Model Treaty from extradition^{xcⁱ} for offences under the military law in both Kenyan and Nigeria extradition laws.^{xcⁱⁱ} There is compliance with this treaty which imposes a mandatory obligation of refusing the surrendering of requested person in extradition proceeding where the crime committed borders on military law offences which are not triable under ordinary criminal law of the state parties.^{xcⁱⁱⁱ} Although the provisions for non-surrendering the requested person on military grounds are contained in the Kenyan extradition laws, and that of many countries, the Nigerian extradition law allows otherwise.^{xc^{iv}} The Nigeria Extradition Act, 2004 concedes a discretion in this regard as it provides that a fugitive criminal may be surrendered, notwithstanding that the Attorney-General or the court dealing with the case is satisfied that the offence constitutes an infraction only under military law or laws relating to military obligation.^{xc^v}

The Principle of Dual Criminality and Returnable Offences

An important aspect of extradition treaty agreement is the incorporation of double or dual criminality principle.^{xc^{vi}} This principle demands that offences upon which an extradition request would be granted should not only be crime in the requesting state, it should also be a crime in the requested state,^{xc^{vii}} It must also be listed as so fulfilling in the extradition treaty.^{xc^{viii}} Double criminality in relation to Commonwealth countries also relates to offences described as returnable offences which, as defined under the extradition laws, is any offence, however described, punishable by imprisonment of twelve months or a greater penalty in Kenya, and two years or a greater penalty in Nigeria.^{xc^{ix}}

Though the offences may bear different nomenclatures at both parties' countries, if the constitutive elements of the offence are of the same descriptions and the offence is punishable under the law of both party states by an imprisonment or other deprivation of liberty for a maximum period not less than twelve months or more for Kenya and for Nigeria, two years or by a more severe punishment, the requirement of the principle is satisfied.^c Where extradition proceedings are predicated on a treaty, specification of extraditable offences in such treaty is essential. The inclusion of an offence in extradition treaty connotes that the mentioned offence has fulfilled the requirement of double criminality.^{ci}

The Principle of Right to Unrestricted Enjoyment of the Unfettered Reasonable Decisions of the Requested State's Attorney-General

An important principle in the extradition proceedings relates to the principle by which the requested person enjoys the right to unrestricted enjoyment of the unfettered reasonable decision of the requested State's Attorney-General. This is because the Attorney-General, as the chief legal officer of the federation, exercises extensive powers with a great deal of discretions in enforcing extradition treaty agreements.^{cii} Both the Nigerian and Kenyan extradition laws preserve the conferment on the Attorneys-General, extensive powers and discretions. These provisions are apparent in the exercise of the discretion of whether or not to initiate extradition proceedings. It is unfettered discretion that cannot be compelled by an order of *mandamus*. Where the Attorney-General chooses not to initiate the proceeding, such an extradition proceeding cannot be compelled by any other authority.^{ciii} Thus, in the case of *George Udeozor v Federal Republic of Nigeria*,^{civ} considering the responsibilities and powers of the Attorney-General to ascertain the conditionality for acceding to extradition request, the court held that the Attorney-General, as the chief legal officer of the federation, exercises extensive discretion on whether or not to initiate extradition proceedings.^{cv} In the above case, the Court of Appeal, placing reliance on section 6(1) and (2) of the Nigeria Extradition Act 1966, held that the section vested in the Attorney-General the discretion to signify that such request has been made and he does that only after satisfying himself that the provisions of section 3(1)-(7) are complied on the basis of the information accompanying the request. Same is applicable under the Kenyan extradition laws.^{cvi} Thus, in *George Udeozor v Federal*

Republic of Nigeria,^{cvii} examining the role of the Attorney-General in extradition proceedings, it was held that:

The discretion to accede to an extradition request is that of the Hon. AG of the federation, not of the court. The role of the court is to issue warrant and undertake such other adjudicatory functions as are required to enhance the statutory powers of the AG.^{cviii}

The above discretionary powers, availed the Attorneys-General, is not peculiar to Nigeria but they are also available at Kenya. Apart from the foregoing, whenever it appears to the Attorney-General that the surrender of the fugitive who the court has held extraditable, is precluded by law, the Attorney-General may refuse to give order for the surrender. Such wide discretion is tantamount to the Attorney-General reviewing the judicial decisions of the courts. These extensive powers invested in the Attorney-General avail the fugitive criminal some sort of intangible rights to enjoy such unrestrained discretion, some of which may be beneficial to him alone. Although the fugitive cannot compel the Attorney-General to act in a particular manner in his favour, where, however, the Attorney-General so acts, no person can stop the fugitive criminal from enjoying benefits accruable from such decisions.

The Principle of Specialty

Since the enforcement of treaty agreements and application of extradition law are *sui generis*, a cardinal principle for the protection of the fugitive criminal is the doctrine of specialty.^{ciix} This principle posits the assurances that the offences for which the requested person is extradited shall be the offences for which he shall be prosecuted or punished.^{cx} The above principle was well emphasised in *R v Horseferry Road Magistrates Court (Exp. P. Bennett)*,^{cxii} where it was held that:

Extradition procedures are designed not only to ensure that criminals are returned from one country to another, but also to protect the rights of those who are accused of crimes by the requesting States; hence, sufficient evidence has to be produced to show a *prima facie* case, and the rule of specialty protects the accused from been tried for any crime other that for which he was extradited.^{cxiii}

In other words, the principle of specialty prohibits the requesting state from prosecuting the requested person for crimes other than those for which the extradition took place.^{cxiii} Both the Kenyan and Nigerian extradition laws prohibit the surrender of the fugitive, where it appears that he may be tried for some other offences not included in the extradition request.^{cxiv}

The Principle of Protection from Unreasonable Trials and Prosecution

Another principle on protection of the requested person's rights is the principle of protection from unreasonable trials and prosecutions. This principle allows the refusal of extradition if there is evidence on established facts, relating to existence of unacceptable trials procedures and unfair prosecution in the requesting state which would be prejudicial to the rights of the fugitive offender.^{cxv} This also applies to situation where the commission of crime is already established. Section 3(2)(b) of the Nigeria Extradition Act, 2018, with similar provision in the Kenyan Extradition Laws,^{cxvi} provide that a fugitive criminal shall not be surrendered, if it appears to the Attorney-General or a Court (in the requested state) dealing with the case that if surrendered, he (the fugitive criminal) is likely to be prejudiced against at his trials or be punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinion.^{cxvii} It behoves the fugitive criminal to supply information relating to his fear of prejudice at his trial if surrendered.^{cxviii} If the facts supplied by the fugitive criminal on the human rights index are credible and believed, having made the unwholesome practices known and proved at the court, the extradition request may be refused.^{cxix}

Wholesome Procedures for Fugitives' Extradition under the Nigerian and Kenyan Extradition Laws

Extradition proceedings are a peculiar kind of quasi criminal proceedings.^{cxx} In any event where extradition of fugitive criminal is necessary, the extradition laws make provisions for appropriate procedures to be undertaken by parties to the agreement. The major actors in extradition proceedings are the requesting state, the requested state, the court and the requested person.

