

SUSTAINABLE AND DEVELOPED INTER-BOUNDARY RELATIONSHIP: AN APPRAISAL OF NIGERIA'S EXTRADITION ACT

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Abstract

Globalisation and the increasing volume of international interactions has led to a rise in cross-border crimes. When a Nigerian commits a crime in another country and absconds to Nigeria or commits such a crime from Nigeria, the foreign country must request Nigeria's assistance in surrendering the suspect for trial. This process, known as extradition, is governed by the Extradition Act, Cap. E25 Laws of the Federation of Nigeria, 2004, as amended by the Extradition (Amendment) Act, 2018. Extradition is an important mechanism for promoting international collaboration in criminal justice and maintaining the integrity of the global legal framework. This study examined the issues surrounding extradition of fugitive criminals in Nigeria, with a focus on section 3(3) of the Extradition Act. Employing a desktop study approach and secondary data, the research reveals that certain conditions for restricting the surrender of fugitives from Nigeria are discretionary. The study argued that the grounds for refusing to surrender a fugitive should be clear, precise, and ascertainable for Nigeria to maintain a sustainable and developed inter-boundary relations. Therefore, this paper

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called for a review of the Extradition Act to ensure that Nigeria's extradition agreements with other countries are aligned with international best practices.

Keywords: *Extradition, Fugitive, Geographical/territorial jurisdiction, Inter-boundary relationship, Sovereignty*

1. Introduction

Migrations, inter border relations, cross border movements and crime have been part of life from time immemorial. The Holy Bible records the migration of Patriarch Abraham from Haran into the land of Canaan,¹ the migration of children of Israel to purchase food in Egypt during famine and their eventual settlement in Egypt.² Likewise, the *Hijra* of the Prophet Mohammed (SAW) and his companions from Mecca to Medina is narrated in Islamic traditions.³ A primary factor that contributes to migrations is harsh conditions in the country of origin. People migrate from a situation they perceive as unbearable to increase their chance for a better life in a new country.⁴

The first case of crime after creation of man as recorded by the Holy Bible was the wilful killing of Abel by Cain,⁵ there was the

¹ Holy Bible. King James Version. Genesis 12; 5-6.

² Holy Bible. King James Version. Genesis 46.

³ The Hijra is the migration of Muhammad and his followers from Mecca to Medina, (320 kilometres north) in 622 CE. See Surah Al-Anfal 'And [remember] when those who disbelieved plotted against you to restrain you or kill you or evict you [from Makkah]. But they plan, and Allah plans. And Allah is the best of planners.' (Quran 8:30); Aminuddin Hassan, 'The Impact of Prophetic Hijrah on the Societies of Makkah and Madinah' (2019) 3 (1) Al-Ilm 24.

⁴ International Scientific and Professional Advisory Council, 'Migration and Crime: A Framework for Discussion' <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/migration-and-crime-framework-discussion>> accessed 6 January 2025.

⁵ Holy Bible. King James Version. Genesis 4:8; also narrated in the Qur'an Surah Al Maidah Q5:27-30.

trafficking of Joseph into slavery by his brothers,⁶ the rape of Dinah by Schecem.⁷ Likewise there are instances in the Holy Quran.⁸ These Holy Books apart from detailed records of migrations therein, instances of wilful commission of crimes, all prescribe penalties for commission of crimes. The Holy Bible states emphatically that no sinner must go unpunished⁹, it states penalty for stealing,¹⁰ penalty for murder,¹¹ and other known crimes.¹² In every jurisdiction, there are laws which identify crimes, state the ingredients of each offence and penalties for same.¹³ Particular legislations create offences and penalty for commission of offences.

In recent time, migrations, inter border activities and crime have been on the increase, globally. It is important to note that Nigerians have high level of interactions with foreign countries, for instance Nigeria which has been termed “a consumer country” conducts a high volume of across border trade, equally, the rate of migration of Nigerian to other countries is presently higher than what used to obtain.¹⁴ Those who attempt to leave and enter countries illegally are at risk for a number of hazards. In terms of the logistics of entering a country illegally, migrants may be enticed by criminal organisations that promise to get them safely into a new country.

⁶ Holy Bible. King James Version. Genesis 37:28

⁷ Holy Bible, King James Version. Genesis 34:2.

⁸ The Qur’an gave account of the flight of Moses after he killed a man. See Qur’an Surah Al-Qasas Q28:15-21.

⁹ Holy Bible, King James Version. Proverbs 11:21.

¹⁰ Holy Bible, King James Version Proverbs 6: 30-31 Exodus 22: 1-15.

¹¹ Holy Bible, King James Version. Numbers 35:30.

¹² There are sanctions for various crimes under the Shari’ah legal system which is made up of injunctions from the Qur’an and Hadith’s of Prophet Mohammed (SAW).

