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Extradition and State Responsibilities on the Protection of Rights of Requested Persons

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ABSTRACT

In recent time, the world has experienced an unprecedented upsurge of emerging national, transnational and international crimes perpetrated by individuals and groups. Perpetrators of these crimes sometimes escape to another country and evade immediate arrest, detention, prosecution, conviction, sentence and/ or punishment. Nonetheless, such individuals are sometimes formally surrendered to the requesting state, where the crimes were committed, upon request made to the requested state for their return through extradition in accordance with extradition laws. These laws place responsibilities on the requesting and requested states regarding the protection of rights of requested persons. This work examines state responsibilities for the protection of rights of requested persons. Using the doctrinal methodology, this work found that many state parties typically fail in their responsibilities to protect the rights of requested persons, which results in the violation of those rights. The work recommends strengthening of extradition laws on the protection of rights of requested persons by state parties; provision of clear penalties on involved states; establishment and strengthening of a realistic enforcement mechanism against involved states and provision of compensation for requested persons where their rights are violated.

Keywords: Extradition, Protection, Requested Persons, Requested State, Requesting State, Rights, State Parties and State Responsibilities.

INTRODUCTION

In recent times, many criminal justice systems of the world have struggled with the increase in commission of diverse crimes. The nature of some of these crimes, particularly, trans-national as well as international crimes, usually elude immediate detection. Consequently, most crimes are usually detected after its commission when the offender would have gone out of the country where the crime was committed. Some offenders who have been arrested sometimes flee from prosecution, while others arrested and tried; flee from conviction, sentence and punishment. Nevertheless, such persons (requested persons) are sometimes surrendered to the state where the crimes were committed (requesting state) upon request made to the state where the persons are found (requested state) seeking their arrest and prosecution, once there is an extradition treaty between the requesting state and the requested state.^[1] This makes extradition a recognised major element of international cooperation in combating many crimes including; money laundering, drug trafficking, human trafficking, gun running, kidnapping, corruption, cybercrimes, genocide, torture, crimes against humanity, war crimes and terrorism.^[2] Thus, it has been maintained that, 'in a world of increased mobility, interactive technology and new forms of criminality, extradition represents an essential response to the characteristics of contemporary crime'.^[3]

Extradition is important to state parties as well as international community because it plays a major role in eliminating crimes through state co-operations given the prevalence of crimes all over the world and spread of transnational criminal organisations. In view of the foregoing, several countries are parties to extradition treaties, which regulate extradition amongst them. But extradition is sometimes contentious and embroiled in political frictions in the light of existing circumstances under which the requested state can refuse to surrender the offender or criminal fugitive to the requesting state. The situation often becomes even worse where there are no extradition treaties between concerned states, because in modern time, a fugitive criminal is not usually extradited in the absence of extradition treaties.^[4] This is what influenced the decision of the supreme court of the United States of America in *Factor v Labubenheimer*, when it stated that, “International Law recognized no right to extradition apart from a treaty”.^[5] Accordingly, states that find themselves under these circumstances often resort to extra legal or illegal alternatives in getting accused persons or fugitive criminals back to the state for prosecution and punishment. This was the case in Nigeria with the alleged abduction of Nnamdi Kanu, the leader of the Indigenous Peoples of Biafra (IPOB), by the Nigerian Government. Nnamdi Kanu was standing trial on charges bothering on terrorism and inciting people against the government when he was alleged to have jumped bail and ran away from Nigeria in 2017.^[6] He was alleged to have been unlawfully arrested in Kenya, detained and was subsequently subjected to extraordinary rendition from Kenya to Nigeria where he was detained and tried.^[7]

Non-compliance with extradition treaties or a total departure from the use of extradition laws, underscored by politics, usually stem from the failure of state parties in their responsibilities to provide protection for the rights of requested persons. These are the problems which raise the following burning questions: do requested persons have rights that are accommodated by laws regulating extradition? What are the responsibilities of state parties on the protection of rights of requested persons? What are the implications of failure of state parties to perform their responsibilities of protecting the rights of requested persons? What could be done to forestall the violations of the rights of requested persons? What remedies are available for the requested persons where there are violations of their rights? Addressing the issues arising from these questions shall be the focus of this work. In doing so, the work is divided into six parts. Part one is the introduction and part two focuses on understanding extradition. Part three examines relevant provisions of extradition laws while part four deals with principles of extradition and rights of requested persons. Part five concerns itself with state responsibilities on protection of the rights of requested persons and the implications of states’ failure to do so. Finally, part six deals with conclusion and recommendations.

