LEGAL FRAMEWORKS ON EXTRADITION OF DRUG AND MONEY LAUNDERING OFFENDERS TO NIGERIA

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Abstract

This paper focuses on the legal framework on extradition of drug and money laundering offenders to Nigeria, while at the same time various states practices were evaluated as to how it affects international cooperation towards the suppression of international organize crimes. The paper adopted hybrid of both doctrinal and empirical research methodologies with a view to evaluating various legal frameworks connected hereto; as well as collection of first-hand information data through the medium of questionnaires to analyse how states practices influence either positively or negatively the international cooperation on extradition of drug and money laundering offenders. Having carefully analysed various legal frameworks dealing with extradition of drug and money laundering offenders to Nigeria, as well as the data received from the Office of the Attorney General of the Federation, it is the humble view of the paper that certain considered legal framework needs to be amended, most especially as it relates to the extradition of nationals of the requested nations. This is due to the fact that, such provisions were observed to have ended in providing a cover to circumventing the entire process, thereby defeating the essence of extradition principles. Hence, it was recommended that for effective and purposeful implementation of such laws, there must be international understanding and demonstrated willingness to amend such provisions in our various bilateral and multilateral treaties for effective, unified and purposeful enforcement drive towards achieving the desired objectives.

Keywords: Extradition; Drug; Money Laundering; Offender.

1. Introduction

This paper focused on the legal frameworks on extradition of drug and money laundering offenders to Nigeria, while various state practices were evaluated as to how it affects International Cooperation towards suppression of international organize crimes. Since the ancient times, international cooperation has been seen and recognised as an important element of criminal prosecution for offences having trans-national dimension or where the offender or fugitive decided to seek refuge in another sovereign nation or jurisdiction. Thus, fugitive

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offenders need to be returned by way of extradition to the State in which the offence(s) were committed to ensure proper investigation and prosecution of the matter by the law enforcement agencies or to enable observance of punishment so awarded by the court.[1]

The scope of this paper is limited within the confines of extradition of drugs and money laundering offenders to Nigeria. Beyond this, the work considered critical parameters governing the scope and limitation of the study by focusing on the key players and crimes at stake. The subject of interest here are purely natural persons as opposed to 'states or juridical persons. In addition, the persons so interested must be convicted person(s) who fled jurisdiction; an alleged criminal who jump bail and fled jurisdiction; and an alleged criminal who is wanted by the law enforcement agents, rather than a merely suspected person or a witness to criminal investigation.

Historically, international cooperation in the suppression of criminal activities otherwise known as 'extradition' dates back to the beginning of formal diplomacy. It is a system consisting of several processes whereby one sovereign nation surrenders to another sovereign, a person within its territorial jurisdiction accused of committing criminal offence, who fled and seeks refuge therein.[2]

This practice in the earlier non western civilization, the delivery of a requested person to the requesting sovereign was undertaken in solemn formula and performed by solemn display. This delivery of individuals to a requesting sovereign in the ancient period was usually based on courtesy and goodwill between sovereigns, while in this modern period it is based on agreement between nations or treaties, mostly through the instrumentality of reciprocity between nations.[3] It is therefore the intention of this paper to consider practical approach of certain nations of the world while dealing with modern extradition process in line with various legal frameworks.

2. Conceptual Clarifications

2.1 Extradition

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[1] Sepec Miha, 'International Criminal Cooperation, Extradition and Surrender Procedures –Modern Trends and Problems', (2015) P. 279; *Journal of Criminal Justice and Security*, No. 2; accessed at, <https://www.fvv.um.si/rV/arhiv/2013-2/09_Sepec.pdf>, visited on 29/04/2017.

[2] Jan Hendrik Verzijl, *'Historical Perspective of Extradition*', P. 27; accessed at, <http://shodhganga.inflibnet.ac.in/bitstream/10603/28180/12/12_chapter%202.pdf>, visited on 29/04/ 2017.

[3] Ibid.

In defining the term 'extradition' the Court of Appeal in the case of *George Udeozor v Federal Republic of Nigeria*,[4] defined it as 'a process by which a person accused or convicted of a crime is officially transferred to the State where he or she is either wanted for trial or required to serve a sentence after being duly convicted by a court of law'. Based on the above therefore, extradition is simply a combination of political and judicial process by which a suspect or convict is surrendered from one sovereign to another for the purpose of ensuring justice.

2.2 Drug

The word drug remain another complex phenomenon when it comes to its definition, as there is no universally accepted definition on it; however, the work will considers and adopt the definition of Stedman's Medical Dictionary,[5] where it defined drug as:

> Chemical substance used in the treatment, cure, prevention, or diagnosis of disease or used to otherwise enhance physical or mental well-being; it continued thus; any substance recognized in the official pharmacopoeia or formula of the Nation. And any substance intended for prevention of disease in human or other animals.

This definition seems to capture most of the ingredients or the notion of drug based on national interest or what a particular state considers as legitimate for the overriding interest of public health and safety of the people, which is the primary responsibility of any government.

2.3 Money Laundering

Money Laundering in a simple way can be described as the process by which a person conceals or disguises the identity or the origin of illegally obtained proceeds so that they appear to have originated from legitimate sources. [6]

It has also been defined by the Court in *Kalu v Federal Republic of Nigeria*[7] as the varied means by which criminals conceal the origin of their activities. The term "laundering" as noted by the

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[4] CA/L/376/05, Cited by Ladapo O and Okebukola E O, '*Cases and Materials on Extradition in Nigeria'*[2016], P.51;accessed at < https://www.google.com/search?client=firefox-b-d&q=cases+and+materials+on+extradition+of+offenders+to+nigeria+pdf,> visited on the 11/08/2019.

[5] Stedman's Medical Dictionary, Reviewed in 2014-05-01-via Drugs.com; accessed at, <http://www.dictionary.com/browse/drug>, visited on 08/04/ 2017.

[6] United Nations, Office for Drug Control and Crime *Prevention and International Monetary Fund, Model Legislative on Money Laundering and Terrorism Financing (for Civil Law Legal Systems)'* (Report) (IMF, UNODC, 1st December, 2005) 1; Cited by D. Roberto, in 'Redefining Money Laundering and Financing Terrorism, p. 4, accessed at, http://www.iae.edu.ar/pi/Documentos%20Investigacin/Research%20Seminars/New%20Definition%20of%20Money%20Laundering_RD.pdf, visited on the 21/04/2020.

court, is used due to the techniques adopted which are intended to turn dirty money into clean money.[8]

It would now suffice to define money laundering as a criminal process by which large amount of illegally obtained money most especially from (drugs, human, and arms trafficking, terrorist activity or other serious crimes) are transformed through other various legitimate manner to appear as having legitimate outlook.

2.4 Offender

An offender has been defined simply as 'an accused/defendant in a criminal case or one convicted of a crime.[9] It therefore follow in this context that, an offender is a person who is accused/convicted of extraditable offence who fled to another jurisdiction with a view to evading justice.

3. International Legal Framework on Extradition

Recent international legal developments occasioned by international terrorism, airline hijack, drug trafficking and Money Laundering are among the trans-national organize crimes that propels the development of modern extradition law embracing the recent trend in international cooperation in fighting trans-national organize crimes through the institution and instrumentality of international legal framework, as no nation can successfully do and achieve it alone. Thus, in order to achieve the desired objectives, international community at different forum convene and formulate rules and procedures towards ensuring equitable and just manner of extraditing criminal fugitive(s) to the requested nations from the requesting jurisdictions. Some of these international legal frameworks dealing with extradition of fugitive criminals are but not limited to the following.

