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The Kanu Saga: International Legal Order and Extradition to Nigeria

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ABSTRACT

Extradition is still a potentially prolific option available on the global scene to maintain the era of International Legal Order. Countries whose boundaries should be covered by the long arm of the law will need to employ this tool. The extradition principle, which is used in criminal cases, is a fundamental of international law, and this study explores the relationship that exists between extradition and the international legal system. For the sake of a better grasp of the topic, the principle of extradition and its definition are briefly introduced in the opening paragraph of this study. The paper succinctly explains the historical context of extradition treaties, their structure, and the actual extradition procedure during the course of the study. In addition, the paper considers how this principle affects human rights and explores many obstacles to the idea of extradition. The paper then attempts to demonstrate the ramifications of this theory using Nnamdi Kanu's case study as a remarkable yardstick. The study ends with a reflection on the small notion of rendition, which is frequently confused with extradition, as well as a thorough summary of the entire study.

Keywords: Extradition; International Law; International Legal Order; Human Rights; Case-studies.

Introduction

Adopting the joint use of international extradition is one of the potentially prolific tools for nations looking to extend their long arm of justice in the transnational era. Over time, legal authorities, historians, and political scientists have closely examined this issue (Ginsburgs, 2004). The political, historical, and technological facets of extradition have been insightfully written about by professionals in the following areas. The emphasis on political consideration, strategic dynamics, and power relationships with regard to the issue of extradition, however, has only been examined in a small number of studies. Many political considerations and practical considerations regarding the subject of extradition have also received less thorough analysis (Edmonds, 2016). In light of this, the Nnamdi Kanu Saga, the International Law System, and extradition to Nigeria are highlighted in this study.

Extradition is a crucial component of international law since it necessitates the involvement of two or more nations. It also draws on ideas that have developed through international treaty law and customary law. Jurisdiction is a fundamental term in this context. Article 2 of the United Nations Charter makes plain the importance of political independence, geographical integrity, and domestic jurisdiction to a country's standing (UN Charter, 1945). That states (countries) are equally entitled to non-interference in their domestic affairs is an assumption the international legal system is built upon.

The international law principle of territoriality states that crimes committed within the borders of a nation can be prosecuted there. Whether the accused is a citizen of the country conducting the prosecution or not, this is true. The extradition procedure is not governed by a system of international treaties and is not overseen by the UN because it normally entails a treaty between two nations states. Extraditing a person to another country is done out of comity rather than out of a need to comply with the law (The Conversation Explainer, 2019).

Conceptual Exploration

To facilitate a better comprehension, key ideas utilized in this paper's discourse will be explicitly clarified.

Extradition

According to Sadoff (2016), extradition is the act of handing over a person to the law enforcement of another jurisdiction once they have been charged with or convicted of a crime there. It depends on the agreements signed between the two jurisdictions and is a cooperative law enforcement approach. Extradition entails not only the legal components of the process but also the actual physical transfer of custody of the person to the legal authority of the requesting jurisdiction (Sadoff, 2016).

Via the extradition process, one sovereign jurisdiction often submits a formal request to the sought state of another sovereign jurisdiction. The fugitive may be detained by the requested state and subjected to the extradition procedure. The extradition procedures that the fugitives would be subjected to,

will be determined by the law and custom of the sought state if the fugitive is discovered on its soil. (Sadoff, 2016).). Extradition is normally regulated by treaties between countries. The law becomes the compulsion of extradition, such as among subnational jurisdictions, more generally known as the concept of rendition; is the handing over of a fugitive by the requesting state.

According to Jonathan (2021), "extradition is the official process by which one state surrenders a person to another state for criminal prosecution or punishment for crimes committed in the jurisdiction of the requesting country. Usually, a bilateral or multinational treaty makes it possible. Without a treaty, some countries will extradite someone, but this is uncommon.

International Law

International law is the common code of conduct governing interactions between sovereign states, as well as between national governments and international institutions like the UN (Shaw, 2008). It consists of broad laws and principles, governing how governments and international organizations should behave in their interactions with the general public, minority groups, and multinational corporations (www.nou.edu.ng, 2015).