Understanding Extradition

In the relationship between countries, one issue of concern is how to return offenders or convicts fleeing from the law to sojourn in another country back to the countries where they committed offences to face trial and/or punishment. This is because the country where the crimes were committed cannot exercise criminal jurisdictions over them while they are in the custody of another state where they have fled to, on account of sovereignty of such states. In order to bring such offenders or convicts to justice, it has been maintained that the host country must surrender them to the country where the crimes were committed.^[8] It is the reality of this situation that has given rise to extradition in international relations, law and diplomacy.^[9]

The word ‘extradition’ is obtained from the Latin word *extradere*, which means forceful return of a person to his sovereign.^[10] It is the process whereby one nation, upon request by another nation, surrenders an individual found within its territory who has been charged with a criminal offence in the requesting state.^[11] It is the official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged or the return of a fugitive for justice, regardless of his/her consent, by the authorities where the fugitive is found.^[12] In strict legal parlance, extradition denotes the process under treaty, or on the basis of reciprocity, where one state surrenders to another state at its request, a person accused or

convicted of a criminal offence committed against the law of the requesting state having jurisdiction over the extraditable person.^[13] The process of extradition and the law regulating it has been shown to be a complex vehicle for the return by one state of accused or convicted fugitives from the criminal justice of another state.^[14] On the one hand, it is considered as a treaty matter bearing on the rights and duties of states with emphasis on inter-state cooperation based on reciprocity and mutuality of obligations. On the other hand, it is considered as part of the domestic criminal law process with a consequence of potential or actual deprivation of the liberty or even the life of the fugitive, if the requesting state retains the death penalty. However, underlying this process is the fact that the goal or purpose of extradition is the final surrender of a criminal fugitive for the purpose of administering justice. This stems from the fact that extradition process, as an aspect of law is based on the principles that criminal acts must be accompanied with the desired consequences, that crimes should not go unpunished and that states should assist one another towards bringing criminals to justice, irrespective of where they are domiciled and how hard they try to evade justice.^[15] But in doing so, extradition is designed to serve the basic concepts of fair play and the protection of nationals, as well as international interests and other political necessities, while ensuring swift and effective criminal justice administration.^[16]

Extradition is distinct from other processes of taking a fugitive from state of refuge to another state, such as extraordinary rendition and deportation. Extraordinary rendition refers to the capture, abduction or kidnap of a fugitive by a country seeking his trial or punishment without a recourse to the extradition laws of the country where the fugitive is found or the procedures recognized by international law.^[17] It consists in a situation where a fugitive is forcefully taken from the country where he has taken refuge without observance of known due process of extraditions.^[18] But, deportation is the process where a competent authority requires a person to leave a territory and prohibits him from returning to it.^[19] In recent time, deportation is formally carried out and it witnesses official handing over of deportees to officials of their home countries.^[20]

Relevant Legal Provisions on Extradition

Extradition is regulated by bilateral and multilateral treaties as well as national laws. Accordingly, the conditions required to be satisfied by the requesting state for consideration by the requested state to secure the extradition of a requested person are contained in existing national laws of state parties on extradition, in addition to extradition treaty between the requesting state and the requested state and any multilateral treaty that both states are parties. Some of the multilateral treaties on extradition include: Rome Statute of the International Criminal Court 2002 (Rome Statute);^[21] UN Model Treaty on Extradition 1990;^[22] European Convention on Extradition 1957; United Nations Convention against Transnational Organized Crime 2003; and Organisation of African Unity Convention on the Prevention and Combating of Terrorism, 2002. Some bilateral treaties on extradition include: Extradition Treaty between United States of America and Nigeria 1935; Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004. Some national laws on extradition, for example that of Nigeria, include: the Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN 1999); Extradition Act^[23] and the Extradition Act Modification Order, 2014.

There are relevant provisions of these laws that place responsibilities on state parties to extradition for the protection of the rights of requested persons. For example, the Rome Statute contains various principles of extradition including the principle of specialty which insists that a person surrendered to a requesting state is not to be detained, prosecuted or punished by the requesting state for any offence committed prior to the extradition, apart from that for which extradition was granted unless there is a waiver in that regard.^[24] This is to ensure the protection of state sovereignty,^[25] and compliance with all the guarantees of the extradition process during trial of requested persons, such as double criminality and political objections.^[26] This operates to prevent a requesting state from using extradition process for an impermissible purpose capable of violating the rights of requested person. Similarly, the United Nations Convention against Transnational

Organized Crime 2003 (UNCTOC) provides in its Article 16(4) that, if a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the Convention the legal basis for extradition in respect of any offence to which the article applies. And where any State Party makes extradition conditional upon existence of a treaty, like in the case of Nigeria, or does not take the convention as the legal basis for extradition between it and another state, such state must take steps to implement the convention by concluding a treaty with such state.^[27] The Convention, in Article 16(13) also provides to the requested person, enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which such person is present. These rights are the fundamental human rights as provided in State Party's domestic laws contained in their Constitution, as in the case of Nigeria.^[28] However, Article 16(14) of the Convention makes it clear that there is no obligation on State Party to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons. This implies that in circumstances other than these and which are not excluded, the requested state is under obligation to extradite. Article 4(2)(h) of the Organisation of African Unity Convention on the Prevention and Combating of Terrorism 2002 (OAUCPT) provides state parties with obligation to arrest perpetrators of terrorist acts and try them in accordance with national legislation, or extradite them in accordance with the provisions of the Convention or extradition treaties concluded between the requesting State and the requested State and, in the absence of a treaty, consider facilitating the extradition of persons suspected of having committed terrorist acts.