Commencing Extradition Proceedings

Initiation of extradition proceedings is usually commenced in Nigeria and Kenya with the filing of a request for surrendering the fugitive criminal.^{cxxxi} The request is made in writing by the diplomatic representative or consular officer of the country making the request.^{cxxii} The request should be accompanied with a duly-authenticated warrant containing the accusation of extraditable offence for which the fugitive criminal is being wanted. In cases where the extradition borders on failure to serve a conviction sentence for an extraditable offence, the written request should be accompanied by a certificate of conviction duly issued by the requesting state.^{cxxiii} The accompanied documents are a proof of facts necessitating the request.^{cxxiv}

The procedures for commencement in Kenya and Nigeria have striking similarities under both countries' extradition laws until 2014. The promulgation of the Nigerian Extradition Act (Modification) Order, 2014 substantially altered the extradition procedures and proceedings in Nigeria. Procedure for commencement now differs in Nigeria from what operates in Kenya except that, under the Nigerian Extradition (Amendment) Act 2018,^{cxxv} and the Kenyan Extradition (Commonwealth Country) Act of 1968 (as amended),^{cxxvi} the appropriate authority to receive the request is the Attorney-General of the each country. However, under the Extradition (Contiguous Foreign Countries) Act, it is the designated Minister (now Cabinet Secretary) who receives the extradition request.^{cxxvii} In Kenya, at its receipt, the Attorney-General or the Cabinet Secretary (as may be applicable under each peculiar extradition law) evaluates the request and decides, on the basis of the accompanying fact, if the surrender is not encumbered by the conditions laid in the extradition law. Where the Attorney-General or the Cabinet Secretary is satisfied that the request is made in compliance with the necessary provisions of the extradition law,^{cxxviii} the request is then referred to the DPP for initiation of extradition proceedings. The DPP, in turn, gives order to the magistrate to proceed on the extradition proceeding, having taken cognisance of the request,^{cxxix} with a petition formally filed by the counsel from office of DPP who carries on the prosecution of the extradition petition.^{cxxx} This innovation, introduced by Article 157 of the Kenya Constitution 2010, is predicated on the fact that extradition proceedings are quasi-criminal in nature.^{cxxxi}

The validity of the transmission of extradition request to the Director of Public Prosecutions and his eventual initiation of the extradition proceeding was challenged in the Kenyan case of *The Director of Public Prosecutions v Okemo & Ors.*,^{cxxxii} leading to the judicial approval of the process. In the case, the Supreme Court held that:

The fact that extradition proceedings were criminal in nature divested the Attorney-General of any authority to involve him/herself in their initiation (that was issuance of authority to proceed) and conduct before a court of law. The Attorney-General however retain the executive authority to receive request for extradition and to transmit the same to the Director of Public Prosecution for necessary action.^{cxxxiii}

The court went further to hold that:

Under the Constitution of Kenya, the power to prosecute any conduct of a criminal nature was the exclusive preserve of the Director of Public Prosecution. That was subject to the provision of Article 157(6)(a) regarding a court-martial and any legislation that could be enacted by the parliament pursuant to article 157(12) of the Constitution.^{cxxxiv}

In Nigeria, however, the Attorney-General does not order the court any longer. The Attorney-General gives information to the Judge of the Federal High Court on the existence of the request for extradition of the fugitive by filing a petition. This was with a view to preserving the independence and sanctity of judges of the Federal High Court which is now saddled with the exclusive responsibility of adjudicating on extradition petitions. It is the Attorney-General or counsel from his office or other legal practitioner authorised by him, who directly prosecutes the extradition petition at the Federal High Court. This procedure is predicated on the fact that the magistrate is no longer entertaining extradition matters in Nigeria by virtue of the Extradition Act (Modification) Order, 2014 which substantially modified the Extradition Act, 2004,^{cxxxv} by placing extradition matters in the domain of the Judge of the Federal High Court. The Order also transferred supervisory powers from the High Court of a state to the Federal High Court. Pursuant to the foregoing, the mode for commencement of extradition matters in Nigeria is now by filing of an application at the Federal High Court by virtue of the

Federal High Court (Extradition Proceedings) Rules, 2015, which has since been consolidated under the Extradition (Amendment) Act, 2018.

Although the Attorney-General exercises a great deal of discretion as to initiating the commencement of extradition proceedings in court and out of court, he is obliged to comply with the provisions of the extradition laws, particularly, the provisions of section 3 of the Nigerian Extradition Act and with the similar provisions under the Kenyan Extradition Law.^{cxvvi} In other words, the Attorney-General is to give effect to the provisions of the extradition laws. The facts of such compliance are presented to court by affidavit evidence which can also be rebutted by the requested person through same mode.^{cxvii} This indicated that the proceedings are heard on affidavit evidence. The offences for which extradition is made are necessarily, subject to permitted exception,^{cxviii} extraditable offences which both countries' extradition laws define as offences that are returnable.^{cxix} Comparatively however, returnable offences under the Nigeria Extradition Act carries two years of imprisonment and must fulfil the double criminality requirement^{cxl} while same offence carries only twelve months under the Kenyan Law.^{cxli}

Handling of Multiple Extradition Requests

In some occasions, under both the Nigerian and Kenyan extradition laws, several requests may be received at about the same time for the extradition of the same fugitive criminal associated with same or sundry criminal matters from different countries. The Attorney-General, in such circumstances, is entitled to deal with such request for the surrender of that fugitive criminal in accordance with the priority of each case.^{cxlii} In addition to the existence of extradition treaty agreement, the Attorney-General, in determining the order with which the requests will be accorded priority, is enjoined to consider the circumstances of the request with special consideration for the relative seriousness of the offences if different. He also the dates of the individual request; the nationality of the fugitive and his ordinary place (state) of residence.^{cxliii}

Filing of Substantive or Provisional Application

Usually under the Kenyan or Nigerian extradition laws, there are two ways by which the court may be seised of jurisdiction to act in extradition matters. The first, in Kenya, is through the information received by the Attorney-General^{cxliv} or the Cabinet Secretary^{cxlv} (as may be

applicable in the respective extradition laws). The request is referred to the DPP to enable initiation of extradition proceedings against the requested fugitive.^{cxlvi} In Nigeria, however, it is commenced by filing a petition at the Federal High Court by the Attorney-General, for an order to surrender the requested fugitive.^{cxlvii} The second mode is commenced through information directly received by the court but passed to the Attorney-General in Nigeria or Kenya (as the case may be), after issuing provisional warrant.^{cxlviii} This is aside from the first mode which is by filing of extradition application by the Attorney-General in Nigeria, or the receipt of order passed by the DPP to the magistrate in Kenya upon the Attorney-General's referral or a referral from the Cabinet Secretary (as the case may be) for commencement of the extradition proceedings. The second mode is commenced by the judge or magistrate (depending on which of the two jurisdictions the extradition proceeding is commencing) who may, upon the receipt of a direct information relating to facts received on credible information supported by evidence, that a certain fugitive criminal accused of an extradition offence or otherwise is unlawfully evading serving sentenced term, at least having been convicted of an extradition offence, is in or on his or her way to Nigeria or Kenya. Under this mode, a Judge in Nigeria,^{cxlix} or a Kenyan magistrate,^{cl} may issue a provisional warrant for the arrest of a fugitive criminal without an extradition petition/application, or without receiving an order from the Attorney-General or the Cabinet Secretary (as the case may be) as required under the first mode. This will occur, when the Nigerian judge, or Kenyan magistrate trying the petition would be seised of jurisdiction if the substantive crime giving vent to the extradition petition has been committed at their divisions.^{cli}