The idea of international law is thought to have been first introduced by Bentham in 1789. He referred to it as "that branch of jurisprudence" (i.e., completely concerned with) reciprocal dealings between sovereign states as such as reported in. The Restatement of the Law's Section 101. International law is made up of broad norms and principles that govern how governments and international organizations should behave, how they should interact with one another, and how they should interact with certain natural or legal people (Foreign Relations of United State). Private international law, often known as conflict of laws, and public international law are two subsets of the notion of international law that have been proposed to control states and other international actors (Haywood, 2011). The second is explicitly defined in Haywood's definition, whereas the former essentially involves the implementation of municipal rules in situations involving non-state actors who have a foreign element (Haywood, 2011).

International Legal Order

The application of international laws to state behavior is known as the "international legal order." It concerns how reasonable and applicable the legal requirements are in the larger system. In essence, it is a set of guidelines that govern how members of the international community conduct their interactions with one another. In other words, it is an established international legal system that can be verified, is consistently enforced, and has repercussions for violations. They are a set of regulations, standards, and laws with elements of coercion, enforcement, and consequence governing the conduct and behavior of states, international organizations, and other non-state entities. The significance of this constitutes the focus. (Okunade, 2002).

A robust international legal system is absolutely necessary for a just, peaceful, and wealthy world. While the killing of innocent civilians should not be hijacked by the government in times of conflict, the establishment of norms and standards becomes necessary. It is important to warn against soldiers across nations torturing people. This will make it possible for a solid international legal system to be established.

Extradition Treaties or Agreements

Consensus international law illustrates that governments in the international system are under no obligation to turn over an alleged criminal to another foreign state. A web of extradition treaties or agreements have developed over time due to the "absence of international obligation, and the desire for the right to demand such criminals from other countries." This has remained an important principle of sovereignty. Every state has legal authority over the people within its borders. If there is no applicable extradition agreement in existence, a request is made to the sought state to carefully examine expulsion or lawful return of an individual (Blakesley, 1981).

This will be made possible by the requested state's immigration laws or other provisions of its domestic legislation. Yet, there are clauses in many nations' codes of criminal procedure that permit extradition to occur even in the absence of an extradition agreement. In the absence of an extradition agreement, sovereigns have the authority to order the expulsion or legal return of a wanted person from the territory of the requested state. For instance, it is absurd that the US has no extradition agreements with the UAE, Russia, China, North Korea, Bahrain, Namibia, etc. No country in the world, including China, Russia, Namibia, the United Arab Emirates, North Korea, Bahrain, etc., does not have an extradition pact with every other nation (Extradition Treaties Interpretation act of 1998).

The Extradition Process

Countries normally adhere to a tight set of guidelines that are defined in accordance with local law and, where relevant, international treaties in order to carry out an extradition. Practically speaking, this implies that the process often follows a well-defined series of procedures when the asking country formally requests that a fugitive or sought person be extradited from the Sending country where they are currently residing (Johnson, 2014).

The Nnamdi Kanu Saga

Extradition is the process where a country such as Nigeria can request another country such as Kenya, to have an "extradited person" returned to the requesting country, in this case Nigeria, to face prosecution for a crime punishable by Nigerian laws. For Nigeria to make this request to the Governments of Kenya, certain legal criteria must be fulfilled.

First, the "extradited person" must either be charged before a court of law with a crime but yet to be tried or have been tried and convicted; however, the "extradited person" escaped custody, or the "extradited person" was tried and convicted in absentia (Ayodele, 2021).

Since his arrest and subsequent court appearance in October 2015 on an 11-count charge that included accusations of terrorism, treasonable felony, managing an illegal society, publishing defamatory material, illegal possession of firearms, and improper importation of goods, Nnamdi Kanu has continued to face criminal charges in Nigeria. This is revealed when the general legal principle above is applied to the case of Nnamdi Kanu. Some of the accusations that were made against him were dismissed by the court. Before being released on bail in April 2017, he was held in custody for 18 months. He departed Nigeria after being released and jumped bail, leading to the issuance of an arrest warrant. On the outside, Nnamdi Kanu appears to be an "extradited person."