According to Article 8 of this Convention, States Parties are under obligation to undertake to extradite any person charged with or convicted of any terrorist act carried out on the territory of another State Party and whose extradition is requested by one of the States Parties in conformity with the rules and conditions provided for in the Convention or under extradition agreements between the States Parties and within the limits of their national laws. Importantly, the convention in Article 8(3) provides that extradition shall not be granted if final judgment has been passed by a competent authority of the requested State upon the person in respect of the terrorist act or acts for which extradition is requested. This paragraph also gives the requested state the liberty to refuse extradition of the requested person if the competent authority of the requested State has decided either not to institute or terminate proceedings in respect of the same act or acts. Under the convention, state parties are at liberty to determine grounds upon which extradition may not be granted.^[29] These are usually contained in treaties signed by countries to regulate extradition amongst them.

Article 3 of the extradition treaty between United States of America and Nigeria provides for the list of offences for which extradition is to be reciprocally granted.^[30] Article 4 of the treaty provides that extradition shall not take place if the requested person has already been tried and discharged or punished, or is still under trial in the territories of the requested country, for the crime or offence for which his extradition is demanded.^[31] Also, by Article 5 of the treaty, extradition shall not take place if, the offence for which extradition is sought has been caught up by the limitation law of the requesting state. By Article 6 of the treaty, a fugitive criminal shall not be surrendered if the crime in respect of which his surrender is demanded is one of a political character. Article 8 provides that extradition of a requested person shall be carried out in conformity with the laws regulating extradition in the territory from which the surrender of the requested person is claimed. However, a person surrendered cannot, by Article 7, be detained or tried for any offence other than that which he was extradited. The provisions of this treaty clearly provide safeguards for the rights of the requested persons – not to be extradited – as well as place obligations on State Party in that regard.

Also, State Party's responsibilities on the protection of the rights of the requested persons is also eminently pronounced in 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, 2004 (2005). In Article 3(3) of this treaty, extradition may be refused unless the requesting state undertakes or gives such assurance as considered sufficient by the requested state that the person sought will not be— (a) detained without trial; (b) tortured in any way; and (c) treated in a cruel, inhuman or degrading way. By Article 4 of this Act, extradition shall not be granted on grounds of offence of political character and for commission of offences under military law or if the requested state is of the opinion that there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, nationality or political opinion.^[32] Similarly, by Article 6(1) extradition shall not be granted when the requested person has been convicted or acquitted in the requested state for the offence for which extradition is sought. Article 7 of the treaty provides for limitation of time. Accordingly, extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the requesting state. Article 15(1) of this treaty accommodates international law rule of specialty. Accordingly, a person extradited under the treaty may not be detained, tried, or punished in the requesting state except for an offence for which extradition has been granted or for any differently denominated offence based on the same facts, on which extradition was granted, provided such offence is extraditable.

National laws on extradition remains the conduit in which extradition treaties are made enforceable in many countries of the world. They also remain the primary legislation on extradition in various countries of the world, which establishes rights of requested persons and place responsibilities on state parties to ensure their protection. In Nigeria, for example, extradition is governed by the Nigerian Extradition Act of 1966^[33] and the Extradition Act Modification Order 2014, which modified the Extradition Act of 1966, by replacing the jurisdiction of the Magistrate Court on extradition matters with that of the Federal High Court. Practically, the Extradition Act of 1966 and the Extradition Act Modification Order 2014 operate together for purpose of extradition in Nigeria.^[34] Section 2 of the Act provides for extradition of requested persons involving Nigeria and any commonwealth country even where there is no extradition agreement between them.^[35]

According to section 3(a) of the Act, a requested person or a fugitive criminal shall not be surrendered if (a) the offence in respect of which his surrender is sought is an offence of a political character; (b) the request is 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; (c) 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; (d) the requested person has been convicted of the offence for which his surrender is sought or has been acquitted thereof. Furthermore, a fugitive criminal shall not be surrendered: if criminal proceedings are pending against him in Nigeria for the offence for which his surrender is sought; if he is serving a sentence imposed by a court in Nigeria in respect of any other offence unconnected with the extradition request until discharged by acquittal or on the expiration of his sentence, or otherwise; for an offence other than that which the extradition was sought.

It is crystal clear, from the above relevant provisions that the basic requirements, which are common with many state parties and established on certain principles run through the extradition procedures, establish rights for requested persons and place obligations on involved state parties to protect those rights with little or no variations. Accordingly, where there is no variation, a failure of a State Party on its responsibilities in relation to any of these provisions usually results in a violation of the rights of requested persons on extradition.

