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United Nations Office on Drugs and Crime



CASES AND MATERIALS ON EXTRADITION IN NIGERIA

Cases and Materials on Extradition in Nigeria

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FOREWORD

Extradition law is one of those arcane areas of legal practice, which many practitioners never have the opportunity to be briefed on. This belies the importance of this area of law, as it features in many international bilateral and multilateral treaties, and agreements. In recent years, great strides have been taken by the Government of Nigeria to strengthen the legal framework for extradition, including the establishment of the Central Authority Unit (CAU) in 2012, to coordinate extradition and mutual legal assistance matters, amendment of the Extradition Act 1966 by the Extradition Act (Modification) Order 2014; and the issuance of the Extradition Act (Proceedings) Rules 2015 by the Chief Judge of the Federal High Court. Despite these developments, there is still a lot to do to develop this area of the law – its grey areas need to be brought to the attention of the courts for judicial interpretation. Law students, practitioners and jurists need also to be trained on principles and practices of extradition.

This compendium – *Cases and Materials on Extradition in Nigeria* comes at an opportune time. It is the first text dedicated solely to extradition law and practice in Nigeria and indeed is a sourcebook. It will serve well as a reference material for law students, Law Officers, other legal practitioners, jurists, legal researchers and officers in central authority units around the world who seek to know the state of extradition law and practice in Nigeria. The compendium consists of constitutional provisions, legislation, subsidiary legislation, judicial pronouncements treaties and other international instruments on extradition as they relate to Nigeria.

The efforts of the authors – Drs. O. A. Ladapo and E. O. Okebukola are highly commended, so is the assistance of the European Union which has provided funding for undertaking the compilation and publication of the compendium, under the Project, ‘Support to Anti-corruption in Nigeria’ implemented by the United Nations Office on Drugs and Crime (UNODC). UNODC is appreciated for its technical support to the Federal Ministry of Justice for the review of laws, development of policy instruments and capacity building for staff of the Ministry in extradition law related areas and generally.

It is a very good resource material on extradition and it is therefore my pleasure to recommend the *Cases and Materials on Extradition in Nigeria* to all and sundry, for use in identifying the position of extradition law in Nigeria.

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Our gratitude also goes to the Attorney - General of Nigeria and Chief Judge of the Federal High Court – Honourable Justice I. N. Auta, for allowing the use of the treaties and judgements contained in the compendium. Special thanks go to officers in the Central Authority Unit (CAU) in the Federal Ministry of Justice, Abuja, Nigeria for their assistance in sourcing a number of the materials used. Particular mention of the assistance of the following officers must be made - Mr. Muslim Hassan (former Head of the CAU, now Judge of the Federal High Court), Mr. Tanko Ashang current head of the Unit, Mr. Tanimu Al-Makura, and Pius Ukeyima Akutah both Assistant Chief State Counsel in the CAU. Mr. Emmanuel Gakko - Chief Registrar of the Federal High Court was also very helpful.

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INTRODUCTION

Nigeria, located on the Gulf of Guinea, West Africa, is Africa's most populous country with approximately 184 million inhabitants. The country has been identified as one of the world's fastest growing economies and often described as the "Giant of Africa". Nigeria is a founding member of the Commonwealth of Nations, the African Union and the Economic Community of West African States. The country is also a member of the United Nations Organization and the Organization of Petroleum Exporting Countries. The country has over the years struggled with the challenge of substantial network of organised crime, including drug trafficking, advance fee fraud, money laundering, kidnapping of persons for ransom, and political corruption.

Over the past decades, Nigeria has developed an impressive array of legal frameworks and set-up numerous institutions to combat corruption and organized crime more effectively. However, a lot still needs to be done to proactively deal with these crimes, and not only apprehend and strive at punishing all local criminals, but also to effectively control trans boarder crimes and work cooperatively with other nations to seek, apprehend and punish the international criminals or fugitives. With support from the European Union, the United Nations Office on Drugs and Crime (UNODC) in implementing the project on "Support to Anti-Corruption in Nigeria" embarked on the compilation of this compendium of Nigerian legislation, case law, treaties the country is signatory to and other materials on extradition. Fleeing a community in an attempt to escape justice can be traced back to antiquity. This may not be unconnected with the human instinct to flee or fight in reaction to perceived harm. With improved international relations among states and advancements in transport technology, cross border mobility is increasingly easier and quicker, offering fugitives a buffet of destinations and the means to get there. Paradoxically, the same factors are also key assets enabling states to track and have fugitives extradited through the cooperation of other states.

There is now a universal consensus that it is very desirable for all criminal acts and deliberate criminal omissions to attract deterrent consequences. It is equally desirable that the process for determining and enforcing the consequences be controlled and managed in the place where the crime was committed. This is arguably because mostly, proof of crime can best be

adduced at the place where it was committed, on account of proximity to sources of evidence. The injury of a crime to society can arguably also be best measured at the place of its commission.¹ Extradition arrangements between nations make it possible for this to happen and to ensure that criminals do not go unpunished by simply moving from the territory where they commit crimes to another territory.