Second, even if Nnamdi Kanu is an "extradited person," Kenya's government cannot send him to Nigeria until both Nigeria and Kenya have ratified a bilateral extradition agreement that outlines the rules and procedures for sending citizens of both countries to another country. According to the Court of Appeal's ruling in *George Udezor v. Federal Republic of Nigeria (CA/L/376/05)*, "the right of one State to request of another the extradition of a fugitive accused of a crime, and the duty of the country in which the fugitive finds asylum to surrender the said fugitive, exist only when created by a treaty." Nnamdi Kanu doesn't appear to have benefited from the procedural safeguards that are frequently included in extradition treaties due to the absence of a bilateral extradition agreement between Nigeria and Kenya. It's significant that Nnamdi Kanu was denied the protections stipulated in Kenya's Extradition (Commonwealth Countries) Act of 1968, which includes the demands to issue an arrest warrant and bring Nnamdi Kanu before a court of law before extraditing him to Nigeria based on Kenya's Extradition (Commonwealth Countries) Act of 1968, which is applicable to both countries (Ayodele, 2021).

Extraordinary Rendition

The Nigerian government appears to have used extraordinary rendition, which is a form of state-sponsored detention, kidnapping, and abduction, when it was established that it lacked the legal jurisdiction to extradite Nnamdi Kanu to Nigeria. Because Nnamdi Kanu is fully denied the chance to object to his transfer to Nigeria and is put in danger of being tortured, extraordinary rendition is against international law.

Ayodele (2021), also argued that kidnapping, arbitrary arrest and incarceration, and illegal transfers without due process are all common human rights violations that occur during extraordinary renditions. It also violates a number of other human rights safeguards. For example, those who have been the subject of extraordinary rendition are powerless to challenge their arbitrary detention or transfer to another country. The United States of America is notorious for taking custody of foreign nationals, utilizing extraordinary rendition techniques to transfer "war on terror" captives into the care of other States, and kidnapping suspects on foreign soil (Ayodele, 2021).

Other Cases

Sunday Igboho and Julian Assange

Why Sunday Igboho cannot be labeled as an "extradited person." Sunday Igboho was not charged with any crimes in Nigeria. Simply put, Sunday Igboho is not evading the law. Any request from the government of Nigeria to the government of the Republic of Benin for Sunday Igboho's extradition must cite the Economic Community of West African States Convention on Extradition of 1994, which specifies all the mandatory information and supporting documentation that must be included with an extradition request. "(a) the original or an authenticated copy of the conviction and sentence immediately enforceable, or the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid out in the law of the requesting State; (b) a statement of the offenses for which extradition is requested," are included in this. (c) a certified copy of the relevant statute that details the potential or actual punishment for the offense, as well as the most accurate description of the person who is the subject of the claim and any other details that could be used to confirm the person's identity, nationality, and location. They shall be described as accurately as possible, including the date and location of their commission, their legal nature, and a citation to the applicable legal requirement.

The Republic of Benin is not permitted to detain and prosecute Sunday Igboho in response to or in anticipation of an "extradition request" from Nigeria; rather, it may only do so if there has been a breach of Beninan criminal law. According to the fundamental idea of territoriality in criminal law, the Republic of Benin cannot use its criminal laws to prosecute Sunday Igboho for any alleged criminal activity that may have occurred in Nigeria in the ongoing legal processes against Sunday Igboho. Even if a criminal complaint is lodged against Sunday Igboho in Nigeria, it might not apply retroactively unless the Nigerian government backdates the date and time the criminal accusation was begun in Nigerian Courts to days before Igboho was taken into custody by the Republic of Benin security. Nevertheless, after much deliberation and court prosecution, on the 7th of March 2022, the media confirmed the release of Sunday Igboho from the Benin Republic prison as it was confirmed by his lawyer (Agency Report, 2022).

Second, Assange's charges against him, which form the foundation of the US's request for his extradition, are directly related to the publication of secret information that was made public as a result of Assange's work with wikileaks. The dissemination of information that is in the public interest is one of

the cornerstones of media freedom and the right of the public to know about wrongdoing by the government. International human rights legislation protects the release of information in the public interest, and it should be illegal (Jonathan, 2020).