3.1 European Convention on Extradition of 1958

The European Convention on Extradition and its two additional protocols is a multilateral extradition treaty drawn in Paris in 1957 by the member states of the Council of Europe. For a better and effective implementation of the Convention, the Committee of Ministers of the member states adopted certain guiding principles with a view towards assisting smooth

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[7] (2012) LPELR -9287 (CA), cited N. Mukhtar and I. A. Yusuf, 'Money Laundering': An Appraisal of the Processes, Trends and Impacts on Nigeria as an Emerging Economy, p. 152; Accessed at http://www.unimaid.edu.ng/Journals/Law/Private%20Law/13.pdf, visited on the 21/04/2020.

[8] Ibid.

[9] Legal Free Online Dictionary; accessed at <https://legal-dictionary.thefreedictionary.com/offender>, visited on 29/01/2020.

application of the provisions of the Convention. It was agreed by the member states that, extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested jurisdiction by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.[10] However, if the offence for which extradition is requested is punishable by death under the law of the requesting Party, while such death penalty is not provided for by law of the requested Party, extradition may be refused.[11]

However, the nationality of an individual is one of the defences against extradition in the European Convention on Extradition, as each member state is at liberty to refuse extradition of its national even though they are found culpable and sought for by another member state.[12] Nonetheless, if the state of nationality does not extradite on the ground of nationality, it is required at the request of the requesting state, to submit the case to its competent authorities in order for criminal proceedings to be instituted if they are considered appropriate.[13]

3.2 The Hague Convention of 1970

The Hague Hijacking Convention is a multilateral treaty by which 75 initial member states agree to prohibit and punish aircraft hijacking. The Convention primarily applies to civilian aircraft as oppose to Police, Customs or Military aircrafts.[14] Considering the evolution of airline hijack and the United States of America (USA) happens to be one of the principal victims, most especially in the mid-1960s, USA therefore became an early advocate of mandatory extradition of hijackers, even though without much international support. However, by 1969, when hijacking became an international phenomenon, other nations of the World reacted positively. By December, 1970**,** the members 'of the International Civil Aviation Organization (ICAO) converged and signed the Hague Convention for the Suppression of the Unlawful Seizure of Aircraft.[15]

[10] European Convention on Extradition of 1958; Art. 2.
[11] Art. 11, ibid.
[12] Art. 6 (1), ibid.
[13] Art. 6 (2), ibid.
[14] The Hague Convention of 1970, Art.3(2).
[15] Marcella Daly Malik 'Unraveling the Gordian Knot: The United States Law of International Extradition and The Political Offender Exception', (1979) P.160, *Fordham International Law Journal, The Berkeley Electronic Press [bepress]* Vol., Issue No.2; accessed at <http://ir.lawnet.fordham.edu/il>j, visited on 18/01/2020.

The Hague Convention required contracting nations to enact legislation imposing 'severe penalties' on the offense of hijacking.[16] The crime of hijacking provided by this Convention provides several nexus for jurisdiction, as it confers the jurisdiction to the states where the aircraft take-off or landed; where suspect(s) are found or arrested; the state of registration of the aircraft and the nation of origin of the suspect(s) among others. Article 3(5) of the Convention clearly provides:

> Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 8, and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft.

The Convention provided that any nation in which the aircraft landed with the hijacker (s) on board has jurisdiction to try the offense. Another additional factor is that, any asylum nation which is an International Civil Aviation Organization (ICAO) signatory was automatically vested with jurisdiction to try the crime so as to prevent the possibility of certain national legal framework requiring national backing before assuming jurisdiction. However, when it come to the issue of extradition of this kind of offenders, the provisions of Article 7 of the Convention was explicit, as it provide thus:

> The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

The extradite or prosecute formula though was created with a view to preventing any possibility of offenders from escaping justice, nonetheless, sometimes creates conflicts between nations envisaging injustice to be mated against their nationals. Thus, it is the view of this work that a single and unified formula needs to be adopted by the international community with a view to ensuring that member nations appreciates and consider a crime as a crime and the only way and means of suppressing same is by punishing the offender without engaging on unnecessary selfish or national sentiments.

[16] The Hague Convention of 1970, Art.2.

In order to strengthen the provisions of Hague Convention and gives it wider acceptance, in 1971, the members of ICAO converged and signed the Montreal Convention extending similar provisions for the Suppression of Unlawful Acts Against the Safety of Civil Aviation popularly called Montreal Convention 1971.[17]

3.3 United Nations Convention for the Suppression of Unlawful Act against Safety of Civil Aviation of 1973

As a result of international pressure and outcry most especially by the Western Countries in relation to unlawful acts against the safety of civil aviation, the United Nations convened in Montreal from 8th to 23rd September, 1971, which culminated into what is called Montreal Convention of 1971 which came into force on the 26th January, 1973 in conformity with the provisions of the Convention[18] in which Nigeria is a signatory.

The member nations having determine and resolved against action that compromise and jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation, therefore determine to provide punitive sanction to serve as deterrence in respect of the any person who commits any act capable of endangering the safety of an aircraft while in flight; or act of violence against person on board of an aircraft if that act is likely to endanger the safety of that aircraft; or destroys or damage an aircraft which renders it incapable of flight; or places or causes to be placed a device or substance which is likely to destroy that aircraft or causes damage to it; or communicate any information which he knows to be false thereby endangering the safety of an aircraft in flight; or an accomplice to a person who commit or attempt to commit any of the foregoing offences .[19]

The member nations in the Convention resolved to establish jurisdiction[20] in respect of all offences[21] agreed and mentioned in the provisions of this Convention to apply severe penalties to the offenders.[22]However, where contracting State in the territory of which the alleged offender is found, upon receipt of extradition request decided not to extradite him, be obliged whether or not

[17] Marcella Daly Malik, P.162; Op cit p. 5.
[18] Montreal Convention of 1971; Art.15 Para 3.
[19] Art. 1 Para 1 and 2, ibid.
[20] Art. 5 Para 1 and 2, ibid.
[21] Per Art. 1 Para 1 and 2, Ibid.
[22] Art. 3, ibid.

the offence was committed in its territory submit the case to its competent authorities for the purpose of prosecution.[23]

3.4 South Asia Association for Regional Cooperation (SAARC) Convention for the Suppression of Terrorism of 1987

The South Asian Association for Regional Cooperation (SAARC) Convention for the Suppression of Terrorism otherwise called Kathmandu Convention of 1987 was convened on the 4th November, 1987 by the Seven member Countries, namely, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri. Lanka. The member countries resolved to take effective measures to ensure that perpetrators of terroristic acts do not escape prosecution and punishment by providing regional legal framework binding the member nations towards achieving the desired objectives.

The member states considered and adopted the provisions of The Hague Convention for the Suppression of Unlawful Seizer of Air Craft of 1970[24] as well as the Montreal Convention for the Suppression of Unlawful acts Against the Safety of Civil Aviation of 1971.[25] The member nations also considers the offences of Murder, Manslaughter, Assault causing bodily harm, Kidnapping, Hostage-taking, Firearms related offences, Weapons, Explosives and dangerous substances to be extraditable offences among member states.[26]

It was also resolved by the member nations that a contracting nation in whose territory a person suspected of having committed offence as enumerated in Article 1 to this Convention having received extradition request from another member state shall if it does not extradite that person submit the case to its competent authorities to take necessary action.[27]However, one of the interesting aspects of this Convention is the non-inclusion of national identity clause in all the provisions of the eleven Articles; thus, no contracting nation will refuse extradition request merely base on nationality of the suspect.