¹³ For instance, the Nigerian Criminal Code Cap C38 Laws of the Federation of Nigeria (LFN) 2004; the Penal Code Cap 53 LFN 2004.

¹⁴ Samuel Kehinde Okunade and Oladotun E. Awosusi, ‘The *Japa syndrome* and the migration of Nigerians to the United Kingdom: an empirical analysis’. (2023) 27 *Comparative Migration Studies*
<https://doi.org/10.1186/s40878-023-00351-2> accessed 23 February 2024.

This involves a heavy price, including risks for physical safety in the transit process and being in financial debt to brutal crime groups. After entering a country, whether legally or illegally, migrants are at risk of being enticed into crime if they do not become integrated into the legitimate socioeconomic network.¹⁵ Some of these Nigerians become illegal immigrants while some may get themselves involved in crime and escape back to Nigeria.

Increase in crime rate on the other hand has been alluded to poverty, get rich quick syndrome, laziness, unemployment, failure of parents to train their wards, peer pressure, drug, rejection, fall out of civilization.¹⁶ While Oyelade identified high unemployment rate as a cause for high crime rate, Kunnuji successfully traced the relationship between crime rate and population density.¹⁷ Though Ezeajughu seemed to be of opinion that crime is higher in urban cities, she however agreed that there are factors causing increase in crime rate. She submitted further:

Crime situation in Nigeria is more intense in urban centres than rural areas due to high level of urban poverty, congestion, unemployment, cost of living, disorganization and moral decadence confronting urban system. The preponderance of urban crimes in Nigeria is a reflection of deprivation, marginalization and breakdown in infrastructure and amenities that

¹⁵International Scientific and Professional Advisory Council, 'Migration and Crime: A Framework for Discussion' <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/migration-and-crime-framework-discussion>> accessed 6 January 2025.

¹⁶Michael O.N. Kunnuji, 'Population Density and Armed Robbery in Nigeria: an Analysis of Variation across States' (2016) 9 (1) African Journal of Criminology and Justice Studies 62.

¹⁷Michael O.N. Kunnuji, 'Population Density and Armed Robbery in Nigeria: an Analysis of Variation across States' (2016) 9 (1) African Journal of Criminology and Justice Studies 62.

are supposed to manage or control crime among urban residents.¹⁸

Abdullahi and Ukasha however submitted that Nigeria generally is witnessing “exponential increase in crimes and insecurity in rural communities, villages and towns have become vulnerable and favourable arena of operations of criminals and insurgents.”¹⁹ The truth however is that no part of the country has been spared, generally crime rate has continued to soar. According to Oguntunde *et al* notable crimes being committed in Nigeria are kidnapping, rape, burglary, murder, terrorism, fraud, robbery, bribery, cyber-crimes, money laundering and corruption among others.²⁰

Commission of crimes is not restricted or limited within the country, the fact is that crimes committed across borders has also been on the increase. For instance Malechi and Mathias in a paper that discussed patterns of cross-border crimes in Idiroko border community of Ogun State, Nigeria, confirmed that such crimes as smuggling of contraband food items, smuggling of natural resources, drug trafficking, car crimes, female trafficking, and smuggling of illegal migrants, smuggling of human parts, child trafficking take place across the Idiroko border of Nigeria.²¹ Malechi and Mathias further noted that States in West Africa are confronted with issues on ways and manner of resolving criminal activities outside their jurisdictions, investigation of cross border crimes and locating and

¹⁸ Mary C. Ezeajughu, ‘High Rate of Unemployment and Crime Increase in Nigeria’ (2021) 3(1) Sapientia Foundation Journal of Education, Sciences and Gender Studies (SFJESGS), 51.

¹⁹ Ahmad Salisu Abdullahi and Ukasha Ismail, ‘Crimes and Insecurity in Rural Nigeria’ (2021) 6 (1) Dutse International Journal of Social and Economic Research (DIJSER) 203.

²⁰ Pelumi E. Oguntunde, Oluwadare O. Ojo, Hilary I. Okagbue and Omoleye A. Oguntunde, ‘Analysis of Selected Crime Data in Nigeria’ (2018) 19 Data in Brief 1242-1249. Doi: 10.1016/j.dib.2018.05.143.

²¹ Anthony Soni Malechi and Bentina Alawari Mathias, ‘Patterns of Cross-border Crimes in Idiroko Border Community of Ogun State, Nigeria’ (2021) 7 (1) International Journal of Health and Social Inquiry 27.

recovery of proceeds of such crime which have been transferred from the place of crime to outside jurisdiction.²²

The era of internet has further heightened the crime rate by bringing in its wake crimes across Continents. E crime otherwise referred to as internet fraud is on the increase. This goes to show that crime can be committed without the perpetrator being physically present within the jurisdiction where such crime is committed. Where crime has been committed (either physical crime or e crime) and the host country makes a request, the only resort is to secure the presence of the suspect to face his trial where the crime has been committed. These and many more are reasons why there should be a perfect extradition law between Nigeria and all countries.