Julian Assange may be tried for violations of the Computer Fraud and Abuse Act and the Espionage Act if he were extradited to the US. He would also be at a genuine danger of suffering severe human rights violations as a result of torture or other cruel treatment, such as extended isolation. The first publisher to be accused of violating the Espionage Act is Julian Assange.

Breach of International Legal Order

Nnamdi Kanu's lawyer, Mr. Ejiofor, claimed in a television interview that Nnamdi Kanu after being taken hostage by security guards from the Kenyan airport, Nnamdi Kanu was tortured for eight days in a private home before being sent back to Nigeria. If that allegation is true and the security guards who tortured him were either Kenyan operatives or Nigerians working for the Nigerian government, then Kenya and Nigeria would have broken international law. Furthermore, it appears that by taking Nnamdi Kanu, Kenya breached her obligations under various treaties, including the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT). Additionally, it is against international law for Nnamdi Kanu to be forcibly transferred from Kenya to Nigeria without following any kind of legal or administrative process. It is also unknown whether Nnamdi Kanu had access to legal counsel, family members, or medical experts throughout his eight days of detention at a private Kenyan house. International human rights organizations define forced disappearances and secret detention as torture (Ayodele, 2021).

According to established international law principles, it is not permitted to extradite Nnamdi Kanu to Nigeria to face his unresolved criminal accusations. Nnamdi Kanu, in actuality, was a wanted felon in Nigeria who violated the terms of his release, fled the nation, and sought asylum between the UK and Kenya.

Nonetheless, he might have been returned to Nigeria using strong international legal frameworks, such as extradition procedures. The use of extraordinary rendition by Nigeria is unlawful, and as a result, a legal need was tainted with illegality. Since Nnamdi Kanu is also a citizen of the United Kingdom, it could possibly result in a diplomatic dispute between Nigeria and the United Kingdom. Nigeria might have used the UNCAT's strong extradition framework to gain Kenya's and the United Kingdom's support and cooperation in order to ensure Nnamdi Kanu's legal surrender and transfer. This was a squandered chance for Nigeria to show her sincere commitment to the extradition standards of international law. For example, Articles 9.1 and 15 of UNCAT mandate that parties, including Nigeria, the United Kingdom, and Kenya, give one another the maximum assistance possible with regard to criminal proceedings, including the provision of all pertinent evidence at their disposal necessary for such proceedings, and they are to respect any treaties on mutual judicial assistance that may already exist between them.

Conclusion

To prevent Nigeria from losing another chance to restore her damaged reputation as a result of the kidnapping of Nnamdi Kanu, caution must be taken. – The pro-Biafra activist claimed that the Extradition (Contiguous and Foreign Countries) Act, Chapter 76 of Kenyan law, was broken when he was extradited from Nairobi to Abuja in June. His extradition, according to him, "violates the fundamental freedoms and rights to equal protection of the law, human dignity, freedom and security, freedom of movement, fair administrative action, access to justice, the right to be represented in court, and a fair hearing as guaranteed by the Constitution of Kenya," he pleaded with the court. In addition, he asked for an order awarding the defendants "exemplary and punitive damages" "on account of their blatant breach of the subject's fundamental freedom and rights as mentioned in the petition." He also asked for a declaration that it was against the Constitution to "detain the subject without cause and without telling him of the reasons for the imprisonment, hold him incommunicado in appalling and inhumane conditions." To "issue an order compelling the respondents to furnish him with the designations and ranks of state officers, public officers, police officers, agencies and departments, institutions and organs of government involved in his extradition," was another request made to the court. Ejimakor claimed that those responsible for Kanu's rendition to Nigeria acted in flagrant violation of his basic human rights, and he specifically blamed the Kenyan government.

Recommendation

The following suggestions are made in order to ensure that offenders are punished, which is one of extradition's legal goals:

1. Politics should not be a factor in the extradition processes and procedures. Instead of being a tool for the ruling government to deal with political rivals, it should be used as a strictly legal process to extradite criminals back to the nations where they committed their crimes so they can face justice.
2. The third world nations must immediately improve their institutions in order to guarantee fair trials and considerate treatment of wanted criminals after extradition requests are granted.
3. To prevent truncating the international criminal justice system that the extradition principle is meant to serve, governments in developing nations must be able to distinguish clearly between opposing political viewpoints and crimes.

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