3.5 United Nations Convention against Illicit Traffics of Narcotic Drugs and Psychotropic Substances of 1988

[23]Art.7, ibid.
[24] South Asian Association for Regional Cooperation (SAARC) Convention for the Suppression of Terrorism of 1987. Art. 1 (a).
[25]Art.1 (b), ibid.
[26]Art.1 (e), ibid.
[27] Art. 4, ibid.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance was held in Vienna from 25th November to 20th December 1988 with a view to strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic in Narcotic Drugs and to deprive persons engaged in such activities the proceeds of their criminal activities thereby eliminating their main incentive for so doing. It was further aimed at reinforcing and supplementing the measures provided in the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol amending the Single Convention in order to counter the magnitude and extent of illicit traffic in narcotic drugs and its grave consequences.[28]

The member nations at the Convention approve for the first time the application of punitive sanction for the offenders in relating to the cultivation, production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961single Convention, as amended among others.[29]The member nations are also employed to establish jurisdiction over person(s) who committed an offence(s) in its territorial jurisdiction in accordance with Article 3, paragraph 1 of the Convention.[30] Thus, each of the offences provided in the Articles to this Convention shall be deemed to be an extraditable offence[31] and parties to the Convention are employed to accord international cooperation when dealing with such offences.

It is further provided that, where there is extradition request, a requested party shall endeavour to expedite extradition procedures and to simplify evidentiary requirements in respect of any offence to which this Article applies.[32]However, where the requested party in whose territorial jurisdiction the alleged offender is found does not extradite, it is required to direct its competent authorities to assume jurisdiction and ensure effective prosecution of the matter.[33]

3.6 1984 Extradition Treaty Between The Peoples' Republic of Benin, The Republic of Ghana, The Federal Republic of Nigeria, and The Republic of Togo

[28] Preamble to the 1988 UN Convention against Illicit Traffics of Narcotic Drugs and Psychotropic Substances.
[29] 1988 U N Convention, (n.28) Art.3 (1) Sub-Para (a) and (b).
[30] Art. 4 Para 1 and 2, ibid.
[31] Art. 6 Para 2, ibid.
[32] Art. 6 Para 7, ibid.
[33] Art. 6 Para 9, ibid.

In 1984, there was a four West African nation's landmark extradition treaty between the Republic of Benin, Ghana, Togo and Nigeria signed on the 10th December 1984 for the extradition of fugitive offenders, where the parties to the treaty then agreed to extradite fugitive offender to the requesting country unequivocally without having regards to the nationality question.[34] The Contracting Parties in this treaty undertake and resolved to extradite to each other on the basis of reciprocity, those persons who are being accused or convicted of any offences punishable by at least 2 years imprisonment.[35]

This treaty though considered by this work to be one of the best extradition treaties Nigeria ever had, but unfortunately could not see the light of the day as it was overtaken by the 1994 West African Convention on extradition which covers the entire region and was not saved by any clause of the succeeding legal framework.[36]

3.7 1994 Economic Community of West African States (ECOWAS) Convention on Extradition

In 1994, members of the Economic Community of West African States (ECOWAS) comprising of Benin, Burkina Faso, Cape Verde, Cote D'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Mali, Mauritania, Liberia, Niger, Nigeria, Senegal, Sierra Leone and Togo converged in Abuja, Nigeria on the 6th August 1994 and resolved to firmly unite in fighting criminal activities throughout the sub-region.[37]

However, as the leaders of the sub-region embarked on rigorous deliberations on the new path, they somewhat failed to deem it expedient in saving any of the previous good existing extradition agreement(s) entered into by either two or more parties from the region or few provisions that are capable of fostering better international cooperation among the member states. As the leaders decided to jettisoning the 1984 four West African nations extradition treaty and adoption of Article 10 in the new 1994 ECOWAS Convention on extradition, nations were left with broader discretionary power as to whether to extradite or not when it come to the issue

[34] Preamble to the 1984 Extradition Treaty Between The Peoples' Republic of Benin, The Republic of Ghana, The Federal Republic of Nigeria, and The Republic of Togo.
[35] 1984 Extradition Treaty Between The Peoples' Republic of Benin, The Republic of Ghana, The Federal Republic of Nigeria, and The Republic of Togo. Art. 2 Para 1.
[36] 1994 Economic Community of West African State Convention on Extradition; Art. 34.
[37] Preamble to the Convention; ibid.

of their nationals; thereby allowing the old principle of extradite or prosecute to come into play. The provision of Article 10 to the Convention[38] clearly provides:

> 1. Extradition of a national of the Requested State shall be a matter of discretion for that State. Nationality shall be determined at the time of the offence for which extradition is being requested.
>
> 2. The Requested State which does not extradite its nationals shall at the request of the requesting State submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.

However, for the purpose of facilitating the application and effective implementation of the various international legal framework by the domestic jurisdictions, member nations Nigeria inclusive were advised to take effective measures in providing domestic legal framework towards ensuring the application of such internal legal framework.

4. Domestic Legal Framework on Extradition

4.1 Constitution of the Federal Republic of Nigeria, 1999

In Nigeria, the first legal instrument dealing with extradition matters, illicit drug trafficking and money laundering offenders inclusive, revolves around the legal ground norm, which is the Constitution of the Federal Republic of Nigeria, 1999 as amended, which gave legal recognition to any other law in the country, be it an Act of the National Assembly or any international instrument applicable to Nigeria. Thus, it is the provisions of the Constitution which confers adjudicatory powers over extradition matters on the Federal High Court to the exclusion of any other court of first instance in the country.[39]

4.2 Extradition Act, 1966

In the event of the need or possibility to extradite drug or money laundering offenders, the provisions of Extradition Act,[40] Laws of the Federation of Nigeria must to be applied. The applicable Extradition Act to Nigeria was enacted on 31st December, 1966, and came into operation in January 1967. It was enacted to repeal all previous extradition laws made by or

[38] 1994 Economic Community of West African State Convention on Extradition.
[39] CFRN [1999] as amended; S. 215 (1) ([i).
[40] Extradition Act (1966)

applicable to Nigeria before independence and to provide for a more comprehensive legal regime with respect to extradition of fugitive offenders.[41]

The Extradition Act[42] which initially conferred Magistrates Court with the jurisdiction to determine extradition proceedings, nonetheless, with the coming into force of the 1999 Constitution, the position was altered sequel to the provisions of Section 251(1) (i) of the Constitution[43], which grants the Federal High Court exclusive jurisdiction to entertain and determine all extradition related matters in the country. This change therefore brought into limelight the application of Extradition Act (Modification) Order 2014 which replaced magistrate with the judge of the Federal High Court and also transferred the supervisory powers from the state's High Courts to the Federal High Court. Therefore, for the purposes of reading, interpreting and application of the Extradition Act, the Extradition Act (Modification) Order[44] must be seen as an integral part of the Extradition Act, therefore applicable in all extradition matters, drugs and money laundering offenders inclusive.