Extradition becomes necessary when a criminal fugitive flees from one country to another to avoid facing trial or punishment and persons who may be extradited include those who have been tried and convicted but escaped custody by fleeing the country, and those convicted in absentia.²³ The law on extradition in Nigeria is the Extradition Act, Cap. E26, Laws of the Federation of Nigeria, 2004 as amended by the Extradition (Amendment) Act, 2018 herein after referred to as ‘the Act’.

2. Definition of Terms

2.1 Extradition

Extradition is defined as a process, under relevant treaties, provisions of law or on the basis of reciprocity, where one country requests another country to surrender a suspect in its country who is accused of having committed a crime or convicted of a criminal

²² Anthony Soni Malechi and Bentina Alawari Mathias, ‘Patterns of Cross-border Crimes in Idiroko Border Community of Ogun State, Nigeria’ (2021) 7 (1) International Journal of Health and Social Inquiry 27.

²³ *Attorney General of the Federation v Princewill Ugonna Anuebunwa* [2022] 14 NWLR (Pt. 1850) 211 at 240, Ratio 46 and 48 Per Helen Moronkeji Ogunwumiju JSC.

offence against the law of the requesting country having jurisdiction over the suspect to be extradited.²⁴

For instance *the Nation*, a Nigerian based newspaper reported on 15/8/2023²⁵ that the Federal Government of Nigeria extradited two citizens of Nigeria, one Samuel Ogoshi and his brother Samson Ogoshi to the United States of America to stand trial on charges of alleged sexual extortion of young men and teenage boys in Michigan and across the United States of America.²⁶ They were also to face prosecution for ‘exploitation of minors, resulting in death, conspiracy to sexually exploit minors by causing the minors to produce child pornographic images that the defendants used to blackmail them,’²⁷ among others, while Samuel Ogoshi was also to face charge of causing the death of Jordan DeMay of Marquette, in the State of Michigan of the United States of America.²⁸ Sometimes in November, 2019, a Nigerian named Adeniran was extradited from Nigeria to Northern District of Florida, the United States of

²⁴ Emmanuel Ekpenyong, ‘Nigeria: Extradition of Foreign Nationals to Nigeria to Face Criminal Prosecution’ 20 April 2022

<<https://www.mondaq.com/nigeria/crime/1184814/extradition-of-foreign-nationals-to-nigeria-to-face-criminal-prosecution>> accessed 27 April 2024.

²⁵ Robert Egbe and Vincent Ikuomola, ‘Nigeria Extradites Two Brothers to U.S. over Child Exploitation, S3xtortion, *The Nation* (15 August 2023)

<<https://thenationonlineng.net/nigeria-extradites-two-brothers-to-u-s-over-child-exploitation-sextortion/>> accessed 27 April 2024.

²⁶ Robert Egbe and Vincent Ikuomola, ‘Nigeria Extradites Two Brothers to U.S. over Child Exploitation, S3xtortion, *The Nation* (15 August 2023)

<<https://thenationonlineng.net/nigeria-extradites-two-brothers-to-u-s-over-child-exploitation-sextortion/>> accessed 27 April 2024.

²⁷ Robert Egbe and Vincent Ikuomola, ‘Nigeria Extradites Two Brothers to U.S. over Child Exploitation, S3xtortion, *The Nation* (15 August 2023)

<<https://thenationonlineng.net/nigeria-extradites-two-brothers-to-u-s-over-child-exploitation-sextortion/>> accessed 27 April 2024.

²⁸ Robert Egbe and Vincent Ikuomola, ‘Nigeria Extradites Two Brothers to U.S. over Child Exploitation, S3xtortion, *The Nation* (15 August 2023)

<<https://thenationonlineng.net/nigeria-extradites-two-brothers-to-u-s-over-child-exploitation-sextortion/>> accessed 27 April 2024.

America,²⁹ Adeniran was alleged to be the ring leader of a group who specialize in on line fraud.³⁰ Adeniran was alleged to have tried to escape justice by escaping to Nigeria in 2005, upon extradition request by the United States of America to Nigeria, Adeniran was extradited and was arraigned in the Federal Court United States of America on November. 4, 2019.³¹

According to Mowoe, section 41(2)(b) of the 1999 Constitution of Federal Republic of Nigeria (As Amended) justifies the removal of a criminal or a person suspected of being a criminal to the country where the alleged crime has been committed.³²

²⁹ U.S. Attorney's office, Northern District of Florida, 'Nigerian National Extradited to United States to Face Federal Charges for Leading International Fraud Scheme that Victimized Dozens of Financial Institutions' *Press Release* (8 November 2019) <<https://www.justice.gov/usao-ndfl/pr/nigerian-national-extradited-united-states-face-federal-charges-leading-international>> accessed 27 April 2024.