By the above process, the judge or magistrate, as may be applicable, is empowered to issue a provisional warrant against a fugitive criminal that is within the court's jurisdiction or suspected of being on his or her way to the country. In that circumstance, such a warrant could be issued if the fugitive criminal were suspected to have committed the offence in Nigeria, in line with the Extradition Act,^{clii} or in Kenya, in line with Extradition (Contiguous Foreign Countries) Act^{cliii} or Extradition (Commonwealth Countries) Act^{cliv} respectively. Subsequent upon the receipt of the information and eventual issuance of the provisional warrant, the judge or the magistrate is required to forward to the Attorney-General, a general report of the facts relating to the issuance of the provisional warrant together with the information and evidence

upon which they acted or the certified true copy thereof. The Attorney-General, having received the report, exercises the discretion on whether or not to file an extradition petition/application in the circumstances of the case. The Attorney-General, thereafter (when so desired), may order that a warrant for surrendering of the fugitive criminal be issued; or they may request that the warrant be cancelled and the fugitive, if arrested, be released or otherwise be treated.^{clv} This may be done by an order from the Attorney-General notifying the Kenyan magistrate that a formal request for the fugitive surrender has been received or may, in the alternative, order that the fugitive be released. Where the Attorney-General is tardy in response to the report, the magistrate is entitled release the fugitive criminal.^{clvi} In Nigeria, however, the filing of a formal extradition petition/application becomes essential unless otherwise treated. The procedure which relates to issues of provisional warrant and the subsequent forwarding of same to the Attorney-General is peculiar to the provisions of Nigerian Extradition Act^{clvii} and the Kenyan Extradition (Commonwealth Countries) Act.^{clviii} The Kenyan Extradition (Contiguous Foreign Countries) Act, nonetheless, allows the magistrate, receiving similar information, to issue warrant of arrest for the immediate arrest of the fugitive criminal without the need of intimating the Cabinet Secretary with the magistrate's action.^{clix} The magistrate, under the Extradition (Contiguous Foreign Countries) Act, wholly handles the treatment of the fugitive criminals arrested through provisional warrant; provided that no order as to the fugitive criminal's return shall be made unless the original warrant is produced or endorsed in accordance with the provisions of Part III of the Kenyan Extradition (Contiguous Foreign Countries) Act.^{clx}

Under the first or second mode, assumption of the responsibility to issue a warrant becomes essential in both Nigeria and Kenya as may be garnered from the nature of the offence being prosecuted. A Federal High Court judge would be seised of jurisdiction to issue court processes or treat the extradition application, if the judge could issue processes against the fugitive had the offence perpetrated by him or for which he was convicted occurred in Nigeria.^{clxi} On the other hand, if the extradition, a Kenya magistrate would similarly be seised of jurisdiction to issue court processes or treat the extradition petition/application, if the magistrate could issue processes against the fugitive had the offence perpetrated by him or for which he was convicted occurred in Kenya.^{clxii}

Having determined the above, the Director of Public Prosecutions files the extradition petition/application at the magistrate court, after receiving the referral from Attorney-General, in the case of Kenya. In Nigeria, the extradition petition/application is filed before the Federal High Court judge who, if the fugitive criminal is not yet in custody, issues a warrant for the arrest of the fugitive criminal, if satisfied by the available evidence.

The courts' inquiry in extradition proceedings, is not into the fugitive's guilt or innocence of the commission of the alleged extradition offence. It is sufficient, if the court is satisfied, that the offence by which extradition is sought is an extradition offence and that the conditions are sufficiently established. This is because extradition proceeding is merely an inquiry into whether the extradition's request for the fugitive comply with the provisions of the extradition law of the requested state. The fugitive may controvert, in his or her counter-affidavit, the evidence contained in the applicant's affidavit in support of the petition/application in the proof, that the offences for which the fugitive was wanted are not only extradition offences but that they are prohibited under the extant extradition law or any relevant extradition agreement.^{clxiii} Except in circumstances where the court is not satisfied that prerequisite conditions for the extradition are fulfilled, the fugitive will be committed to custody pending the receipt of the Attorney-General's final order for his surrender to the requesting country, if satisfied that the warrant from the requesting country was indeed issued or that the certificate of the conviction records was duly authenticated, and that the extradition relates to the requested fugitive. The evidence produced should also justify the committal of the fugitive criminal for trial. At any rate, the judge^{clxiv} or magistrate^{clxv} would need to consider if, in the circumstances of the extradition proceedings, the fugitive criminal could be so committed, had the offence been committed in the requested country. Such surrender should, however, not have been restricted by the extradition law or extradition agreement in such country.^{clxvi}

A fugitive arrested on the basis of a provisional warrant of arrest shall be brought before the court as soon as practicable. The court shall either remand him or her in custody or grant bail, pending the receipt of an order of the Attorney-General. This subject to their receiving the appropriate request on the said fugitive criminal from the requesting country. Whenever the Attorney-General receives such a request appropriately, they shall notify the court of such request demanding the surrender of the detained fugitive, otherwise the Attorney-General

should order the cancellation of the said warrant and direct the release of the fugitive if he declines to grant the request.^{clxvii} This is without prejudice to the subsequent arrest and surrender at the receipt of future request made against the fugitive criminal.^{clxviii} If, however, at the end of thirty days, no order was received from Attorney-General, the fugitive criminal is entitled to be released.^{clxix} Where the application is heard and determined without discharging the fugitive, he shall be informed of his right of access to court by way of a writ of *Habeas Corpus* and be committed to custody until the Attorney-General shall direct the eventual surrender to any person authorised by the requesting country.^{clxx}

The above practices are applicable to both Nigeria and Kenya under their respective extradition laws except that the court in Nigeria refers to a Federal High Court, if the extradition takes place in Nigeria while it refers to the magistrate court if the extradition takes place in Kenya. The application for extradition shall be appropriate when done in accordance with the provisions of extant laws of the country where the extradition is taking place in the circumstance, be it Nigeria or Kenya, as the case may be.^{clxxi} The requested fugitive shall be served with the copy of the application together with supporting documents which should contain essential facts, capable of presenting *prima facie* evidence, necessary for the grant of the extradition, as not being frivolous.^{clxxii}

At the trial, the court would also take judicial notice of the accompanied documents annexed to the affidavit in support of the petition/application as received from the representative of the requested state making the extradition request. Such annexed documents require no further proof.^{clxxiii} The fugitive respondents are entitled to be represented a by legal practitioner of their choice and they may consent to the extradition. Where they intend to oppose the extradition application, they do so by filing a counter-affidavit within five days or such further extended days as may be permitted by the court.^{clxxiv} Further application may be filed by the fugitive within the time allowed for filing of counter-affidavit. The applicant may also file a reply on point of law within 48 hours.^{clxxv} Then, the extradition application is ready for hearing.