The Principles of Extradition and the Rights of Requested Persons

Basically, some of the jurisprudential justifications for extradition include that it is in the interest of the global criminal justice system not to allow offenders who have committed heinous crimes to go unpunished.^[36] However, for a requested person to be extradited, the laws on extradition have shown that certain requirements have to be shown to exist, including the requirement that the offence allegedly committed is

extraditable. These requirements, together with the principles of extradition, are usually considered by State Party for purposes of extradition. The rights of requested persons as contained in the extradition laws as well as State Party's responsibilities to protect such rights are intrinsically tied to these principles. Accordingly, where the laws and these principles are not applied, yet a requested person is extradited, such rights stand violated while the State Party fails in its responsibilities. These principles include; the principle of territoriality, dual or double criminality principle, principle of specialty, statute of limitations principle, principle against double jeopardy and political or religious offences principle.

The principle of territoriality requires that the offence, which extradition is sought must have been committed within the territorial boundaries of the requesting state. This principle has found expressions in many treaties of extradition between countries including that between the US and Switzerland.^[37] The implication of this principle is that where the offence for which extradition of the requested person is sought was not committed within the territory of the requesting state, such extradition should not be granted. This shows that it is the right of the requested person not to be extradited where the extradition is sought for an offence that was not committed within the territorial boundaries of the requesting state. Where such extradition is granted contrary to this principle, same is granted in violation of the rights of the requested person. However, there are arguments on the elasticity of what constitutes territory and the issues of offence that is committed outside the territories of the states concerned with the extradition but which operate as obstacles to surrender of requested person.^[38] These influence the responsibilities of State Party in the protection of the rights of requested persons in this regard.

The principle of dual or double criminality insists that the offence for which extradition of a requested person is sought must in addition to being a crime in the requesting state also exist as a crime in the requested state. The offense must also be included in the list of offenses listed within the treaty of both states. An example of this is in the US – Swiss Treaty. Article II of this treaty specifically lists several extraditable offenses, including; murder, arson, robbery and counterfeiting.^[39] According to Wood Jr., if the offense for which extradition is sought is considered criminal under the laws of both states, as well as being listed in the treaty, the element of dual criminality has been met.^[40] Although some treaties have remained silent on this issue, it has been suggested that most nations require this provision to be included within the treaty.^[41] This is because extradition may not be allowed for offenses not specifically included within the treaty even if they are crimes under the laws of both nations. This is what happened in *Dunster* case, where Great Britain refused to extradite a couple who assisted in the kidnapping of their daughter's children from the United States to Great Britain because the crime of kidnapping as characterized by the United States, was not similarly characterized as such in Great Britain.^[42] Consequently, the extradition was denied. Although older extradition treaties tend to list covered offences,^[43] treaties on extradition, in recent time, tend to take a dual criminality approach.^[44] It classifies as extraditable only those crimes that are punishable in both jurisdictions and states.^[45] Therefore for extradition of a requested person to be considered, it is the responsibility of the requested state to ensure that the alleged offence in question is an extraditable crime and punishable in both the requested and requesting state.^[46] At the moment, recent treaties provide for extradition of all crimes or offenses that are punishable under the laws of both states by imprisonment of greater than one year so far as they are broadly listed according to the nature or type of offense.^[47] Accordingly, a requested person has right not to be extradited unless the offense for which extradition is sought is a crime under the laws of both the requesting and requested states, as well as being listed in the extradition treaty between them or otherwise as clearly stated therein. However, where it is clear that the offence for which extradition of the requested person is sought is not a crime in both the requesting and requested state, and such extradition is made, the rights of the requested person to be protected from extradition is violated.

The principle of specialty holds that no requested person that is surrendered shall be prosecuted or punished for any offense committed before the demand for extradition other than that for which the extradition is

granted unless there is a waiver in that regard.^[48] According to Wood Jr., the requesting state can still prosecute the surrendered person on an offense for which he was not extradited; if he is given sufficient time to leave the state before initiating the proceedings. He can also be prosecuted for crimes committed after extradition has occurred or if the requested country consents, or waives the doctrine of specialty.^[49] Example of this is reflected in Article IX of the US – Swiss Treaty which provides: No person surrendered by either of the Contracting States to the other shall be prosecuted or punished for any offense committed before the demand for extradition, other than that for which the extradition is granted, unless he expressly consents to it in open Court...^[50] This principle clearly shows the right of a requested person not to be extradited for purpose of being prosecuted or punished for any other crime apart from that which he was extradited and the derogations of this right. It also enables the requested state to regulate the extradition proceeding of the requesting state, thereby preventing ‘faked extraditions’ and provides an extra layer of protection for individual rights and liberties.^[51]