³⁰ U.S. Attorney's office, Northern District of Florida, 'Nigerian National Extradited to United States to Face Federal Charges for Leading International Fraud Scheme that Victimized Dozens of Financial Institutions' *Press Release* (8 November 2019) <<https://www.justice.gov/usao-ndfl/pr/nigerian-national-extradited-united-states-face-federal-charges-leading-international>> accessed 27 April 2024.

³¹ U.S. Attorney's office, Northern District of Florida, 'Nigerian National Extradited to United States to Face Federal Charges for Leading International Fraud Scheme that Victimized Dozens of Financial Institutions' *Press Release* (8 November 2019) <<https://www.justice.gov/usao-ndfl/pr/nigerian-national-extradited-united-states-face-federal-charges-leading-international>> accessed 27 April 2024.

³² Kehinde M. Mowoe, *Constitutional Law in Nigeria* (North Line Press 2021) 525. The section provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and that no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom and however, the foregoing does not invalidate any law that is reasonably justifiable in a democratic society for the purpose of providing for the removal of any person from Nigeria to any other country to be tried outside Nigeria for any criminal offence, or to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty. Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

Extradition is further defined as “the formal process of one state surrendering an individual to another state for prosecution or punishment for crimes committed in the requesting country’s jurisdiction,”³³ While Mowoe described it as “a process whereby, under a treaty, or on basis of reciprocity, a state surrenders to another, on its request, an accused person or convict for crimes committed against its laws, for trial.”³⁴ However their Lordships of Supreme Court of Nigeria in *Attorney General of the Federation v Princewill Ugonna Anuebunwa* held that extradition is “a cooperative legal process of one state called the surrendering state or authority which surrenders an individual to another state called the requesting state for prosecution or punishment for crimes committed within the requesting country’s jurisdiction.”³⁵

On the other hand, an extradition agreement is defined as a treaty or other arrangement made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment.³⁶ Extradition treaties that are directly relevant to the territory of Nigeria fall into two distinct periods in time viz:

- (a) Pre-independence treaties entered into by the British colonial administration.
- (b) Post-independence treaties entered into by Nigeria as a sovereign State.³⁷

³³Jonathan Masters, ‘What is Extradition.’

<<https://www.cfr.org/backgrounder/what-extradition>> accessed 27 April 2024.

³⁴Kehinde M. Mowoe, *Constitutional Law in Nigeria* (North Line Press 2021) 526.

³⁵[2022] 14 NWLR (Pt. 1850) 211 Ratio 46 per Helen Moronkeji Ogunwumiju JSC.

³⁶Section 1(a) Extradition Act, 2004.

³⁷*Attorney General of the Federation v Princewill Ugonna Anuebunwa* [2022] 14 NWLR (Pt. 1850) 211 at 240. Ratio 46 and 48. Per Helen Moronkeji Ogunwumiju JSC.

Nigeria's Extradition Act refers to that individual who has been suspected of having committed a crime in another country and for whose surrender that other country has made a request for surrender as a 'fugitive criminal' or 'fugitive' and further defined a 'fugitive criminal' or 'fugitive' as

any person accused of an extradition offence committed within the jurisdiction of a country other than Nigeria; or any person, who, having been convicted of an extradition offence in a country other than Nigeria, is unlawfully at large before the expiration of a sentence imposed on him for that offence, being in either case a person who is, or is suspected of being, in Nigeria.³⁸

The main purpose of the Act is to bring an accused to the jurisdiction of the commission of crime to face his trial or In the case of a fugitive criminal alleged to be unlawfully at large after conviction of an offence claimed to be an extradition offence, to ensure the extradition of the fugitive criminal to the country of the commission of the conviction to serve his sentence. In *Attorney General of the Federation v Princewill Ugonna Anuebunwa*, extradition is distinguished from other methods of forcibly removing undesirable persons from a country, such as exile, expulsion and deportation.³⁹

2.2 Geographical / Territorial Jurisdiction

The Constitution provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and that no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom and however, the forgoing does not invalidate any law that is reasonably justifiable in a

³⁸ Section 21(1) (a) (b) of the Act. The definition is without prejudice to provision of the Act in Section 8(2) of the Act.

³⁹ [2022] 14 NWLR (Pt. 1850) 211 at 240. Ratio 50 per Helen Moronkeji Ogunwumiju JSC.

democratic society for the purpose of providing for the removal of any person from Nigeria to any other country to be tried outside Nigeria for any criminal offence, or to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty.⁴⁰ This is to ensure that the trial of the suspect takes place in the jurisdiction where the offence was committed with the suspect in attendance.