Application for Issuance of Post-Extradition Warrant of Arrest

The law does not require that the fugitive criminal must be in custody before filing the extradition petition. This is because, the court may, after filing of the petition/application, issue

a warrant of arrest for the arrest of the alleged fugitive criminal when the case is set for hearing.^{clxxvi} The issuance of such warrant usually is predicated upon an application filed by the applicant furnishing the court with such evidence as may, in the opinion of the judge of the Federal High Court in Nigeria, or the magistrate in Kenya justify the issuance of the warrant were the offence for which extradition is sought committed in Nigeria^{clxxvii} or Kenya.^{clxxviii} The warrant issued may be executed anywhere in the country^{clxxix} but the arrested fugitive shall be brought before the magistrate in Kenya or the judge of the Federal High Court in Nigeria as soon as practicable.^{clxxx} Hearing of the post-extradition application may be in open court or in private.^{clxxxi} In granting the application for issuance of a warrant, the court considers the status of the offence as regards its extraditable nature, and its non-encumbrance under the provision of the extradition law.^{clxxxii}

Hearing and Proceedings of Extradition Application and Miscellaneous Application

In Kenya, the Criminal Procedure Code and Evidence Act regulates the extradition proceedings. Gaps in the Federal High Court Act and the Federal High Court (Extradition Proceeding) Rules, 2015 in Nigeria are filled by resorting to the provisions of the Administration of Criminal Justice Act 2015 with such adaptations as the court may direct.^{clxxxiii} The gaps in the Kenyan extradition law is filled by resorting to the provisions of the Kenyan Criminal Procedure Code.^{clxxxiv}

In both countries, subject to the court's power of imposing restriction, withholding information from the public; or ordering hearing to be in private, extradition proceedings are prescribed to take place in the open court.^{clxxxv} Except where the fugitive is represented by a counsel and their presence is impracticable due to ill-health or disorderly conduct, the court exercises its extradition powers in the presence of the fugitive.^{clxxxvi} Adjournments' request are strictly scrutinised, and, unless absolutely necessary, are also curtailed during hearing.^{clxxxvii} Unless where the court requires classification on facts that are irreconcilable, evidence is given, at extradition proceedings, by affidavit evidence.^{clxxxviii} At the extradition hearing, the commencement of addresses by the parties begins with the applicant/petitioner who, in Kenya, is the DPP but in Nigeria, the Attorney-General or the counsel representing him. The Applicant/petitioner is the first to address the court, arguing for the surrender of the fugitive to the requesting state. Next in line, is the fugitive or the counsel representing them, who may

argue against the grant of the application. Thereafter, the party that began the argument, that is, the DPP or Attorney-General (as the case maybe) will reply on point of law and the matter closes for court decision to be read in the open court. Should the extradition be grantable under the extant extradition law,^{clxxxix} having regard to the totality of the facts of the case, and on whether the grant of the extradition would not be excessive, unjust, oppressive or too severe for the fugitive, the concern of the court always, at hearing, is the status of the offence as to its extraditable nature,^{cx} and the protection of the fugitive rights.^{cxci} Should any of the above issues be resolved in favour of the fugitive, the court, then, decides whether, in the circumstances of the case, it is appropriate for the court to discharge the fugitive.^{cxcii}

Miscellaneous application challenging the court's jurisdiction or the competence of the proceeding is expected to be filed and argued together with a substantive extradition application.^{cxci} At the discharge of the fugitive, ancillary order(s) may be made relating to reporting restriction, traveling restriction, probation or any order or direction, the court may deem reasonable.^{cxci} Where, in the alternative, the fugitive is not discharged, the court shall exercise its power to order the fugitive's extradition.^{cxci} Where a fugitive is not represented by counsel, upon the grant of the extradition, the fugitive would be informed of his or her right to writ of *Habeas Corpus*, if in Kenya or the right to appeal, if in Nigeria.^{cxci} Ancillary application may be also considered at this juncture.^{cxci}

Burden and Standard of Proof

Although the provision of the Evidence Act of both countries provide that, where the commission of crime is directly in issue in civil or criminal proceedings, the standard of proof in that respect is proof beyond reasonable doubt.^{cxci} However, an extradition proceeding is neither a trial of the fugitive for the commission of the offence(s) contained in the extradition request nor a review of the validity of the conviction handed down by the court of the requesting state. Thus, the standard of proof required by the extradition laws is a lesser standard predicated on *prima facie* evidence. The extradition law enjoins the court to grant extradition request by committing the fugitive to custody pending Attorney-General's order for his surrender when the evidence duly produced would, according to the law of the requested state, justify the committal to trial were the offences committed in Nigeria and Kenya (as the case may be). Usually, the standard of proof required before the court to enable committal of the accused to

face trial is the establishment of a *prima facie* case.^{ccxcix} From the foregoing, it could be rightly ascertained that the standard of proof is not a proof beyond a reasonable doubt but on the preponderance of evidence.

Rendition of the Fugitive

At the close of trial at both countries, as earlier noted, if the fugitive is not discharged, the court shall exercise its powers to order the fugitive's extradition.^{cc} The court shall inform the fugitive of his right to appeal,^{cci} and make an order for his committal to custody. The rendition of the fugitive is regulated by the extradition laws which provides for the actual surrender of the fugitive to the requesting state. It is provided, however, that the fugitive who has been committed for rendition shall not be surrendered in any case until the expiration of fifteen days which is usually counted from the day the fugitive criminal is committed to custody after trial, or until his application of his writ of *Habeas Corpus* is determined, or whichever is later. The fugitive is kept in the custody pending the expiration of time permitted by law to enable him exploit necessary legal redress till the expiration of time allowed, at which time he would be surrendered to the requesting state. The extradition laws further provide that any person to whom an order for the surrender of a fugitive directs a fugitive criminal to be surrendered may receive, hold in custody, and convey out of the requesting state, the person surrendered to him and if, while in custody of the person to whom he is surrendered, escapes, he shall be liable to be re-taken in the same manner as any person who escapes from lawful custody.^{ccii}

At his surrender, the fugitive criminal shall be handed over the property found in his possession at the time of his arrest except those that are essential for the prosecution of the offence with which he is accused.^{cciii} In this case, upon his formal surrender, the property shall be handed over to the person to whom he is being surrendered.^{cciv} At the close of hearing of the committal proceedings, failure to render the fugitive, within two months, after committal to custody, commencing from the day they are committed to custody after hearing, or at the determination or the writ of *habeas corpus*, the fugitive is entitled, on application, to be discharged. The fugitive would, in such circumstance, need to give reasonable notice to the Attorney-General, of his intention to make the application.^{ccv} It should also be noted that the Attorneys-General are empowered to discharge a fugitive committed to custody if it occurs to them, at any time, that the extradition law or treaty incumbrances the surrender of a fugitive who is awaiting

surrender or that the request for such person so surrendered is not forthcoming, or although, such request has been made, but it has been abandoned.^{ccvi} In addition to the above, the Attorney-General may also order discontinuation of all extradition proceedings.

Conclusion and Recommendations

Various extradition treaties and statutes regulating the extradition of fugitive criminals, in Nigeria and Kenya, situated in the western and eastern regions of Africa respectively, were interrogated in this discourse. This disclosed comparable features in treaty agreements and procedures statutorily stipulated. It however found both accommodating a consistent reform for repatriating and compelling the attendance of fleeing criminals from the shore of the states where extradition crimes were committed before absconding in the pursuit of justice. Notably, the two Kenyan laws for treatment of extradition matters are subsumed in the Nigerian Extradition Act. Despite the extensive modification made under extant laws, extradition matters continued to be handled by the magistrate courts in Kenya while same has since been moved exclusively to the domain of Federal High Court in Nigeria. If the noble objectives of extradition laws in both countries are to be actualised, the recommendation of shared law reform has become essential. The most startling discovery was that despite the awesome provisions on defence of fugitive's rights in both countries' extradition laws, there still remain incidences of unlawful rendition.^{ccvii}

To this end, the following recommendations are proffered.