The principle of limitation is also usually considered by contracting states in extradition of requested persons. According to this principle, extradition shall not take place if, the offence for which extradition is sought has been caught up by limitation law of the requesting state.^[52] For instance, Article VIII of the U.S. – Swiss Treaty states that extradition shall not be granted when, ‘under the laws of the State upon which the requisition is made, or under those of the State making the requisition, the criminal prosecution or penalty imposed is barred by limitation’.^[53] Accordingly, the courts of the requested state must determine if the arrest and trial of the offence is caught up by statute of limitations in either the requested or requesting state. And where that is the case, the court may deny such extradition. It has long been argued that problem usually arises where an offence is statute barred in the requested state and not in the requesting state and *vis-versa*.^[54] But Wood Jr., maintains that there have been recent developments in international law on extradition, which appear to solve this problem by making the issue of the statute of limitations of the requested state irrelevant, focusing instead on the statute of limitations of the requesting state.^[55] According to him, these changes enable requesting states to effectively combat specific crimes and offenses which may not receive similar attention in other states.^[56] It is therefore the right of the requested person not to be extradited if the offence for which his extradition is sought is statute barred in the laws of the requesting state. Similarly, it is the responsibility of the requested state to ensure that extradition of a requested person is not granted when the prosecution has become barred by lapse of time according to the laws of the requesting state. Doing otherwise constitutes a breach of the rights of the requested person.

The principle against double jeopardy, which is accommodated by extraditions laws, maintains that extradition of a requested person shall not be made if the requested person has been convicted of the offence for which his surrender is sought or has been acquitted thereof or granted amnesty or pardoned by the requested state.^[57] This is also recognized in national laws on extradition of many countries where it is also made part of the fundamental rights of citizens.^[58] Also, a requested person shall not be surrendered if criminal proceedings are pending against him in the requested state for the offence for which his surrender is sought or if he is serving a sentence imposed by a court in the requested state in respect of any other offence unconnected with the extradition request until discharged by acquittal or on the expiration of his sentence, or otherwise.

In all extradition treaties, it is a remarkable requirement that a request for extradition shall not be granted on account of sex, race or nationality or where the offence is regarded as a political or religious one. As such a political offense exists as an exception to offences accepted for extradition of requested persons.^[60] It has been shown that underlying this consideration is the assumption that the requested person would not receive due process or fair trial and equal treatment if returned to the requesting state. Wood Jr., maintains that the ideal objectives of this exception have not been fully realized, mainly because the decision whether to apply this exception ultimately rests with the requested state, which has its own political affinities and biases in that regard.^[61] Consequently, a requested state may be more willing to overlook the applicability of this

exception when the requesting state holds similar political ideologies. It is in taking such direction that the rights of requested persons are violated in this regard instead of being protected by involved State Party, which has the responsibility to do so.

The contemplation of reciprocity in extradition of requested persons constitutes a strong consideration which has shaped state responsibilities in protecting the rights of requested persons. For example, in many countries, extradition applies only with respect to requesting states that have provisions in their national laws that are similar with what is contained in the Extradition laws of the requested states. Notwithstanding the existence of these laws, some nation states are found to extradite requested persons in breach of these laws as a result of political and quasi ethical factors. Many others have been frustrated and denied their applications because the signatories to extradition treaties do not religiously grant requests for extradition, particularly where granting such requests will not be in their national interest. However, involved states that have no extradition treaties with each other, sometimes willingly surrender fugitives for trial or to serve punishment after conviction, if they find it politically expedient to do so. This is the hallmark of reciprocity. However, some requesting states usually hold to their responsibilities and refuse to extradite a requested person for non-compliance with extradition laws and existing extradition principles as well as consideration of reciprocity. And where such surrender is refused, some states usually resort to abduction of the fugitive criminal and risks exposing themselves to international condemnations.^[62]

States Responsibilities and the Rights of Requested Persons

States responsibilities on extradition are founded on law. They constitute the upshot of states' response to crime through extradition process usually regulated by treaties as well as domestic legislation.^[63] Apart from the rights of requested persons that are rooted in the principles of extradition and recognized by various extradition laws discussed above, others are incidental to the responsibilities of State Party in extradition contained in the treaties and municipal laws. These treaties provide instances when extradition may be denied and those that extradition shall be denied.^[64] For instance, requested states have the responsibility not to extradite individuals for such offences like political offences with exceptions for terrorism and other violent acts.^[65] Requested states also have the responsibility not to extradite individuals to requesting states with capital punishment where the requested states have abolished capital punishment within its jurisdictions, unless the requesting states agree or pledge not to impose such punishment on the individual. Therefore, where any requested state extradites a requested person in circumstances that such requested person should not have been extradited as stipulated by law, such extradition is evidence of the state's failure in its responsibility on the protection of the right of such requested person.