Jurisdiction is the authority a court has to entertain and decide a matter brought before it. It is the power of the court to decide the matter in controversy and it presupposes the existence of a duly constituted court with control over the subject matter and the parties.⁴¹ Jurisdiction is of fundamental nature in adjudication. It goes to the competence of the court or the tribunal sitting on a matter. Jurisdiction is further described as the heart of any matter and any proceeding conducted without jurisdiction is void and a nullity *ab initio*.⁴² Jurisdiction is in different forms. Mainly, there is substantive jurisdiction which means the matters which a court has power to adjudicate upon by virtue of having been deliberately conferred with powers to so do by a statute, on the other hand is territorial jurisdiction which refers to the 'geographical area in which the matters brought before the court for adjudication arose...'⁴³ Courts of law do not adjudicate over matters which arise outside their legally defined geographical territory, hence the need for the Act which shall make provision for the surrender of a person suspected of having committed a crime in a foreign country to country of the venue of commission

⁴⁰ Section 41(1) (2) (b) (i) (ii) of the 1999 Constitution.

⁴¹ *Prof Abubakar Sulaiman v Federal Republic of Nigeria and 1 Or* [2020] 18 NWLR (Pt. 1755) 180 at 188. Ratio12.

⁴² Per Akomolafe-Wilson in *Buba Enoch Wulangs v Central Bank of Nigeria* [2021] 16 NWLR (Pt. 1802) 195 at 205. Ratio1.

⁴³ *Prof Abubakar Sulaimon v Federal Republic of Nigeria and 1 or.* [2020] 18 NWLR (Pt. 1755) 180 at 188 and 189 Ratio13.

the crime which is the appropriate place where judicial authority may be exercised. The implication of this for sustainable and developed relationship among nations cannot be over emphasized.

2.3 Sovereignty

According to Johnson-Odusanya, the principle of territorial sovereignty dictates that States have exclusive right within their geographical boundaries.⁴⁴ The implication of this, is that a suspect can only be prosecuted by courts within the geographical jurisdiction where the crime was committed. Sovereignty also confers upon a country the express power of full authority on every incident within its territory which includes the power and duty to protect its citizens. By virtue of section 2(1) of the 1999 Constitution, Nigeria is sovereign State. Chapter four of the said Constitution parades an array of rights. One of the core right of every citizen of Nigeria is the freedom of movement throughout Nigeria and the freedom to reside in any part thereof.⁴⁵ Further to the foregoing is the fact that Nigerians cannot be expelled from Nigeria nor can any citizen of Nigeria be refused entry into or exit from Nigeria. However one of the exceptions to this general provision provides for the validation of any law that is reasonably justifiable in a democratic society for the removal of any person from Nigeria to any other country to be tried outside Nigeria for any criminal offence, or to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty where there is reciprocal agreement between Nigeria and such other country in relation to such matter.

⁴⁴Adekunbi O. Johnson-Odusanya, 'An Analysis of the Foreign Judgments (Reciprocal Enforcement) Act, Cap F35, LFN 2004: A Call for Review' (2014) 1 (1) Umaru Musa Yar' Adua University Law Journal 11-31.

⁴⁵ 1999 Nigerian Constitution as Amended Section 44(1).

3. Overview of the Extradition Act Cap E25 LFN 2004

The law on extradition in Nigeria is the Extradition Act, Cap. E25 Laws of the Federation of Nigeria, 2004 as amended by the Extradition (Amendment) Act, 2018.⁴⁶ The Extradition Act E25, LFN 2004, is an Act to repeal the former Extradition Laws made by or applicable to Nigeria and to make more comprehensive provisions for extradition of fugitive offenders for Nigeria. The Act applies to any country with which Nigeria has a treaty or an extradition agreement for the surrender of persons wanted for prosecution or punishment by Nigeria to the said country and vice versa.⁴⁷ The Act also applies to every separate country within the commonwealth.⁴⁸ The Extradition Act E25, LFN 2004 herein after referred to as ‘the Act’ is arranged into 7 parts of 23 sections.

Part one contains 2 sections. Section one which is titled ‘Power to Apply Act by Order’ empowers the President by order published in the *Federal Gazette* to apply the Act to a country who has a treaty or agreement with Nigeria for purpose of releasing to it any Nigerian who has escaped to Nigeria after committing an offence in that country or after being convicted of an offence in that country. Section two applies the Act to Commonwealth countries delimited areas as separate countries within the Commonwealth. Section 3 of the Act lists situations under which Nigeria shall refuse to surrender a fugitive criminal to go and face trial in a requesting country. Section 4 of the Act allows the surrender of fugitive criminal notwithstanding the fact that the offence in respect for which his surrender is sought is an offence only under military law or a law relating only to military obligations. Section

⁴⁶ The Extradition (Amendment) Act, 2018 Amends the Extradition Act, Cap. E26, Laws of the Federation of Nigeria, when it vested the Federal High Court with the jurisdiction in extradition proceedings. By this, the Magistrate Courts ceased to have the power in extradition proceedings. This is the main highlight of the amendment among others.

⁴⁷ The Extradition Act Cap E25, LFN 2004 Section 1(1).

⁴⁸ The Extradition Act Cap E25, LFN 2004 Section 2(1).