- i. The transfer of exclusive jurisdiction of matters relating to extradition of fugitive criminal to the high court to aid speedy administration of criminal justice. This will, in much faster manner, prevent the noticed delay of justice in extradition trial in Kenya. For instance, the interlocutory application in the case of *the Director of Public Prosecutions v Okemo & Ors.*,^{ccviii} took almost ten years for determination after which the main petition was referred back to the Magistrate Court for continuation of trial.
- ii. Objections in extradition proceedings should be made a matter to be treated in the main extradition judgment. This will prevent unwholesome delay pervading quick dispensation of justice. This has been addressed in Nigeria via the reform introduced by the Administration of Criminal Justice Act, 2015.

- iii. Introduction of extradition proceeding rules for extradition trial in Kenya. This will enhance the process for effective predictiveness in extradition proceedings.
- iv. Delinking of the Office of the Director of Public Prosecutions from the Office of the Attorney-General in Nigeria to remove criminal prosecution including extradition proceedings from political influence.
- v. Enhancing protection for victims of enforced imprisonment or arrest and forceful rendition.
- vi. Ensuring the observance of due process of law in the enforcement of extradition treaties and other extant laws.

It is hoped that the above, if adopted, would enhance an effective practice of extradition enforcement at both jurisdictions.

Endnotes

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- i The National Intelligence Council, ‘Global Trend 2040 – A More Contested World’ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjNk9Pzr_2DAxXZhp0HHXsQDVU4ChAWegQIBhAB&url=https%3A%2F%2Fwww.dni.gov%2Ffiles%2FODNI%2Fdocuments%2Fassessments%2FGlobalTrends_2040.pdf&usg=AOvVaw03OgsiNlhdxw8fqyAh8Na&opi=89978449> (accessed on March 27, 2023).
- ii Larry J. Siegel, *Criminology* (11th edn, Wadsworth Cengage Learning 2012) p. 103.
- iii Ibid; see also Jeremy Bentham, *A Fragment of Government and an Introduction to the Principle of Moral and Legislation* (Wilfrid Harrison (ed), Basil Blackwell, 1948) 48.
- iv David L. Carter, ‘Law Enforcement Intelligence Operations – An Overview of Concepts, Issues and Terms’ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=ved=2ahUKEwjDh-LAqf2DAxU2U0EAHT_ZDWQQFnoECA0QAQ&url=https%3A%2F%2Fwww.ojp.gov%2Fpdf%2Ffiles%2F1%2FPhotocopy%2F134434NCJRS.pdf&usg=AOvVaw0pHZ_J9dYklSMXSF15KJqk&opi=89978449> (accessed on January 27, 2023).
- v Estine Okolo, ‘Extradition Process in Nigeria’ <<http://thenigerialawyer.com/extradition-process-in-nigeria>> (accessed on January 27, 2023).
- vi Sharon A. Williams, ‘The Double Criminality Rule Revisited’ (1993) *Israel Law Review* 27(1-2) at 298.
- vii Michael D Hanson and Amanim Akpabio, ‘Extradition and State responsibility on the protection of right of requested persons 2023’ *International Journal of Research and Renovation in Social Science (LJRISS)* VII (VI) 356 – 371 at 358.
- viii UNODC, ‘Cases and Materials for Extradition in Nigeria’ (United Nations 2016).
- ix A. T. Bello, ‘Legal Stencil on Extradition Law in Nigeria: The Chronicle and Evaluation’ (2018) *ABSU Law Review (ABLR)* Vol. 2, pp. 84-98.
- x C.E. Thaddeus, ‘Exploring the Politics of Extradition in International Relations’ <https://www.ajol.info/index.php/nauij/article/view/215297/20349> (accessed on July 27, 2023).
- xi Feinrider, Martin, ‘Extraterritorial Abductions: A Newly Developing International Standard’ (1981) *Akon Law Review: Vol. 14(1) Article 3* pp. 27-47 at 29.
- xii B.A. Garner, *Black’s Law Dictionary* (10 ed., Thompson Reuters 2014) p. 704.
- xiii Robert Johnson, ‘Extraordinary Rendition: A Wrong Without a Right’ 43 *U. Rich. L. Rev.* 113 (2009) pp. 1135-1174 at 1147. <<https://scholarship.richmond.edu/lawreview/vol43/iss3/11>> (accessed on March 27, 2021).
- xiv London scheme of extradition within the commonwealth is applicable as a multilateral treaty among countries that are members of the Commonwealth of Nations.
- xv The application of the Nigerian Extradition Act, 1966 now Extradition Act Cap E 25, Laws of the Federation of Nigeria 2004 (as amended) [the Nigerian Extradition Act], to Commonwealth country is expressly preserved by the Act at s 2(1), as applying to every separate country within the Commonwealth of Nations, however, subject to its provisions.
- xvi See the Extradition (Commonwealth Countries) Act, 1968 (as amended), Cap 77 Laws of Republic of Kenya (Rev. 2012) [Kenyan Extradition (Commonwealth Countries) Act].
- xvii See, for instance, the Mutual Assistance in Criminal Matter within the *Commonwealth* (Enactment and Enforcement) Act of (1998) No. 13.
- xviii Some of these international treaties are multilateral treaties arising from interregional obligations while others are bilateral treaties.
- xix See the Constitution of Federal Republic of Nigeria 1999 (as Altered) [CFRN 1999].
- xx See the Constitution of Republic of Kenya 2010 [Kenyan Constitution 2010].
- xxi Ibid at s 2(1); see also the CFRN 1999 (n 19) s 1(1).
- xxii See the CFRN 1999 (n 19) ss 33 – 44; see also the Kenyan Constitution 2010 (n 20), Chapter IV - The Bill of Rights, Articles 19 – 51 [Art.].
- xxiii Ibid at 2(5).
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- xxiv Ibid at 2(6).
- xxv See the CFRN 1999 (n 19) s 4; see also the Kenyan Constitution, 2010 (n 20) at Arts. 93, 95, & 109.
- xxvi Ibid at s 6; see also the Kenyan Constitution 2010 (n 20), Art. 159.
- xxvii See the Kenyan Constitution 2010 (n 20), Art. 157.
- xxviii Ibid at Art. 156.
- xxix Ibid at Art. 157.
- xxx See the Nigerian Extradition Act (Modification) Order 2014, Order 1 & 2; see also CFRN 1999 (n 19) s 251(i); and the Nigerian Extradition (Amendment) Act 2018.
- xxxi See the Nigerian Extradition Act (n 15).
- xxxii See the Extradition (Contiguous and Foreign Countries) Act 1967, Cap 76 [Rev. 2010] as amended [Kenyan Extradition (Contiguous and Foreign Countries) Act]; see also the Extradition (Commonwealth Countries) Act 1968, Cap 76 [Rev. 2012] as amended.
- xxxiii Ibid. There are three laws dealing with extradition processes in Kenya. The first two are the main extradition enactments in Kenya while the third is merely enforcing. The first is the Extradition (Commonwealth Countries) Act (n 32) which makes provisions for the surrender by Kenya to other Commonwealth countries, of persons accused or convicted of offences in those countries while the second extradition law applicable to Kenya is the Extradition (Contiguous and Foreign Countries) Act (n 32) which amended and consolidated the previous extradition laws relating to the extradition of fugitive criminals in other countries outside the Commonwealth. The third law is the Fugitive Offenders Pursuit Act, Cap 87 Laws of Kenya which authorises the police of Uganda and Tanzania to pursue within Kenya, offender fugitives from those countries based on reciprocity.