Notably, all states have a responsibility to protect their nationals as the security and welfare of citizens constitute part of the fundamental objectives of government.^[66] Evidently, the nationality of the individual sought to be extradited sometimes also come into consideration as many states would not extradite their own citizens, or do so on a restrictive basis. This is more so, where the requesting state is identified with gross violations of human rights of individuals arising from absence of adherence to rule of law, presence of death sentence and other anti-discrimination and human rights standards. Accordingly, if the requested person has been or would be subjected in the requesting state to torture or cruel, inhuman or degrading treatment or punishment or that if that person has not received or would not receive the minimum guarantees in criminal proceedings as contained in the International Covenant on Civil and Political Rights, it is the responsibility of the requested state to refuse such extradition in order to protect the requested person.^[67] Thus, in the 1989 case of *Soering* the United States had requested the UK to extradite a German national charged with capital murder, to be tried in Virginia. This request was denied because there were substantial grounds for believing that *Soering* would face a risk of being sentenced to death and being subjected to death row phenomenon, which, in view of his age and diminished mental state at the time of the offence,

would constitute treatment going beyond the threshold accommodated by the covenants on civil and

political rights of persons.^[68]

State parties are also responsible to ensure that serious consideration is given to the issue of double jeopardy when a request for extradition is made.^[69] The principle of double jeopardy is important additional protection for requested persons. It holds that extradition shall not be granted if final judgment has been passed on the requested person or he has been pardoned or granted amnesty in the requested state or has served the sentence for the acts or omissions constituting the offence for which extradition is requested. Accordingly, where a person has been tried and convicted of an offence in the requested state, which forms the basis of the request for extradition, such request for extradition should not be granted.^[70] A grant of such request is a violation of the right of such requested person and a failure on the responsibility of the requested state to protect the right of the requested person in that regard.

Administrative considerations and transfer of evidence also operate to impact on the extradition of a requested person. In many extradition treaties, it is the responsibility of the requested state to make all necessary arrangements for extradition of the requested person, meets the cost of any proceedings arising out of a request for extradition and advices, assists, represents, and appears in court on behalf of the requesting state and represents the interests of the requesting state until the requested person is surrendered to a person nominated by the requesting state.^[71] However, the requesting state has the responsibility to bear the expenses related to the translation of documents and the transportation of the person extradited.^[72] Where these responsibilities are not performed by state parties and expeditiously too, and the requested person is denied the opportunity of being tried fairly and within reasonable time, or denied legal representation of his choice or provisions of materials to enable him prepare his defence, the fundamental rights of the requested person, which are the core of right to fair hearing provided for in many national laws of state parties, are violated.^[73]

In considering issues of human rights in extradition, it has been shown that human rights based provisions are clearer and more defined in scope, but with some difficulty of application in practice.^[74] Notwithstanding this, both international and domestic tribunals have refused extradition on the basis of human rights violations.^[75] Thus extradition of requested persons to some nation states has been refused because such a person may face years on death row, or death by gas asphyxiation, or death for peacetime offences. However, where there is assurance that death penalty would not be imposed on the requested person, same may be granted.^[76] This was the case in the extradition of Abu Salem, where the Portuguese Government agreed to extradite Abu Salem to India only when Government of India assured that the death penalty would not be imposed.^[77] However, an assurance that the death penalty would not be carried out by the requesting state may be insufficient for a requested state whose Constitution or other domestic law prohibits the death penalty. Domestic courts have also refused extradition when it would violate either a right guaranteed by a convention to which that state is a party or its sense of decency, or where the standards of justice in the requesting state are less than the rights guaranteed by the Constitution of the requested state.^[78]

CONCLUSION AND RECOMMENDATIONS

Extradition develops through the use of bilateral and multilateral treaties as well as national laws of state parties, which constitute the legal frameworks regulating the surrender of requested person for trial or punishment. These legal frameworks together with the principles of extradition accommodate the rights of requested persons involved in extradition and places responsibilities on state parties on the protection of such rights. Therefore, a Sovereign State is not under any compulsion to surrender a requested person to another Sovereign State except as provided in the treaties as well as its municipal laws and guided by the principles of extradition. This is so because extradition derives as an obligation, either from an existing bilateral or multilateral treaty as well as extradition principles, subject to the domestic law of the state

parties.

No doubt, existing legal frameworks of state parties on extradition in the world show recognised rights of requested persons. They also show the responsibilities of state parties in the protection of these rights. They provide the circumstances under which a requested person shall not be surrendered for prosecution or punishment as well as when they may or shall be surrendered. In spite of the existence of these legal frameworks and in total disregard to the guiding principles of extradition, many states usual fail in their responsibilities to protect the rights of the requested persons. This usually results in violations of the rights of the requested persons before, during and after their extradition. This however usually occasioned injustice on the requested persons contrary to the rationale that justice is not for the states and victims alone, but also for the requested persons as well.

In view of the above findings, this work makes the following recommendations. First, this work recommends strengthening of extradition laws on the protection of rights of requested persons by state parties. This is because some requested persons are usually extradited in breach of extraditions laws and for reasons of political inclinations which influences the decision of the requesting state in that regard. Furthermore, it has been shown that requested persons do not enjoy some recognised rights even when same are available for other suspected offenders prosecuted for criminal offences all over the world. For example, requested persons, unlike other offenders, are not given opportunity of a choice of jurisdiction for trial even when they reasonably believe that they would not obtain fair trial in the requesting state. Such practice if clearly provided for in extradition treaty of state parties or in extradition laws of state parties would go a long way to ensure that the requested person is fairly treated. Therefore, extradition laws should be strengthened to offer a requested person a choice of choosing the state within which he would want to stand trial or serve his punishment where the requested person has a reasonable believe that he would not have fair trial if his extradition is granted.