5 of the Act made provisions for the arrest and surrender of every fugitive criminal of a country to which the Act applies whether the offence in respect of which his surrender is sought was committed before or after the commencement of the Act or the application of the Act to that country, and whether or not there is concurrent jurisdiction in any court in Nigeria over that offence. Section 6 of the Act deals with powers of Attorney-General whenever requests for surrender is made to him and the procedure for making such a request.⁴⁹ Though the Act empowers the Attorney-General to make an order to signify to the Court that such a request has been made and require the court to deal with the case in accordance with the provisions of the Act, he is to decline to make such an order if he decides on the basis of information then available to him that the surrender of the fugitive is precluded by any of the provisions of subsection (1) to (7) of section 3 of the Act. The Attorney-General may equally refuse to make an order in respect of any fugitive criminal who is a citizen of Nigeria except there is an extradition agreement in force between Nigeria and the requesting country. In a case where more than one country have requested for the surrender of a fugitive criminal, whether for the same offence or different offences, the Attorney-General is to determine which

⁴⁹ The request for the surrender of a fugitive criminal of any country is to be made in writing to the Attorney-General by a diplomatic representative or consular officer of that country and shall be accompanied by a duly authenticated warrant of arrest or certificate of conviction issued in that country.

ORDER V, EXTRADITION APPLICATION 1. An application for extradition shall be in line with the Schedule to these Rules containing— (a) the particulars of the fugitive whose extradition is requested; (b) a request for the surrender of the fugitive by the requesting country; (c) a duly authenticated warrant of arrest or certificate of conviction issued in the requesting country; (d) the particulars of the offence specified in the extradition request; (e) the particulars of the corresponding offence in Nigeria; and (f) a supporting affidavit. 2. Where the fugitive does not consent to extradition after being served with the application mentioned in rule 1, he shall file a counter affidavit and any other application within 5 days or such further time as the Court may permit.

request is to be accorded priority, and accordingly may refuse the other request or requests; and in determining which request is to be accorded priority, the Attorney-General shall have regard to all circumstances of the case.⁵⁰ Sections 7, 8 and 9 of the Act are on the procedure to be adopted by the court in respect of surrender of a fugitive criminal.

It is important to note that The Extradition Act (Modification) Order, 2014 modified the Extradition Act, Cap E25, Laws of the Federation of Nigeria, 2004 as follows— (a) in section 3(9), 4(2), 6(2), 7, 8 and 9, substitute the word “magistrate” with the word “judge”; (b) in section 12, substitute the phrase “... the High Court of the territory in which he is ...” with the word “court”; (c) in section 21(1), substitute the definition of the word “court” with the phrase “means the Federal High Court”; (d) in section 21(1)(b), substitute the word “magistrate” and its definition with the phrase “judge” means a judge of the Federal High Court”; (e) in sections 6, 7, 8, 9 and second schedule of the Act, substitute the word “order” in relation to powers of the Attorney-General of the Federation with the word “apply” “apply for” or “application” as the context so requires; and (f) in the second schedule to the Act, substitute the word “magistrate” wherever it appears with the “judge”. The Order modified the Act to bring the provisions of the Act in conformity with Section 251 of the Constitution of the Federal Republic of Nigeria 1999. Hence all references to ‘magistrate’ in the Act now means ‘judge of the Federal High Court’. All powers which resided in the magistrate court in the Act now reside in the Federal High Court by virtue of the Federal High Court (Extradition Proceedings) Rules, 2015 which apply to

⁵⁰ In this regard, the Attorney- General is to consider particular-

- (a) the relative seriousness of the offences, if different;
- (b) the relative dates on which the requests were made; and
- (c) the nationality of the fugitive and the place where he is ordinarily resident.

all extradition proceedings under the Extradition Act,⁵¹ save to the extent and as may otherwise be directed by the Chief Judge.⁵² These Rules provide that upon receipt of information that a fugitive is in Nigeria, suspected to be in or on his way into Nigeria, a Judge may issue a provisional arrest warrant under section 8 of the Act, to bring the fugitive before the Court. However, before issuing a provisional warrant of arrest upon information, a Judge shall consider whether — (a) the alleged offence is an extraditable offence; and (b) there is sufficient evidence or information to justify the issuance of a warrant of arrest. The provisional warrant of arrest shall direct that the fugitive shall be brought before the issuing Judge within 48 hours of effecting the arrest or such longer period as the Court may deem reasonable.