Similarly, where the issue of transfer of some evidence or proceeds of crime located in foreign countries is involved, the provisions of Mutual Assistance in Criminal Matters Act[45] may be applied with a view to using international law enforcement cooperation mechanism so as to facilitate effective and efficient transfer of such evidences or proceeds of crime as the case may be.

4.3 Federal High Court (Extradition Proceedings) Rules, 2015

As the power to adjudicate extradition matters was transferred from the Magistrate to the Federal High Court, there was the need to have rules regulating the conduct of extradition proceedings before it, hence, the Federal High Court (Extradition Proceedings) Rules, 2015 which were made pursuant to the powers conferred on the Chief Judge of the Federal High Court by the Constitution.[46] These powers enable the Chief Judge of the Federal High Court to make procedural rules relating to matters over which the Federal High Court has jurisdiction. Although the Extradition Act has certain procedural provisions, however, they are inadequate and therefore

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[41] Oluwafemi L and Elijah O. O '*Cases and Materials on Extradition in Nigeria*:' (2016) P.7; accessed at < https://www.google.com/search?client=firefox-b-d&q=cases+and+materials+on+extradition+of+offenders+to+nigeria+pdf,> visited on the 11/08/2019.
[42] Ibid.
[43] CFRN, (1999), as amended.
[44] Extradition Act (Modification) Order, 2014.
[45] Mutual Assistance in Criminal Matters Act, LFN, (2019), as amended.
[46] CFRN, (1999), ibid.

do not cover some areas of the proceedings,[47]hence, the need for supplementary rules by the Chief Judge of the Federal High Court.

The Federal High Court (Extradition Proceedings) Rules were made to ensure clarity in extradition proceedings and to promote efficient and expeditious hearing of extradition applications. However, where there is conflict between the Federal High Court (Extradition Proceedings) Rules and that of Extradition Act, the later prevailed.[48]

4.4 Evidence Act, 2011

In the course of extradition proceedings in this country, the provisions of the Evidence Act[49] must not only be taken into consideration but must be religiously observed as its provisions apply to all criminal proceedings in Nigeria with the exception of a court martial. It is also applicable in all civil judicial proceedings except those civil causes and matters before the Sharia Court of Appeal, Customary Court of Appeal, Area Court or Customary Court.

However, in a situation where the domestic court is confronted with extradition matter, the foreign laws upon which the extradition process depends become a matter of fact which requires proof. Thus the existence of such foreign law, which a fugitive is accused of violating, must be viewed as annex in the warrant issued by the foreign court; thus, its existence must be satisfied by the court as required by the provisions of extradition Act.[50]

However, with regards to evidence in Nigeria to be considered by the foreign court, the provisions of Extradition Act[51] permits the testimony of any witness in Nigeria obtained in any relevant criminal matter pending in any court or tribunal in country to be valid and applicable in the circumstance.[52]

4.5 Administration of Criminal Justice Act, 2015

Enactment of Administration of Criminal Justice Act in 2015 was primarily aimed at protecting the rights of a dependant while on detention in relation to any criminal proceeding in Nigeria. The Act[53] which regulates Criminal Procedure in Federal Courts, Federal High Court inclusive, is therefore applicable to extradition proceedings before the Federal High Court. It is particularly relevant when it relates to court procedure most especially to pre and post-proceedings matters

[47] Oluwafemi L and Elijah O. O, P. 8, Op cit p.11.
[48] Ibid.
[49] Evidence Act, 2011.
[50] Oluwafemi L and Elijah O. O, P.8; Op cit. p. 11.
[51] Extraditions Act, (1966), S.16.
[52] Oluwafemi L and Elijah O. O, Pp.8-9; Op cit p. 11.
[53] ACJA 2015.

which are not provided for in either the Extradition Act or the Federal High Court (Extradition Proceedings) Rules.[54]

5. **Jurisdiction**

The very essence of sovereignty began with the competence of a nation-state to have control over a particular geographical location or area, including its legal competence to prescribe any conduct that occurs in whole or in part within that territory. Thus, for a nation state to embark into criminal prosecution of a particular prescribed conduct, it must have jurisdiction to assume, without which the entire process will be a nullity. Then, what jurisdiction mean in this context. Accordingly, the term Jurisdiction has been viewed as:

> … the ability of the state to exercise some form of power, coercive or otherwise, over persons, places of things [including property] and events. This power may be exercised by various agencies of the state – the legislature, the executive, the courts or regulatory bodies that receive delegated power from one of those sources – and is defined and delimited by whatever the powers of those agencies happen to be.[55]

It has also been defined as:

> …jurisdiction has different forms that may involve the authority of a State to establish prescriptive, judicial, and enforcement jurisdiction. Prescriptive jurisdiction is the power to criminalize a certain conduct; adjudicative jurisdiction is the authority to subject persons or things to a judicial process; whereas enforcement jurisdiction refers to the right to enforce rules in a concrete situation.[56]

Based on the above therefore, the term 'jurisdiction' refers to the legal competence of a particular sovereign nation to make laws or rule, apply or enforce such rules of conduct upon persons, properties, or events, as the case may be, in a given related circumstance. Therefore, once a person is in breach of such rules of conduct, is said to be an offender and exposed to

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[54] Oluwafemi L and Elijah O. O, P. 11; Op cit. p 11.
[55] Peter Malanczuk, '*Modern Introduction to International Law*', (1997), 7th Ed (London: Routledge), P.109 Quoted by Joshua H. Beale, *'Anti-Money Laundering Regime and Its Challenge to Criminal Jurisdiction'*,P.149; accessed at <https://www.google.com/search?q=j-chapter+7+anti-money+laundering+regime+and+its+challenge+to+law+enforcement+&ie=utf-8&oe=utf-8&client=firefox-b-ab&gfe_rd=cr&ei=RRzDWLbqDcGA8QfA7YDoBw>. Visited on 10 /03/ 2017.
[56] Christopher L. Blakesley, 'United States Jurisdiction over Extraterritorial Crime', (1982), P.1109, Quoted by Joshua H. Beale, P.150.

liability. Consequently, offender(s) who committed offence(s) relating to illicit narcotic drugs and money laundering activities like any other criminal offence, will be exposed to criminal responsibility with a view to serve as a deterrence to others. This has been echoed by the provision of Article 3 (6) of the Convention,[57]which provides that:

> The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences, and with due regard to the need to deter the commission of such offences.

Considering the foregoing analysis, a state has jurisdiction over person(s) who committed an offence(s) in its territorial jurisdiction, offences of illicit narcotic drugs and money laundering activities inclusive. This has been affirmed in the provisions of Article 4 paragraphs 1 and 2 of the Convention.[58] The provision of the paragraphs provides:

> 1. Each Party:
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> a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when: (i) The offence is committed in its territory; (ii) The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed;
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> b) May take such measures as maybe necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when: (i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;
>
> 2. Each Party:
>
> a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground: (i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered

[57] 1988 UN Convention, Op cit p. 9.
[58] Ibid.

under its law at the time the offence was committed; or (ii) That the offence has been committed by one of its nationals;

b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

However, when a person who committed an offence and is apprehended within the territorial jurisdiction in which such offence(s) are committed by the relevant agents of the state, such a person shall be brought before the court in person, not only for the court to assume jurisdiction over the matter in which he is standing trial, but also to ensure justice by availing him with the necessary opportunity to respond to the charges against him. This has been re-stated by the provisions of Article 4 (9) of the Convention[59] which provides that; 'Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings'.