Secondly, this work recommends provisions of clear penalties on state parties who fail in their responsibilities to provide protections for the rights of requested persons. At the moment, there are no penalties or clearly defined liabilities placed on state parties who renege on their responsibilities to protect the rights of requested persons when their act results in the violations of such rights. States therefore act with impunity and in total disregard to the provisions of existing extradition laws as well as extradition principles thereby violating the rights of the requested persons. Some requested states are usually influenced by expectations of favour, political or economic, to extradite requested persons even when no treaty exists and no law permits. These States acts in pretext of reciprocity believing that their act would be reciprocated one way or other in a later date, not minding that they have a responsibility to protect requested persons as provided by law. Accordingly, provisions of clear penalties or liabilities on involved states would deter state parties from failing in their responsibilities to protect the rights of requested persons and thereby prevent future occurrences. Such penalties should include economic sanctions, which can be imposed on involved states including arms embargoes, exclusion from grants and visa bans on key officials of governments of such country.

Thirdly, the work recommends the establishment and strengthening of a realistic enforcement mechanism against states that are involved in the extradition of requested persons in complete breach of extradition laws and principles, which is evidence of their failure to provide the requisite protection for the rights of requested persons in that regard. This is necessary because mere existence of provision of penalties and liabilities on involved states, without more, will not achieved the requisite goal needed to deter states from acting with impunity and extraditing requested persons without following the law.

Establishment and strengthening of a realistic enforcement mechanism against states that are involved in the extradition of requested persons in complete breach of extradition laws and principles would help keep them on their toes to ensure that they perform their responsibility or be ready to pay the price for their failure. [79]

Fourthly, this work recommends the provision of compensation for requested persons where state parties fail in their responsibility on the protection of their rights and the failure results in violation of such rights. It is trite that where there is a right, there is a remedy. In which case where a wrong is done to a person, which wrong constitutes a violation of such person's right, such person is entitled to a remedy. This, without doubt, is not the case with requested persons whose rights are violated; particularly, when they are extradited to stand trial via a request which ought not to have been granted for breaches of extradition laws or principle of extradition. Compensation made payable by state parties who fail in their responsibilities to protect the requested persons would help to provide succour to requested persons who are unjustly extradited for trial or extradited to be unjustly punished. Importantly, requested persons who have been tortured or made to go through degrading treatments in the hands of state parties to extradition should be sufficiently compensated. Leaving them without clear cut entitlement to compensation under extradition laws would continue to open the floodgate for abuses of the rights of requested persons.^[80] Providing the recommended compensation would surely make state parties accountable for failure of their responsibilities to protect the rights of requested persons.

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FOOD NOTES

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[3] Per Kirby J in *Foster v Minister for Customs and Justice* (2000) 200 CLR 442, 474.

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[5] *ibid.*

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[9] *idid.*

[10] Wood Jr., 'Extradition: Evaluating the Development, Uses and Overall Effectiveness of the System' [1993] *Regent Law Review*, (3) 44.

[11] *Ibid.*

[12] Thaddeus Chukwuka Eze (n 8).

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[17] Ibid.

[18] This process is of course unknown to international law but still used by desperate states who want to secure the arrest and prosecution of a fugitive by all means as was done in Nigeria in the case of Nnamdi Kanu. See Chimaobi Nwaiwu, 'Nnamdi Kanu's abduction from Kenya violates international laws- Family' Vanguard News, 30 June 2021<<http://www.vanguardngr.com>>...Accessed 12 August, 2021.

[19] Eze (n1) 3.

[20] Agency Report, 198 Nigerians Deported by Saudi Arabia Arrive Home, <https://www.premiumtimes...> Accessed 17 April 2023.

[21] Opened for signature 17 July 1998, 2187 UNTS 3, art 101 (entered into force 1 July 2002). It provides for extradition of persons who commit international crimes and trans-national crimes or national crimes with international colorations.

[22] 14 December 1990, GA/45/116.

[23] Cap. E 25, LFN 2004.

[24] Article 101(1) & (2) of the Rome Statute

[25] Gavan Griffith QC and Claire Harris 'Recent Developments in the Law of Extradition', (2005) *Melbourne Journal of International Law*, Vol. 6, p. 18; Clive Nicholls, Clare Montgomery and Julian Knowles, *The Law of Extradition and Mutual Assistance: International Criminal Law — Practice and Procedure* (2002) 180.

[26] Griffith QC and Harris (n 3)

[27] Ibid Article 16(5).

[28] Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN 1999)

[29] OAUCPCT Article 8(2).