- xxxiv The original Extradition Act was enacted on 31st December, 1966 but became operational in January, 1967. It repealed and reformed all previous extradition laws made by, or as are applicable in Nigeria, and also provided a more-extensive legal regime for the extradition of fugitive criminals. The Extradition Act, 1966, by process of incorporation of laws, was later known as Extradition Act, Cap 125, Laws of the Federation of Nigeria, 1990, and by a later process, it was incorporated into the laws of Nigeria as the Extradition Act, Cap E 25, Laws of the Federation of Nigeria, 2004. The Extradition Act, 2004 has since passed through a major amendment, and its current version is the Extradition Act, 2004 as amended by the Extradition (Amendment) Act, 2018 which now forms the primary legislation specially made for regulating extradition in Nigeria and is applicable to two categories of states; that is, states having extradition agreements with Nigeria with respect to which agreement order has been made and published in the Federal Gazette,^{xxxiv} and the states which are members of Commonwealth of Nations.
- xxxv See Unini Chioma, 'Extradition Process in Nigeria' (2021) <<https://thenigerialawyer.com/extradition-process-in-nigeria/>> (accessed on March 27, 2024).
- xxxvi The Criminal Code Act, Cap C 38, Laws of the Federation of Nigeria, 2004.
- xxxvii The Penal Code Act, Cap P 3, Laws of the Federation of Nigeria, 2004.
- xxxviii See Unini Chioma, 'Extradition Process in Nigeria' (n 35).
- xxxix See the Kenyan Evidence Act, Cap 80, Laws of Kenya.
- xl See the Criminal Procedure Code Cap 75 Laws of Kenya, Rev. 2012 [Kenyan Criminal Procedure Code].
- xli See the Kenyan Magistrate's Court Act No. 26, 2015.
- xlii See the Kenyan Criminal Procedure Code (n 40).
- xliii Kenyan Evidence Act (n 39).
- xliv See the Nigerian Extradition Act (n 15) at s 1(1) & (2).
- xlv See the provisions of the Federal High Court (Extradition Proceedings) Rules, 2015
- xlvi See the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 3(1); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 3(1).
- xlvii See the Nigerian Extradition Act (Modification) Order 2014 (n 30) Order 1 & 2; see also CFRN 1999 (n 19) s 251(i); and the Nigerian Extradition (Amendment) Act 2018.
- xlviii See the CFRN 1999 (n 19) s 41; see also the Kenyan Constitution 2010 (n 20) Art. 39.
- xlix Ibid at 35; see also the Kenyan Constitution 2010 (n 20) Art. 29.
- l Ibid at 34; see also the Kenyan Constitution 2010 (n 20) Art. 28.
- li Ibid at 36; see also the Kenyan Constitution 2010 (n 20) Art. 50.
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- lii See the Nigerian Extradition Act (n 15) at ss1 & 3; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6.
- liii Ibid at s 3(2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) s 5; and the Kenyan Extradition (Commonwealth Countries) Act (n 15) at s 5.
- liv See CFRN 1999 (n 19) at s 36(8) & (12); see also the Kenyan Constitution 2010 (n 20) Art. 50(2)(n).
- lv See the Nigerian Extradition Act (n 15) at s 5; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 6; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 5.
- lvi Ibid.
- lvii Ibid.
- lviii See the Nigerian Extradition Act (n 15) at s 6(1); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 6(1)(b); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 7. Statutorily, extradition evidence for criminal offence or conviction is in the form of a duly authenticated warrant of arrest or certificate of conviction issued in the requesting country.
- lix Ibid at s 3(2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 7(2); and he Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 4.
- lx See the Schedule to the Nigerian Extradition Act (n 15); see also the Schedule to Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32); and the Schedule to the Kenyan Extradition (Commonwealth Countries) Act (n 32).
- lxi See the Nigerian Extradition Act (n 15) at s 3(2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16(1); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 7(3).
- lxii Ibid at s 4(2) & (3); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 3(2); and he Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 4(1).
- lxiii Ibid at s 3(1) & (2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16; and he Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6(1).
- lxiv See the CFRN 1999 (n 19) s 42; see also the Kenyan Constitution 2010 (n 20) Art. 27.
- lxv See the Nigerian Extradition Act (n 15) at s 3(1) & (2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16; and he Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6(2).
- lxvi Ibid; see also *George Udeozor v Federal Republic of Nigeria* CA/L/376/05.
- lxvii Ibid.
- lxviii See the CFRN 1999 (n 19) at s 39; see also the Kenyan Constitution 2010 (n 20) Art. 32 & 38.
- lix Ibid at s 38; see also the Kenyan Constitution 2010 (n 20) Art. 32.
- lxx See the Nigerian Extradition Act (n 15) at s 3(2)(b); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16(1)(a) & s 5(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6(1)(a) & (b).
- lxxi UNODC, ‘Cases and Material for Extradition in Nigeria’ (n 7) p. 22; see also the CFRN 1999 (n 19) s 39 and the Kenyan Constitution 2010 (n 20), Art. 38.
- lxxii Kenelly JJ, ‘The Political Offence Exception: Is the United States – United Kingdom Supplementary Extradition Treaty, the Beginning of the End?’ *American International Law Review* (1987) 2(1) Article 4 p. 208.
- lxxiii See the CFRN 1999 (n 19) s 42.
- lxxiv See also the Kenyan Constitution 2010 (n 20) Art. 50(2)(o).
- lxxv See the Nigerian Extradition Act (n 15) at s 3(4); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16(1)(b); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6(2).
- lxxvi Ibid at s 3(5); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 4; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 5.
- lxxvii Ibid at s 3(4); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16(1)(b); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6(2).
- lxxviii See the CFRN 1999 (n 19) s 36(5); see also the Kenyan Constitution 2010 (n 20) Art. 50(2)(a).
- lxxix Ibid.
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- lxxx See the Nigerian Extradition Act (n 15) at s 9; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(4).
- lxxxi Generally, a charge is sustainable on *prima facie* evidence. This is so in Nigeria as well as in Kenya.
- lxxxii See the Nigerian Extradition Act (n 15) at s 9(2) & (3); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16; and the Kenyan Extradition (Commonwealth Countries) Act (n) a32t s 9(5).