Section 10 discusses surrender of fugitive in due course after committal, section 11 on the Act states situations which would warrant postponement of surrender of fugitives section 12 is on discharge of fugitive if not removed from Nigeria within limited time. The provision of the Act on seizure and surrender of property is as stated in section 13 while section 14 empowers the Attorney-General to order release of fugitive Section 15 provides that fugitive surrendered to Nigeria is no triable for previous crime, while section 16 provides for transit of surrendered fugitives through Nigeria. Sections 17 to 23 made provisions for taking of evidence in Nigeria for use abroad,⁵³ forms,⁵⁴ returnable offences,⁵⁵ and interpretation.⁵⁶

⁵¹ CAP E25, Laws of the Federation of Nigeria 2004

⁵² The objectives of these Rules are to – (a) ensure clarity of extradition proceedings; (b) set out in detail the requirements for specific Orders; and (c) minimize the time spent during extradition proceedings as a result of interlocutory applications, undue adjournments and other causes of delay.

⁵³ Section 17 of the Act.

⁵⁴ Section 18 of the Act.

⁵⁵ Section 19 of the Act.

⁵⁶ Section 20 of the Act.

3.1 Situations Under Which Nigeria May Refuse to Surrender a Fugitive Criminal

The focus of this paper is on situations under which Nigeria may refuse to surrender a fugitive criminal.⁵⁷ This is important in view of the fact that the Act empowers the Attorney General to decline to make such an order for extradition if he decides on the basis of information then available to him that the surrender of the fugitive is precluded by any of the provisions of subsection (1) to (7) of section 3 of the Act.

Under Section 3 of the Act titled ‘Restrictions on Surrender of Fugitives’, the following are the grounds upon which Nigeria may rely to refuse to surrender a fugitive criminal to a requesting country.

- (a) If the Attorney-General or a court dealing with the case is satisfied that the offence in respect of which his surrender is sought is an offence of a political character.⁵⁸
- (b) If it appears to the Attorney-General or a court dealing with the case that the request for his surrender; although purporting to be made in respect of an extradition crime, was in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions or was otherwise not made in good faith or in the interest of justice.⁵⁹
- (c) If it appears to the Attorney-General or a court dealing with the case that, if surrendered, he is likely to be prejudiced at his trial, or to be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.⁶⁰
- (d) If the Attorney-General or a court dealing with the case is

⁵⁸ Section 3(1) of the Act.

⁵⁹ Section 3(2) (a) of the Act.

⁶⁰ Section 3(2) (b) of the Act.

satisfied that, by reason of the trivial nature of the offence for which his surrender is sought, or the passage of time since the commission of the offence, it would, having regard to all the circumstances in which the offence was committed, be unjust or oppressive, or be too severe a punishment, to surrender the offender.⁶¹

- (d) If the Attorney-General or a court dealing with the case is satisfied that, whether in Nigeria or elsewhere, he-
- (a) has been convicted of the offence for which his surrender is sought; or
 - (b) Has been acquitted thereof, and that, in a case falling within paragraph (a) of this subsection, he is not unlawfully at large.
 - (c) If criminal proceedings are pending against him in Nigeria for the offence for which his surrender is sought.
 - (d) A fugitive criminal-
 - (a) who has been charged with an offence under the law of Nigeria or any part thereof, not being the offence for which his surrender is sought; or
 - (b) who is serving a sentence imposed in respect of any such offence by a court in Nigeria,

Shall not be surrendered until such a time as he has been discharged whether by acquittal or on the expiration of his sentence, or otherwise.

(g) A fugitive criminal shall not be surrendered to any country unless the Attorney- General is satisfied that provision is made by the law of that country, or that special arrangements have been made, such that, so long as the fugitive has not had a reasonable opportunity of returning to Nigeria, he will not be detained or tried

⁶¹ Section 3(3)(a) (b) of the Act

in that country for any offence committed before his surrender other than the extradition offence which may be proved by the facts on which the surrender is granted.

Another reason as held in *Attorney General of the Federation v Princewill Ugonna Anuebunwa* is where an extradition treaty has not been proclaimed by way of an order published in the Federal Gazette, the treaty will not be justiciable in Nigerian Courts and Nigeria might refuse to surrender a fugitive based on an extradition request on such a treaty.⁶²

Further, section 3(3)(a)(b) of the Act empowers the Attorney-General or a court dealing with the case to decline to surrender the fugitive criminal is satisfied that, by reason of the trivial nature of the offence for which his surrender is sought, or the passage of time since the commission of the offence, it would, having regard to all the circumstances in which the offence was committed, be unjust or oppressive, or be too severe a punishment, to surrender the offender.⁶³ This provision has thrown up some issues which will be discussed here under.

The issues involved are discussed as follows:

- i. **That the Offence for Which the Surrender of the Fugitive Criminal is Sought is of Trivial Nature and Having Regard to all the Circumstances in Which the Offence was Committed, it Would be Unjust or Oppressive, or be too Severe a Punishment, to Surrender the Offender**⁶⁴

The word ‘trivial’ could be interpreted to mean ‘insignificant’, ‘inconsequential’, ‘trifling’, ‘negligible.’ The categorization of an

⁶² *Attorney General of the Federation v Princewill Ugonna Anuebunwa* [2022] 14 NWLR (Pt. 1850) 211.