Nonetheless, even though, the provisions of the Constitution did not expressly provides for the physical attendance of the suspects throughout of his trail, but it could be deduced from the provisions of Section 36 (6) of the Constitution[60] that, the attendance of the accused persons is required not only for him to take his plea but also to represent himself in person or by a legal practitioner of his own choice with a view to ensuring justice at the trail. The provision of the Constitution expressly provides that:

6) Every person who is charged with a criminal offence shall be entitled to –

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice;

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal

[59] Ibid.

[60] CFRN (1999), as amended.

> on the same conditions as those applying to the witnesses called by the prosecution:[61]

Accordingly, where an offender(s) who committed an offence(s) in the territorial jurisdiction of a state relating to illicit drugs and money laundering activities and decided to flee jurisdiction with a view to evading justice, such a state may be left with no option than to use the instrumentality of international cooperation, through the medium of extradition to seek for his return to its jurisdiction to answer to the charges against him.

Nonetheless, member states are encourage when such request is presented by the requesting country to take urgent and adequate measure to ensure that the suspect who is the subject of the request is identified, traced, served or arrested as the case may be and brought before the appropriate court for extradition proceeding with a view to ensuring his possible extradition to the requesting country to answer to the charges against him. The provisions of the article to the Convention provide that:

> Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.[62]

Accordingly, once the suspect is taken into custody or is served with the extradition notice as the case may be, the extradition proceedings shall be instituted by the Attorney General of the Federation before a competent court for possible extradition; and all requirements for extradition process must be observed in the circumstance. In Nigeria however, the court having competent jurisdiction to entertain extradition proceedings is the Federal High Court, as per the provisions of Section 251(1) (i) of the Constitution[63]which provides that:

> S.251. (1) Notwithstanding anything to the contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters ….

[61] CFRN (1999), S.36 (6) .
[62] 1988 Convention , Art. 6 (8); Op cit p. 9.
[63] CFRN (1999) as amended.

(i) citizenship, naturalization and aliens, deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration from Nigeria, passports and visas;

6. Extradition Process

In modern extradition process, as the international community became desirous more than ever in conducting international cooperation with a view to combating the menace of illicit drugs and money laundering phenomenon using the medium of extradition treaty mechanisms; so also the increasing need to protect the rights of the suspects subject to extradition request.[64]

Accordingly, in order to accomplish these objectives, there exist two channels or stages through which such extradition request must pass before its successful implementation. These processes are the political or diplomatic channel and the judicial investigation.[65]Under the political or diplomatic process, it commences with a formal request formulated by the relevant law enforcement agency forwarding same to the office of the Attorney General of the Federation, who afterwards transmit the request to the Ministry of Foreign Affairs, which is refers to as the Foreign Affairs Ministry of the requesting country. The Foreign Affairs Ministry of the requesting country will then transmit the request to the Ministry of Foreign Affairs of the requested country, requesting the extradition of a suspect/defendant. Then, the Foreign Affairs Ministry of the requested country transmits same to the relevant Ministry and agency for implementation.

However, with the recent development in which several nations entered into either bilateral or multilateral extradition treaty, Central Authority Units were created which is normally in some countries the Attorney General of the Federation, empowered to carry out such functions relating to receipt, documentation, evaluation of the request along with the annexed document, refusal or processing if possible of all extradition and Mutual Legal Assistance matters directly from the Central Authority Unit of requesting country, thereby eliminating diplomatic protocols and delay occasioned by such process.[66] The Central Authority Unit which is an office under the Attorney General of the Federation, after evaluating the request and having satisfied with the necessary requirements, will then file the request before the Federal High court for necessary action.

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[64] Ibid.
[65] Sepec Miha, P. 284; Op cit p. 1.
[66] Ibid.

Thus, the staff of the Central Authority Unit covered by the power of the Attorney General under the provisions of the Extradition Act[67] will carry out the function of receiving, evaluating, refusing if possible or filing of such request before the court. This power of the Attorney General in relating to extradition matters has been judicially recognized in the case of *George Udeozor v. Federal Republic of Nigeria*[68] where the Court of Appeal affirmed that:

> By the provisions of section 6(l and 2) of the Extradition Act, it is the duty of the Hon. Attorney- General to receive the request for the surrender of a fugitive criminal in Nigeria, Section 6(2) of the Extradition Act reposes the discretion in the Hon. Attorney-General to signify to the Court that such a request has been made and he does that only after he satisfies himself on the basis of the information accompanying the request, that the provisions of section 3(1-7) are met. Nothing in the Extradition Act gives the Court the powers to question the discretion of the Hon. Attorney-General in those matters.

In the cause of judicial investigation, once the request has been filed by the office of the Attorney General of the Federation, the court must verify if there is sufficient evidence and grounds to warrant extradition in one hand and ensure the rights of the suspect is not compromised in the other hand. In order to achieve these objectives, and considering certain slight differences in the statutory wordings that exist from different national legal systems that are bound to be confronted with by the court in the judicial process, certain modalities or principles have been adopted to aid the court in resolving such possible discrepancies for possible implementation of the request[69]. In carrying out the process of extradition, the court is to observe the following principles in holistic manner before granting or refusing the request.

6.1 Dual Criminality Principle

For an accused person to be extradited to the requesting sovereign jurisdiction, the offence in question in which the suspect is sought to be extradited must be legally recognized as an offence

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[67] LFN (1966), S. 6 (2).

[68] CA/l/376/05/ 2007; Quoted by Oluwafemi L and Elijah O. O, P.422; Op cit p. 11.

[69] Joshua H. Beale, ‘Anti-money Laundering Regime and Its Challenge to Law Enforcement’,(2003), P.178, *Oxford University press;* accessed at, <https://www.google.com/search?q=j-chapter+7+anti-money+laundering+regime+and+its+challenge+to+law+enforcement+&ie=utf-8&oe=utf-8&client=firefox-b-ab&gfe_rd=cr&ei=RRzDWLbqDcGA8QfA7YDoBw>. Visited on 10 /03/ 2017.

in the two jurisdictions. This is in line with the principle reflecting the doctrine of *nulla poena sine lege* (no punishment without law).[70]

The principle of dual criminality therefore is aimed at protecting the fugitive from unjust punishment. Thus, where the offence in question is not considered as a crime in the requested nation the request may not be granted. This may be the reason however that some bilateral or multilateral extradition treaties are worded in such a way they it incorporates all the agreed offences to be implemented under the treaty by the respected or affected nations.[71]

Though, the element of certain offences may differ in several other jurisdictions, in such a situation, courts are at liberty to adopt any of the following methods for guidance; thus, methods are *in concreto* and *in abstracto*. In the first method, the court applies a strict analysis of its nation's elements of the crime in question to the parallel law of the requesting state, if the elements match, the court then applies the domestic law in granting the extradition request.