- lxxxiii see also *George Udeozor v Federal Republic of Nigeria* (n 66); see also see also *R v Wilfred Onjanjo Nganyi* (2008) cKLR cited in Busola Mayeku, 'An Appraisal of Extradition Law in Kenya' LSKJ 9(2) (2013) pp. 6 & 7.
- lxxxiv See the Nigerian Extradition Act (n 15) at s 9(3); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 7(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5).
- lxxxv See the Nigerian Extradition Act (n 15) at s 3; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) s 9(5).
- lxxxvi See the CFRN 1999 (n 19) s 34.
- lxxxvii See also the Kenyan Constitution 2010 (n 20) at Arts. 28 & 30.
- lxxxviii See of the United Nations Convention Against Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment Art. 3.
- lxxxix Ibid at Article 1(d).
- xc Ibid.
- xcii See the United Nations Model Treaties on Extradition A/Res/45/116.
- xciii See the Nigerian Extradition Act (n 15) at s 4(1).
- xciv See the United Nation Treaty on Extradition Article 1(1)
- xcv See the Nigerian Extradition Act (n 15) at s 4(1).
- xcvi Ibid.
- xcvii Ibid at s 9(3); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n32 at s 13(1); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5)(a) a (b).
- xcviii Ibid; see also Blass F, 'Double Criminality in International Extradition' (Dissertation, University of Stellenbosch, South Africa).
- xcviii *AG Fed v Rashid Abayomi Mustapha*, Charge No. FHC/218C/2011, certified true of the judgment of The Federal High Court of 9/1/2012 delivered on Lagos Division by Hon. Justice P. I. Ajoku; see also Hanson and Akpabio, (n 7) p. 361; *Collins v Loisel* 259 US 309, 42 (1922) Sct. 49, 66L. Ed. 956.
- xcix See the Nigerian Extradition Act (n 15) s 20; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 4(1).
- c Ibid.
- ci Ibid at s1(1) & (2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 3(1); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 7(1); see also *Samuel Kimuch Gichuru & Anor. v Attorney-General & Ors.* (2015) eKL.R; see further UNODC, 'Cases and Material for Extradition in Nigeria' (n 7) at p. 24.
- cii Watney M., 'A South African Perspective on Mutual Legal Assistance and Extradition in Globalised World' *Potchefstroom Electronic Law Journal* 1(2) (2012) 297.
- ciii See the Nigerian Extradition Act (n 15) at s14; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 5(3); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at ss 3 & 7(3).
- civ *George Udeozor v Federal Republic of Nigeria* (n 66).
- cv Ibid.
- cvi See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 7(3) & (8); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 5.
- cvi *George Udeozor v Federal Republic of Nigeria* (n 66).
- cvi *George Udeozor v Federal Republic of Nigeria* (n 66).
- cvi Ibid.
- cix See the United Nations Secretariat, 'Manual on Mutual Legal Assistance and Extradition' (Vienna 2012).
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- cx See the Nigerian Extradition Act (n 15) s 3(7); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16(2); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6(3).
- cxii *R v Horseferry Road Magistrate Court (Ex Parte Bennet)* (1994) 1 AC 42 HL.
- cxiii Ibid.
- cxiv UNODC, Cases and Material (n 7) at p. 22.
- cxv See the Nigerian Extradition Act (n 15) at s 15; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 26(1); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 14.
- cxvi Ibid at s 3(3); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16(3); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 10(3).
- cxvii See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16(1); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6(1) & 11(5).
- cxviii Ibid.
- cxix Ibid at s 9(2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 14(3) & (4); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5).
- cxv See the Nigerian Extradition Act (n 15) at s 3(2)(b); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 11(b); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 11(5); see further the United Nations Convention Against Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment (n 88) at Art. 3.
- cxv See *Director of Public Prosecutions v Okemo & Ors.* (Petition 14 of 2020) [2021] KESC 13 (KLR) (Crim). <<http://kenyalaw.org/caselaw/cases/view/221914/>> (accessed on 09/02/2024) see also *R v Governor of Brixton Prison, Ex parte Levin* (1997) AC 741 at Para 74(b); and UNODC, ‘Cases and Materials for Extradition in Nigeria’ (n 7) at p. 31.
- cxv See the Nigerian Extradition Act (n 15) at s 6(b); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 5(1); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 7(1).
- cxv Ibid.
- cxv See also Bello Adesina Temitayo, Legal Stencil on Extradition Law in Nigeria: An Evaluation. <<http://ssrn.com/abstract=2970989>> (accessed on 09/02/2024); see also the Nigerian Extradition Act (n 15) at s 9(3); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8(1); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 7(2).
- cxv Extradition proceedings in Nigeria is within the exclusive preserve of the Federal High Court by virtue of the CFRN 1999 (n 19) s 251(1)(i); in Kenya, under the Kenyan Extradition (Commonwealth Countries) Act (n 32), initiation of extradition proceedings is at the instance of the Director of Public Prosecutions by virtue of the Kenyan Constitution 2010 (n 20) at Art. 157.
- cxv The Nigerian Extradition Act, 2018 incorporated the changes contains the amendment made to the Nigerian Extradition Act by the Executive Order on extradition in Nigeria).
- cxv The Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 7.
- cxv The Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) s 5(1).
- cxv Ibid at s 3(1) – (7); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(3),
- cxv It will be recalled, before the coming into force of the Kenyan Constitution, 2010 (n 20) which created the office of the DPP and saddled it with responsibility of initiation of criminal proceeding, the Attorney-General dealt exclusively with extradition proceedings. He gave order directly to the magistrate to initiate the extradition proceeding. Same procedure was applicable in Nigeria before the 2014 reform.
- cxv See the Office of the Director of Public Prosecution Act Cap 6B, Laws of Kenya (Rev. 2022) ss 5 & 6. *The Director of Public Prosecutions v Okemo & Ors.* (n 120) at p. 3.
- cxv Ibid.
- cxv Ibid.
- cxv Ibid. The Office of the Director of Public Prosecution is Kenya’s national prosecuting authority. The Office was delinked from the Attorney-General’s Office in 2011 after the enactment of the Kenya Constitution in 2010, and it operate independently under the guidance of the Director of Public