[30] This treaty was signed by the colonial government on behalf of the Nigerian people on the 22nd of December 1931. It entered into force on 24th June, 1935 with the aim of making more adequate provision for the reciprocal extradition of criminals amongst state parties. See United Nations, 'Cases and Materials on Extradition in Nigeria', United Nations Office on Drugs and Crime Country Office Nigeria 2016.

[31] However, where the requested person is under trial for any other crime, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him. See Article 4 of the Treaty between United States of America and Nigeria of 1935.

[32] Article 4(3)

[33] Cap. E 25 LFN 2004.

[34] Unini Chioma, Extradition Process in Nigeria, <<https://thenigerialawyer.co...>> accessed 17 April 2023.

[35] Ibid s. 2(a).

[36] Hillier (n 5).

[37] Article I of the Treaty on the Extradition of Criminals, May 14, 1900, U.S. – Switz., 31 Stat. 1928.

[38] Wood, Jr. (n 3) 55.

[39] Ibid.

[40] Ibid 56.

[41] Ibid.

[42] Act Charged, a Crime in Both Countries, 6 Whiteman Digest S 13, at 775-776 (1968).

[43] Example of such treaty is the treaty between Albania and the United States signed in 1933 which has a list of crimes including murder, rape, arson and burglary.

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[47] Wood, Jr., (n 3) 56.

[48] See for instance Article 4 of the Treaty between United States of America and Nigeria of 1935; Article 101(1) & (2) of the Rome Statute.

[49] Ibid 57; United States v. Najohn, 785 F.2d 1420, 1422 (9th Cir. 1986).

[50] U.S. – Swiss Treaty, (n 19) 1932.

[51] Wood Jr. (n 3) 57

[52] See Article 5 of the Extradition Treaty between United States of America and Nigeria of 1935; Article 7 of the Extradition Treaty between Government of the Federal Republic of Nigeria and Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004.

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[55] Wood Jr. (n 3) 58.

[56] Ibid.

[57] Article 6(1) of the Extradition Treaty between Government of the Federal Republic of Nigeria and Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004. See also Article 4 of the Treaty between United States of America and Nigeria of 1935; Article 16(14) United Nations Convention against Transnational Organized Crime 2003

[58] See for instance, Article 3 of Extradition Act 1966 of Nigeria; CFRN 1999, s. 36(9).

[59] See Article 5 of the Extradition Treaty between United States of America and Nigeria of 1935 See also Article 4 of the Extradition Treaty between Government of the Federal Republic of Nigeria and Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004.

[60] See Article VII of the U.S. – Swiss Treaty (n 19).

[61] Wood Jr. (n 3) 59.

[62] This was the case of Nigeria and Kenya involving the abduction of Nnamdi Kano from Kenya to Nigeria.

[63] Sharon A. Williams ‘The Double Criminality Rule Revisited’ (1993) 27(1-2) Israel Law Review, 298.

[64] See for instance Article 5 of the Extradition Treaty between Government of the Federal Republic of Nigeria and Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004.

[65] Ibid. Libor Klimek, ‘Surrender vs. Extradition: A Comparison Focused on Innovations of European Arrest Warrant’ (2011) 11(1) International and Comparative Law Review, 145.

[66] See CFRN, s.14 (2) (b).

[67] Griffith QC and Harris (n 9) 15.

[68] Soering (1989) 11 EHRR 439, 448. Cf, *R v Secretary of State for the Home Department; Ex parte Launder*.

[69] S. 36(9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN 1999); Article 6 of the Extradition Treaty between Government of the Federal Republic of Nigeria and Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004.

[70] Ibid.

[71] Article 19(1) of the Extradition Treaty between Government of the Federal Republic of Nigeria and Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004.

[72] Ibid, Article 19(2).

[73] See for instance in Nigeria, CFRN 1999, S.36(6).

[74] Griffith QC and Harris (n 2) 16.

[75] Ibid 18.

[76] See Article 11 of the European Convention on Extradition 1957.

[77] Puneet Vyas, “Laws Governing Extradition: A Special Reference to Abu Salem’s Extradition”, available at <http://www.legalserviceindia.com>> accessed 17 October, 2021.

[78] Ibid.

[79] In Nigeria for instance, this is consistent with the principle that the vested rights of persons must be protected from abuse by authorities, which was well expounded by the Supreme Court in the case of *Oyeyemi v Commissioner For Local Govt., Kwara State & Ors* (1992) LPELR-2882(SC) (Pp. 24-25 Paras. D) to wit: “Courts have a duty to protect vested rights, as otherwise lawlessness will reign”.

[80] The Justice System in some countries like Nigeria recognises that the need to pay compensation in circumstances of clear violation of rights is very fundamental and mandatory that same has been entrenched in Section 35(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which stipulates thus: “Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority.” The law is trite that the award of damages in compensation legally and automatically follows from a finding of every act of violation of a citizen’s fundamental right.”; *Dasuki v Director General State Security & Ors* (2019) LPELR-48113(CA) (Pp. 32-39 paras. C).