This situation was tested in the case of *Wright v. Henkel;*[72] the facts of the case are as follows: Wright was involved in a request by the British government to extradite him, having participated in a fraudulent scheme in England and then fled to New York. The extraditable offence listed in the treaty was fraud. The problem arose from the fact that the elements for a prima facie case of fraud differed in the two jurisdictions, raising dual criminality concerns. The elements of the English version of the crime differed only slightly from a similar New York provision. Nevertheless, the defendant, Wright, claimed that his extradition was precluded by the dual criminality requirement. In rejecting Wright's claim, the Court noted that, the elements of the British and United States version of the crime were different but held that because the two were substantially analogous, the dual criminality requirement had been satisfied.[73]

However, in the second method, a court is to review the criminal conduct from the documents sent by the requesting state regardless of the label [name of the offence, whether such name clearly exist or not] and elements of the crime. In this context, it is not necessary for the wording of the offence to be identical, once the alleged criminal conduct is equally viewed as an offence in the requested nation, the court would give its verdict in the circumstance.[74]

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[70] Ibid.
[71] Ibid.
[72] No. 661, 190 US. 40 (1903).
[73] Facts of the case quoted by Joshua . H. Beale, P. 179; Op cit p. 19.
[74] Ibid, p. 180.

This has been demonstrated in the case of *Factor v Laubensheimer*[75] where British authorities instituted extradition proceedings against Jacob Factor on a charge of receiving money by fraudulent conduct in London. At the time extradition process was applied for, Factor was residing in the State of Illinois, United States of America (USA) and the offence charged was not recognized as an offence under Illinois Law, hence, the request was denied. In an appeal against the decision of the lower court, the United States Supreme Court held that, this did not prevent extradition, since according to the Criminal Law generally (i.e. Federal Law) of the USA, the offence in question was punishable, therefore, the request was granted in the circumstance.[76]

6.2 Principle of Specialty

This principle unlike the preceding one seems to be simple and direct, as it reflects the rule that, once a person is successfully extradited, he can only be prosecuted for the charges on which he was extradited. Which means that the requesting state may not, without the consent of the requested nation, try or punish the suspect for offence(s) other than the one reflected in the extradition request. Accordingly, the materials obtained through international cooperation in criminal matters may not be used for other purposes or proceedings other than those requested for.[77]

6.3 Extraditable Offence

Another principle to be considered in the process of extradition by the court is the offence in question as to whether it is extraditable or not. The practice is usually encapsulated in the treaties either bilateral or multilateral by itemizing all the offences that are subject to the treaty. This is in line with the provision of Article 6 paragraph 2 of the Convention[78] in which member states are advised to include in the body of their extradition treaties either bilateral or multilateral, all the offences that are to be covered by the treaty. In Nigeria however, apart from itemizing the offences in the body of the treaty, additional legal requirement is that, all offences that are punishable with minimum of two years of imprisonment and above are considered as extraditable offences.[79]

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[75] (1933) 290 US 276, quoted by Abegunde Babalola, 'Extradition under International Law: Tool for Apprehension of Fugitive'. *Journal of Law, Policy and Globalization (2014)*,vol. 22, P.27;accessed at <http://www.iiste.org/Journals/index.php/JLPG/article/view/11045>, visited on the 21/03/2017.

[76] Facts of the case quoted by Abegunde Babalola, ibid.

[77] Joshua. H. Beale; Op cit p. 19.

[78] 1988 Convention, Art. 6 Para. 2; Op cit p. 9.

[79] Nigerian Extradition Act, 2004. S.20 (2) .

However, while the effort for the international cooperation is on course, there exist certain factors militating against the effort which serves as an impediment to the modern extradition process and which are considered worthy to be mentioned in this context. The factors may be conveniently categorized as 'State practices' and 'statutory bar' and each will be considered in the circumstance.

7. States Practice

During the drafting of the present international Convention[80] and many other Regional Conventions, certain provisos were inserted that allow countries to circumvent the initial idea of international cooperation with a view to protecting certain interest. These provisos enable some countries to hide under them as a cover to honor or refuse to honor request from certain nations thereby defeating the aim of the entire process. For example, the element of 'Nationality' as encapsulated in the provision of Article 6 paragraph 10 of the Convention[81] is being used as a cover by some nations. The provision of the Article clearly provides:

> If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.

This particular provision reinforces the principle of *aut dedere aut judicare* (to extradite or to prosecute) an old articulated natural law school scholars, such as Grotius and Jean Bodin who were of the opinion or believe that a state has a duty to either extradite or to prosecute**.** Under this principle, where a requested state refuses extradition on the basis of nationality, the case should be referred to its competent authorities for prosecution, as the principle is intended to ensure that criminals are not allowed to escape justice on the basis of nationality.[82]However even if the naturalist theory is to be followed in strict sense of it, as encapsulated in the provision of Articles 7 and 8 of the of the United Nations Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, it is nonetheless capable of creating problem as the one occasioned in 'Pan-Am Lockerbie case' which resulted into ten year extradition stalemate

[80] 1988 Convention; Op cit p. 9.
[81] Ibid.
[82] Joshua. H. Beale, P.179; Op cit p. 19.

between Libya in one hand and United States of America and Britain in the other over 'the right to prosecute and duty to extradite' as provided by the provisions of the two Articles.[83]

Nonetheless, unlike the provisions of the aforementioned two Articles[84] which appears to be more clear and concise, the provision of Article 6 paragraph 10 of the Convention[85] seems to be a bit subjective when considering the express wordings of the Article as it states thus:**'…**the requested party shall, if its law so permit and in conformity with the requirements of such law, upon application of the requesting party, consider the enforcement of the sentence which has been imposed under the law of the requesting party…'. In this expression, one may deduce that, the request is or may be subjected to two different tests; one, to see whether it is (expressly) allowed by the law of the requested nation to so act; and second, to pass the validity test upon application to the local legislation. Similarly, the word 'consider' could better be described as normative in character without conferring positive or imperative obligation to the requested nation, as it may or may not decide to take any action without any legal consequences. Thus, even if it decide to take any action, such action may not only cause unnecessary delay, but likely to defeat the intended objectives of the entire process.[86]

It is worthy to note that, most nations of the world are not willing, while very few are reluctant in extraditing their 'national' even though found culpable in the commission of criminal activities, illicit drugs and money laundering activities inclusive. For example, countries such as Austria, Brazil, Germany, Greece and Luxembourg declared that, they will not extradite their national, while the Netherlands has rule of non-extradition of its national. Similarly, Denmark clearly states that, extradition of its national may be rejected. Belgium, Finland, Portugal, Spain and Sweden will grant extradition of nationals only on certain special circumstances, however, the special circumstances has not been defined, leaving the operation of such phrase to the discretion of the state actors. Switzerland does not extradite its national based on the statutory prohibition contained in Article 25 of its Federal Constitution. While Italy stated that, it owes protection to

[83] United Nations Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1973, Art. 7 and 8.
[84] Ibid.
[85] 1988 Convention; Op cit p. 9.
[86] Joshua H. Beale, P. 180; Op cit p. 19.

its citizens, and cannot abandon them to their lot, if charged with crime to the mercy of foreign law.[87]

Nonetheless, the situation in the United States of America and Britain seems not to be different, in that, even though the United States of America is regarded as one of the pillars of modern extradition arrangement, however, when it comes to the extradition of its national, it demonstrated very lukewarm attitude. Notwithstanding to the fact that, United States has entered into extradition agreement with more than 150 countries;[88] and more than 54 mutual legal assistance agreement currently in force;[89] with its personnel in 32 countries under the Mutual Legal Assistance agreement;[90] however going by the available sources at the disposal of this work, United States of America has operationally active extradition agreement in respect to its national only with Britain, Israel, Italy and Uruguay.[91]