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- Prosecutions (DPP); see also Article 157 of the Kenyan Constitution 2010 (n 20); see further the Office of the Director of Public Prosecutions Act (n 129).
- cxxxv See the reforms introduced by the Nigerian Extradition (Amendment) Act 2018, which substantially further modified and consolidated the various modification made the principal Act since 2014.
- cxxxvi See also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16; see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6.
- cxxxvii *George Udeozor v Federal Republic of Nigeria* (n 66).
- cxxxviii See the Nigerian Extradition Act (n 15) at ss 3 & 20 (1) which, in their permissible collocation allow for extradition of fugitive criminal without limitation to returnable offences; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at ss 2(1) & 16); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at ss 4 & 6.
- cxxxix Ibid at s 6; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at ss 2 & 15; see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6.
- cxl Ibid at s 20(2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 2(1); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 4.
- cxli See the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 4(1).
- cxlii See the Nigerian Extradition Act (n 15) at s 6(4); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 11(4).
- cxliii Ibid at s 6(4)(a)-(c); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 11(4)(b).
- cxliv See the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 7.
- cxlv See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 5.
- cxlvi The Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) does not make provision for the office of the Attorney-General or the Director of Public Prosecutions for initiation of extradition proceedings nor giving direction to the magistrates on extradition matters. However, in compliance with Kenyan Constitution 2010 (n 20) at Art. 157, the initiation of Criminal processes in Kenya is now in the domain of the Director of Public Prosecutions. Notwithstanding the practice put in place before the enactment of the Kenyan Constitution 2010 (n 20) at Art. 157.
- cxlvii See the Nigerian Extradition Act (n 15) at s 7.
- cxlviii Ibid at s 8; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 13(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 8(1)(b).
- cxlix Ibid.
- cl See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 13(2); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 8(2).
- cli Ibid.
- clii See the Nigerian Extradition Act (n 15) at s 8 (2).
- cliii See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 13(2).
- cliv See also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 8(2)(3).
- clv See the Nigerian Extradition Act (n 15) at s 8(3); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 8(2) & (3).
- clvi See the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5).
- clvii See the Nigerian Extradition Act (n 15) at s 8(3).
- clviii See the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 8(3).
- clix See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 13.
- clx Ibid. at s 13(2).
- clxi See the Nigerian Extradition Act (n 15) at s 7(1).
- clxii See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 13(1); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5).
- clxiii See the Nigerian Extradition Act (n 15) at s 9(5); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 7; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) s 9(5).
- clxiv Ibid at s 9(3) & (4).
- clxv See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8(2) & (3); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5).
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- clxvi See the Nigerian Extradition Act (n 15) at s 9(4)(c); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 7(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 6.
- clxvii Ibid at s 8 (3) & (5); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 6(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 8(3).
- clxviii Ibid at s 8 (7).
- clxix Ibid at s 8(6); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 6(4); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 8(3)(b).
- clxx Ibid at s 10(2); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 10(1); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(1).
- clxxi Where the requisition takes place in Nigeria, the application is required to be supported by such documents containing information as would include; (a) particulars of the fugitive who extradition is requested; (b) a request for the surrender of the fugitive by the requesting state; (c) a duly authenticated warrant of arrest or certificate of conviction issued in the requesting State; (d) the particulars of the offence specified in the extradition request; (e) particulars of the corresponding offence in Nigeria or Kenya, as the case may be; (f) supporting affidavits; (g) written Address; and (h) Any other relevant document . See Order V of the Federal High Court Extradition Proceedings Rule, 2015; and the Nigerian Extradition Act (n 15) at s 17; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 17); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 16.
- clxxii *Attorney-General of the Federation v Jeffery Okafor* Charge No: FHC/ABJ/CR/180/2014 which emphasised the necessity of observance of fair hearing in the extradition proceeding while extolling the strong pillar of justice; see also the Nigerian Extradition Act (n 15) at s 9(2) & (3); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at ss 7(2) & 8; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5).
- clxxiii This becomes apparent, placing reliance on the Nigerian Extradition Act (n 15) at s 17; with similar provisions in the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 17 and Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 16 which all propel the courts to take judicial notice of certain documentary evidence. For instance, The Nigerian Extradition Act(n 15) at s 17 asserted that, for purposes of extradition warrant issued in a country other than Nigeria; any deposition or statement on oath or affirmation taken in any such country, or a copy of any such deposition or statement; and any certificate of conviction issued in any such country, shall be taken to be duly authenticated if either it is authenticated in any manner provided by law; or if it complies with the requirements of Section 17(3) of the Extradition Act and in addition is authenticated by the oath or affirmation of some witness or by being sealed with the official seal of a Minister of State of the country in which it was issued or taken. The requirements of s 17(3) of the Extradition Act are that: a warrant must purport to be signed by a judge, magistrate or officer of the country in which it was issued; any deposition or statement on oath or affirmation taken in a requesting State, or a copy of any such deposition or statement, must purport to be certified under the hand of a judge, magistrate or officer of the State in which it was taken to be the original or a copy, as the case may be, of the document in question; a certificate of conviction must purport to be certified by a judge, magistrate or officer of the country in which the conviction is stated to have taken place; see also *Attorney-General of the Federation v Rasheed Abayomi Mustapha* Charge No: FHC/L/218C/2011 p. 36.
- clxxiv See order VI Rule (3) of the Extradition Proceeding Rules 2015. This is also allowed by the extradition law and practice in Kenya.
- clxxv Ibid.
- clxxvi See also the Nigerian Extradition Act (n 15) at s 7(1); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 6(1); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) s at 8(2).
- clxxvii Ibid at s 7(1).
- clxxviii See the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 6(1).
- clxxix See also the Nigerian Extradition Act (n 15) at s 7(2); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8(2).
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- clxxx See also the Nigerian Extradition Act (n 16) at s 7(3); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 6(5); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 8(5).
- clxxxI Ibid; see also Order VI Rule (3) of the Extradition Proceeding Rules 2015.
- clxxxII Ibid at s 8(6); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 7(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 7(5); see also Order VI Rule (2)(a) of the Extradition Proceeding Rules 2015.
- clxxxIII See order IX Rule (1) of the Extradition Proceeding Rules 2015.
- clxxxIV See the Kenyan Criminal Procedure Code (n 40).
- clxxxV See Order X Rule (1) of the Extradition Proceeding Rules 2015; see also the provisions of the CFRN 1999 (n 19) s 36(6)(c) and the Kenyan Constitution 2010 (n 20) Art. 50(2)(f).
- clxxxVI See Order X Rule (2)(a) of the Extradition Proceeding Rules 2015; see also the provisions of the CFRN 1999 (n 19) s 36(4) & (8) and the Kenyan Constitution 2010 (n 20) at Art. 50(1) & (2)(d).
- clxxxVII See Order VIII Rule (6) of the Extradition Proceeding Rules 2015; see also the provisions of the CFRN 1999 (n 19) s 36(4) and the Kenyan Constitution 2010 (n 20) at Art. 51.
- clxxxVIII See the Nigerian Extradition Act (n 15) at s 9(2); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 7(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5); see also Order IX Rule (2) of the Extradition Proceeding Rules 2015.
- clxxxIX See the provisions of the Administration of Criminal Justice Act Part 31; see also the provisions of the Kenyan Criminal Procedure Code (n 40) at ss 300-310; see also Order VIII Rule (1) (b) of the Extradition Proceeding Rules 2015.
- exc See the Nigerian Extradition Act (n 15) at s 9(3); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5); see also See Order VIII Rule 1a of the Extradition Proceeding Rules 2015.
- excI Ibid at s 9(5); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 16(3); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 10(3) & 11(3) & (5); see also See Order VIII Rule (1)(c) of the Extradition Proceeding Rules 2015.
- excII Ibid at s 9(7); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5); see also Order VIII Rule (1)(e) of the Extradition Proceeding Rules 2015.
- excIII Ibid at s 9(2); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 7(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(2); see also Order VIII Rule (5) of the Extradition Proceeding Rules 2015.
- excIV Ibid at s 9(5); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 14(3); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(3); see also Order VIII Rule (2) of the Extradition Proceeding Rules 2015.
- excV Ibid at s 9(3); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5); see also Order VIII Rule (3)(a) of the Extradition Proceeding Rules 2015.
- excVI Ibid at s 9(6); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 9; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 10(1); see also Order VIII Rule (4) of the Extradition Proceeding Rules 2015.
- excVII Ibid at s 9(5); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(3); see also order VII Rule (3)(b) of the Extradition Proceeding Rules 2015.
- excVIII See the provision of Evidence Act 2011, s 135 (1); see also the provisions of Kenyan Evidence Act (n 39).
- s111 *Ajidagba v IGP* 1958 3 FSC 5.
- excIX See the Nigerian Extradition Act (n 16) at s 9(4); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 8(2); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(5); see also order VIII Rule (3)(a) of the Extradition Proceeding Rules 2015.
- cci Ibid at s 9(6); the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 9(1); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 10(1); see also See order VIII Rule (4) of the Extradition Proceeding Rules 2015.
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- ccii Ibid at s 10 (3); see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 9(3); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 13(3).
- cciii Ibid at s 13 (1); see also and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9(6).
- cciv Ibid at s 13 (2); see also the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 9 (6).
- ccv Ibid at s 12; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 15; and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 12.
- ccvi Ibid at s 14; see also the Kenyan Extradition (Contiguous and Foreign Countries) Act (n 32) at s 9(3); and the Kenyan Extradition (Commonwealth Countries) Act (n 32) at s 11(3).
- ccvii Human Rights Council Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session 30 March – 8 April 2022. A/HRS/WGAD/2022/25, 17 August 2022; see *Nnamdi Kanu v Federal Republic of Nigeria*, Appeal No: CA/ABJ/CR/383/2015, lead judgment p. 4.
- ccviii See *the Director of Public Prosecutions v Okemo & Ors.* (n 120).