⁶³ Section 3(3) (a) (b) of the Act.

⁶⁴ Section 3(3) (a) of the Act.

offence as trivial is strange to Nigerian Law.⁶⁵ It is startling that the Act can categorize any offence as trivial and also leaves the standard for determination of whether or not an offence is trivial to discretion. Howbeit, under the Nigerian Law, no crime is without penalty attached to same. The Act failed to state the next line of action where the offence is 'trivial'. Whether the implication is that the fugitive /criminal will be allowed to go free because the offence is 'trivial' or whether the fugitive /criminal will be prosecuted under Nigerian law. The Act did not also state what happens where the country where the crime was committed considers the offence as 'weighty'. It is apt to state that this particular provision should be re addressed and corrected as such cannot facilitate and sustain relationship between and among nations.

ii. That by Reason of the Passage of Time Since the Commission of the Offence, it would, Having Regard to all the Circumstances in Which the Offence was Committed, be Unjust or Oppressive, or be too Severe a Punishment, to Surrender the Offender⁶⁶

Section 3(3) (b) of the Act provides that Nigeria shall refuse to surrender a fugitive criminal if by reason of passage of time since the commission of the offence, it would be unjust or oppressive, or be too severe a punishment, to surrender the offender. In this section, the determination of how long the passage of time would be to warrant the refusal to surrender an offender is again left to discretion and is not in any way certain.

The position of law in Nigeria, is that there is no time limit in respect of when criminal proceedings may be commenced against a suspect. This is a general position to the effect that prosecution of a suspect can commence at any time. This is because it may take some space

⁶⁵ The Nigerian law categorised crimes into felonies, misdemeanours, simple offences. Criminal Code, Part 1, Chapter1 S.1.

⁶⁶ Section 3(3) (b) of the Act.

of time to put together the evidence of crime, a suspect may take to his heels after commission of crime and may take ample time before he is physically apprehended, the law does not set limit for commencement of prosecution.

On whether or not prosecution of crime can become statute barred or whether time runs against the State in respect of criminal offences, Peter Chudi Obiorah, JCA held:

Let me state that there is no rule that prescribes a time limit for the report of a crime. In the same vein, there is no time limit for the prosecution of crime. In other words, time does not run against the report, investigation and prosecution of crime. In effect, the statute of limitation has no application in criminal proceedings. Accordingly, the time lapse between the commission of an offence and report by the victim to the police is of no moment, since whether reported timeously or belatedly, the prosecution still has the burden to prove the alleged offence beyond reasonable doubt.⁶⁷

There are however few but specific statutory exceptions to this general rule for instance section 52(1)n of the Criminal Code states that proceedings in respect of sedition must be commenced within 6 months of the commission of the offence, prosecution of a suspect for offence of having carnal knowledge of a girl under the age of 16 must commence within two months of the commission of the crime,⁶⁸ section 43 of the criminal code stipulates that prosecution of offence of treasonable felony must be commenced with 2 years.⁶⁹ In all these cases, the time limit is specified.

⁶⁷ *Thompson v State*, (2023) LPELR-61413, 12 - 13 Paras E - A)

⁶⁸ Section 218 and Sections 221 of the Criminal Code

⁶⁹ By virtue of section 176(3) of Customs and Excise Management Act, offences committed under the Act must be prosecuted within 7 years

4. Observations, Conclusion and Proposed Reforms

In view of rising crime across international borders including crimes perpetrated via the internet, this paper undertook in detail the task of analysing the Act which aims at making more comprehensive provisions for extradition of fugitive offenders for Nigeria. The paper identified the lapses in section 3 (1-8) of the Extradition Act, Cap. E25 Laws of the Federation of Nigeria, 2004 as amended by the Extradition (Amendment) Act, 2018 on restriction on surrender of fugitives.

A successful inter boundary and international relationship depends on the confidence that all areas of interaction between nations are safeguarded by laws that are certain and precise.

The uncertainty which surrounds this core section of the Act is startling, as the provisions in section 3(3) is left to discretion. The courts are usually wary of discretions. Court condemns discretion in strong terms and state thus “discretion is defined as a power or right conferred upon public functionaries by law of acting officially in certain circumstances according to the dictates of their own judgement or conscience of others.”⁷⁰ “It is also the act or liberty of deciding according to justice and propriety, and one’s idea of what is right and proper under the circumstances without wilfulness or favour.”⁷¹ To this end a complete removal of the said provision is hereby suggested, the aim is to minimize the areas of uncertainty.

⁷⁰ *Mr Livinus Achi v Mr Peter Ebenighe and 2 Ors* [2014] 4 NWLR (Pt. 1397) 380 at 383. Ratio1.

⁷¹ Per Oyebisi Folayemi Omoleye in *Mr Livinus Achi v Mr Peter Ebenighe and 2 Ors* [2014] 4 NWLR (Pt. 1397) 380 at 383. Ratio 2.