However, the British government and United States of America re-negotiated certain terms of the 1931 extradition treaty in 2003 which came into force on the April, 26, 2007 allowing the extradition of national between the two nations; nonetheless, the treaty could not have a long life span, as the rationality of the agreement was called to question only a year after by the Civil Rights and Business Association Groups following the United States request for extradition of three former employees of the British bank, National Westminster [now the Royal Bank of Scotland], on charges of financial fraud, leading to street protest.[92] Consequently, Tony Blaire's government was severely criticized, which later had to give way for Gordon Brown's Government, which enacted a statute vesting the power of veto of such extradition request to the Home Secretary to so act in the circumstance.[93] Similarly, despite the existing extradition treaty between Israel and the United States involving their citizens, the Israel Knesset enacted a law

[87] Vesna Stefanovska, 'Extradition as a tool for inter Cooperation: Resolving Issues about the Obligation to Extradite' (2016), P 42, *Journal of Liberty and International Affairs, vol.2, no. 1,Published online by the Institute for Research and European Studies*, accessed at <https://www.google.com/search?client=firefox-bd&q=%E2%80%98Extradition+as+a+Tool+for+InterState+Cooperation%3A+Resolving+Issues+about+the+Obligation+To+Extradite,> visited on the 06/12/2019.

[88] John E. Harris 'International Cooperation in fighting Transnational Organized Crime: Special Emphasis on Mutual Legal Assistance and Extradition' P. 141, *114th International Training Course Visiting Experts' Papers Resource Material Series no. 57;* accessed at <https://www.google.com/search?client=firefox-b-d&q=John+E.+Harris+%E2%80%98International+cooperation+in+fighting+Transnational+organized+crime%3A+Special+Emphasis+on+Mutual+Legal+Assistance+and+Extradition> visited on 11/04/2020.

[89] Ibid, P.139.

[90] Ibid, P. 137.

[91] William Magnuson, 'The Domestic Politics of International Extradition' (2012), P. 881, *Virginia Journal of International Law*, vol.52; accessed at <https://scholarship.law.tamu.edu/facscholar/757 > visited on 13/03/2020.

[92] Ibid, P. 881.

[93] Ibid, Pp. 883-4.

prohibiting the extradition of its citizens, but in 1999, reviewed same to the effect that it would allow extradition of its citizens on condition that they would serve their prison terms in Israel if convicted outside the country.[94]

Based on the above analysis therefore, it is clearly reflected that, practically, United States has consistently remain adamant in extraditing or transferring its citizens to other countries for investigation and possible prosecution, including the International Court of Justice (ICJ),[95]but always desirous to having other nationals transferred to its jurisdiction for investigation and possible prosecution. Few examples in this regards, it includes the arrest and somewhat extra-judicious transferred of Alh. Lanre Shiitu from Nigeria to the United States on 5th Dec,2000, as well as the contentious issue before the Nigerian Court of late Sen. Kashamu Buruji, to mention but a few. This kind of selective trend by the somewhat developed nations needs to change only if the desired objectives are to be achieved.

However, the good relationship between Nigeria and the United Arab Emirate in recent years yielded a positive result which culminated into signing of the 2016 extradition treaty between the two countries. In the treaty, the two nations agreed among other things to reserve the rights not to extradite its citizens, but provide an imperative provision to prosecute such nationals when found culpable to have committed a criminal offence. The provision of Article 5 paragraphs 1 and 2 of the extradition agreement between the two countries provides:

> 1. Each Party shall have the right to refuse extradition of its nationals.
> 2. If extradition is not granted, the Requested Party <u>shall</u>, at the request of the Requesting Party, submit the case to its competent authority for the purpose of institution of criminal proceedings in accordance with its national law. For this purpose, the Requesting Party shall provide the Requested Party with documents and evidence relating to the case. The Requesting Party shall be notified of any action taken in this respect, upon its request.

However, no matter how the treaty received certain commendation, it fall short of serving the intended objectives, this is because, a suspect is expected to be arraigned, tried and punish in the jurisdiction in which the offence is committed, so that the victims of the crimes and indeed the immediate community to witness that, justice is not only done, but seen to have done to serve as

[94]Ibid, P. 881.
[95]Ibid, P.880.

deterrence to others irrespective nationality differences. This is because crime respects no nation, tribe, race, or any geographical boundary; hence, it would be foolhardy for nations to be using political power to shield criminal elements to the detriment of other peace loving citizens of the world.

One of the most remarkable and successful extradition treaty entered into by the Nigerian government in the recent times is the one between Nigeria and the Republic of South Africa. In the treaty, both Nations decided to exhibit the spirit of international obligation in fighting the common enemy 'crime' irrespective of nationality. In Article 4 of the treaty,[96] the two nations agreed among other things that, extradition shall not be refused based on the notion of nationality. The Article clearly provides that: 'Extradition shall not be refused on the ground that the person sought is a citizen or national of the requested State'.

Hence, the Nigerian legislature wasted no time in ratifying the treaty, in which it reads 'Federal Republic of Nigeria has by a decision duly reached in accordance with her constitutional process ratified the Extradition Treaty between the Federal Republic of Nigeria and the Republic of South Africa today on 30th November, 2002'. Consequently, as it was ratified, it was assented into law by the President, Federal Republic of Nigeria and reflected in the short title that, 'This Act may be cited as the Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2005'. Therefore, by this legislative recognition and subsequent assent by the executive, the treaty is having the force of law to be fully applied by relevant government agencies in Nigeria. Similarly, the two nations, not only in Africa, have demonstrated their commitment and leadership for other nations to emulate.

After considering various extradition practices based on relevant existing treaties in some other parts of the world, as well as in some African countries, we need to consider what is obtainable in our own West African Sub- Region. In 1984, there was extradition treaty between the Republic of Benin, Ghana, Togo and Nigeria for the extradition of fugitive offenders between the four Nations where the parties to the treaty then agreed to extradite fugitive offender to the

[96] Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2005.

requesting country without having regards to the nationality question. The provision of Article 1 of the treaty[97] provides:

> The Contracting Parties undertake to extradite to each other on the basis of reciprocity, in accordance with the rules and conditions stated in this Treaty, those persons who being accused or convicted of any of the crimes or offences referred to in Article 2, committed within the jurisdiction of one party shall be found in the territory of the other party.

This treaty happened to be one of the best treaties Nigeria participated, even though it was not fortunate to be ratified, as it was overtaken by the 1994 West African Convention on extradition that covers the entire region.

On the 6th August, 1994, the entire members of the sub-region which includes Benin, Burkina Faso, Cape Verde, Cote D'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Mali, Mauritania, Liberia, Niger, Nigeria, Senegal, Sierra Leone and Togo decided to converge in Abuja and resolved to firmly unite in fighting criminal activities throughout the sub-region, as expressly reflected in the preamble of the resolution to the effect that; 'Convinced that security can best be maintained if offenders are denied shelter from legal proceedings or penalties and desirous of working together to curb crime throughout the territory of the community'.[98]

As the leaders of the nations who represented their respective countries shows their solemn commitments in fighting criminal activities in the sub-region, they embarked on rigorous deliberations and resolved to do away with any previous existing extradition agreement entered into by either two or more parties from the region, with a view to having a common front by the entire members of the region. The suspension of all the previous extradition agreement was contained in Article 34 of the Convention[99] which provides:

> 1. This Convention shall supersede the provisions of any Treaties, Conventions or Agreements on extradition concluded between two or several States except as provided under paragraph 3, Article 4 of this Convention.
>
> 2. States may conclude between themselves bilateral or multilateral agreements with one another only on the matters dealt with in this Convention, for purposes

[97] Extradition Treaty between Republic of Benin, Ghana, Togo and Nigeria of 1984.
[98] Preamble to the 1994 West African Convention on Extradition.
[99] Economic Community of West African State Convention on Extradition of 1994.

> of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

With the suspension of the aforementioned provision or treaty, one expects a better deal or provision that will promote regional collective response against crime and criminal activities. However, the outcome of their resolutions when the entire body of the Convention is carefully analysed, reflects nothing in common when compared with the solemn commitment expressed by the leaders in the preamble of the Convention.[100] The leaders after suspending the 1984 treaty which had no regards to nationality question of the fugitive offender, went ahead to provide in Article 10 of the Convention a provision that prevent extradition of nationals of the requested country in the circumstance. The provision of the Article states:

> 1. Extradition of a national of the Requested State shall be a matter of discretion for that State. Nationality shall be determined at the time of the offence for which extradition is being requested.
> 2. The Requested State which does not extradite its nationals, shall at the request of the requesting State submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.

A critical examination of the foregoing provision to the view of this researcher, most especially the usage of 'extradition of a national of the requested state shall be a matter of discretion for that State' has entirely derogated the spirit of the common objectives and purposes among the members of the sub-region. The inserted word of 'discretion' carries no idea of solemn commitment or obligation, as no any authority will question your discretionary judgment when you failed or refuses to extradite your national no matter culpable they be in connection to any offence in which they are sought for. Consequently, the entire regional nations may end of not honouring extradition request involving their national. Similarly, the provisions of paragraph two to the Article did not provide any positive or imperative remedy when the requested nation refuses to extradite its national. This is because, the provision clearly states that, the requested state '…submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. This provision could better be described as disservice to entire purpose of the Convention. Even though, the Convention has been shown to be among the

[100] Ibid.

regional agreement in which Nigeria is a party to,[101] it is strongly suggested by this researcher that Nigeria should take prompt step in reviewing or amending[102] the provisions of this Convention or withdrawing[103] from it all together, thereby given opportunity for other bilateral treaty arrangement with separate members of the region.

After a very careful analysis of the aforementioned provisions that appears to serve as a clog to the wheel of smooth running of the extradition process, most especially relating to the extradition of national of the requested state, it is the view of the researcher that, the aforementioned provision only ended in providing a cover to circumventing the entire measure with a view to defeating the essence of the extradition principle. Hence, it is suggested that, the provisions Article 6 paragraph 10 of the Convention[104] and indeed the provisions of Article 7 and 8 of the United Nations Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1973, as well as many other provisions reflected in different extradition treaties needs to be re-considered or abrogated, thereby providing a positive dutiful provision whereby nations are to consider it a duty to extradite so long as the offence(s) sought for extradition falls within the agreed terms by the member nations to a particular treaty. Thus, nations should not be allowed to circumvent the provision or terms of an international obligation merely to satisfy their political interest.

8. Statutory Bar

As a point of departure from the ancient extradition practices where most of the wanted fugitives then were either religious or political opponents, the modern extradition practice is somewhat criminal offences oriented; thus, issues of religion and political opposition as subject of extradition are not tenable in the contemporary world. Hence, the provision of Article 6 paragraph 6 of the Convention[105] clearly exempt certain offences based on their nature from the list of extraditable offences. Thus, if there is suspicion that, the person subject of extradition proceeding will be prosecuted for reasons based on ethnicity, nationality, race, religion or political affiliation; extradition may be refused by the requested nation. The paragraph of the said Article[106] provides:

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[101] Oluwafemi L and Elijah O. O, P.104; Op cit p. 11.
[102] Economic Community of West African State Convention on Extradition of 1994, Art. 15 (1).
[103] Ibid, Art. 15 (2).
[104] 1988 Convention; Op cit p. 9.
[105] Ibid.
[106] 1988 Convention, Ibid, Art. 6 Para 6

> In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

In the Nigerian context therefore, the provisions of Section 3 (a) and (b) of the Nigeria Extradition Act[107] clearly anchored the provisions of Article 6 paragraph 6 in prohibiting or in other words, construing that, when it appears extradition request is politically motivated, race, or based on religious inclination, such request may not be honoured.[108]

Therefore, if the request has not been turn down by the Attorney General of the Federation while exercising his discretion, but decides to file the process before the court; if the court while considering the merit of the request is satisfied that the request is predicated on the ground of race, religion or political reason[s] may refuse to grant order for extradition in the circumstance. This is because, it is the duty of the court to ensure not only that the provisions of relevant laws are complied with, but also to ensure that the rights and privileges of the suspect/defendant subject to extradition proceedings are respected and guaranteed. This has been judicially acknowledged in the case of *AGF v. Olayinka Johnson (AKA Big Brother)*[109] where the court observed that: 'In the matter of extradition, the courts will not in the name of extradition carelessly surrender citizens and noncitizens alike unless the Court is satisfied on the facts and position of the law'.

9. Conclusion

With the current technological advancement resulting into what is called globalization, international transactions, communication and collaboration become increasingly easier from one part of the world to another. Accordingly, international criminal groups as well uses the same medium as an opportunity to advance their nefarious activities, thereby recruiting online, dispatching and distributing drug and transferring the proceeds of crime with less stress.

Consequent upon that therefore, drug trafficking and money laundering activities do not only transcend the boundaries of national jurisdiction, but also make their detection and suppression

[107] Nigeria Extradition Act, 2004.
[108] Nigeria Extradition Act (2004), S.3(a) and (b).
[109] Suit No. FHC/L/16C/2013 P. 35 of the Judgment; Quoted by Oluwafemi L and Elijah O. O, P. 417; Op cit p. 11.

very complex and difficult. In order to checkmate these nefarious activities, international community becomes more desirous than ever in tackling the menace; hence, the creation, extension, expansion, and enhancement of international criminal cooperation by member states through the instrumentality of either bilateral or multilateral treaties for effective suppression of the menace.

However, as international cooperation among nations of the world increases with significant achievement recorded so also certain difficulties or challenges confronting the implementation process. These challenges include traditional view of sovereignty as demonstrated in the states practices, the diversity of national legal systems which sometimes causes unnecessary delay in the implementation process, and the capability to perform international cooperation due to limited resources or unwillingness to do so by some nations of the world.

It is therefore required that more awareness creation be made at various level with a view to reducing the traditional conception of sovereignty and unnecessary states practices; while after hiving carefully analysed various legal framework dealing with this topical issue, it is the view of these researchers that certain considered legal framework as identified needs to be amended, most especially as it relates to the extradition of nationals of the requested state; while a single formula for the extradition of fugitive criminal to the place of the offence be created in all bilateral or multi-lateral treaties with a view to attaining and achieving the desired objectives.

This is done by making emphasis to the fact that all treaties made through the mutual consent of the contracting nations removes any clause which tends to preclude the extradition of offender merely based on nationality. It should be noted that, no matter how a treaty received certain commendation, it falls short of serving the intended objectives, if it is unable to provide the necessary avenue for the arraignment of suspect in the place of the offence. In criminal bastion, a suspect is expected to be arraigned, tried and punish in the jurisdiction in which the offence was committed, so that the victims of the crimes and indeed the immediate community can witness that, justice is not only done, but seen to have been done, to serve as deterrence to others irrespective of nationality differences.