Extradition is primarily a treaty-based legal framework, though there are statutes and rules and judicial decisions which mediate the implementation of extradition treaties. This book, traces the evolution of the law and practice of extradition in Nigeria since the colonial period when some treaties made by Britain were extended to apply to the Nigerian territory. Following independence, a couple of these treaties still remained in force in Nigeria. For historical, scholastic, practical and juridical purposes, it is important to identify and highlight the contents of extradition treaties that were in force in colonial times. It is particularly necessary to highlight those colonial extradition treaties that continue to be relevant today. In addition to extant colonial treaties, extradition treaties and arrangements made by Nigeria are not only relevant in municipal extradition proceedings but are also relevant in ascertaining the international obligations which will give rise to Nigeria's state responsibility.²

Extradition proceedings in Nigeria involve diplomatic, administrative and judicial steps. These steps are so strictly guided by constitutional and statutory provisions that they may be invalidated if done in a manner inconsistent with or contrary to the law. The relevant laws provide the legal basis for extradition, jurisdiction over extradition cases and other matters including bail pending or after extradition proceedings. These issues together with a compilation of extradition instruments applicable in Nigeria are covered in this book.

¹ See "Extradition" (1935) 29 A. J. I. L. Supplement p. 39.

² In international law, state responsibility arises from the violation of an international obligation.

CHAPTER 1

The Legal Basis for Extradition in Nigeria

1.1. What is Extradition?

Extradition is a process by which a person accused or convicted of a crime is officially transferred to the State where s/he is either wanted for trial or required to serve a sentence after being duly convicted by a court of law. As defined by the Court of Appeal in *George Udezor v Federal Republic of Nigeria*,³ extradition is the process of returning somebody, upon request, accused of a crime by a different legal authority to the requesting authority for trial or punishment.

For the purposes of extradition proceedings, a person is only deemed to be wanted for trial where a court of law has issued a warrant requiring that the person be brought to answer criminal allegations in court. This is quite different from where a person is wanted for questioning, for example, as a witness. In *Attorney-General of the Federation v Lawal Olaniyi Babafemi aka "Abdullahi", "Ayatollah Mustapher (Babafemi)"*,⁴ the Respondent was wanted for conspiracy to provide support to a Foreign Terrorist Organisation in the United States. It was enough to show to the Federal High Court that there was a subsisting indictment against the Respondent as well as a warrant issued by a United States Magistrate Judge for the Respondent's arrest. These qualified the Respondent as an extraditable person.

In the case of a person already convicted and sentenced, the existence of a possibility or pendency of an appeal does not change the extraditable status of the person. In *Attorney-General of the Federation v. Uche Okafor Prince*,⁵ the Respondent was convicted by the District Court of Helsinki, Finland. The conviction was later upheld by the Court of Appeal, Helsinki, Finland. After being sentenced, the Respondent came to Nigeria without serving the sentence. Following an extradition request by Finland and subsequent

³ *George Udezor v Federal Republic of Nigeria*, CA/L/376/05.

⁴ *Attorney-General of the Federation v Lawal Olaniyi Babafemi a.k.a. "Abdullahi", "Ayatollah Mustapher (Babafemi)"* Suit No: FHC/ABJ/CR/132/2013.

⁵ *Attorney-General of the Federation v Uche Okafor Prince* SUIT NO: FHC/ABJ/CR/28/2013.

Extradition proceedings, the Federal High Court made an order for the extradition of the Respondent to the Republic of Finland. At the extradition hearing, the Respondent informed the court that the conviction was subject to review at the Court of Appeal. This information had no bearing on the court's judgment which focused on the existence of a sentence to be served by the Respondent.

As noted by the Court in *Attorney-General of the Federation v. Olayinka Johnson (AKA Big Brother), AKA Rafiu Kofoworola, (AKA Gbolahan Opeyemi Akinola)*,⁶ extradition proceedings are not meant to serve as a trial of the Respondent. Rather, the proceedings serve as an expression of considerate practice based on the notion that it is in the interest of every State that persons fleeing from justice must be disallowed from seeking refuge outside the territory of the State where the person is wanted. As far back as 1896, Lord Russell of Killowen, C.J noted in *R v. Arton (No. 1)* that:

*The law of extradition is without doubt founded upon the broad principle that it is to the interest of civilised communities that crimes acknowledged as such should not go unpunished and it is part of the comity of nations that one State should afford to another every assistance towards bringing persons guilty of such crimes to justice.*⁷

It is easy to confuse extradition with rendition. Rendition is a general term for all procedures, including extradition, for returning wanted persons or aliens generally, from a State. Unlawful or irregular forms of returning persons wanted for trial or punishment include abduction and the so called "extraordinary rendition"⁸. Extraordinary rendition is a government sponsored arrest, kidnap and abductions of persons wanted, accused or convicted of a criminal offence either to the state who sponsored the arrest, kidnap or abduction or to a willing third party state. Extraordinary rendition denies a person of the right to challenge his transfer to the requesting or receiving state. It involves the violation of the principles of international law

⁶ *Attorney-General of the Federation v Olayinka Johnson (AKA Big Brother), AKA Rafiu Kofoworola, (AKA Gbolahan Opeyemi Akinola)* Suit No. FHC/L/16C/2013.

⁷ *R v. Arton (No. 1)* [1896] 1 Q.B. 108.

⁸ Singh, A.(2013) *Globalising Torture: CIA Secret Detention and Extraordinary Rendition* Open Society Foundations. New York: Open Society Foundations.

especially where the persons transferred are subjected to torture or sham criminal charges or trials.⁹ The ‘Dikko Affair’ of 1984 is an example of an attempt at unlawful rendition. After a coup d’état in 1983, the Federal Military Government of Nigeria requested the British government to surrender Umaru Dikko, a former Minister alleged to have been involved in corrupt practices. Before the British government responded to the request, an intelligence officer from the Nigerian security forces with three Israeli nationals abducted Mr. Dikko and attempted to cargo him to Nigeria in a crate. This attempt was foiled by the British security apparatus, the abductors were jailed and the relationship between Nigeria and Britain became strained.¹⁰ Even though not successful, it was an attempt by Nigeria to go against the international norms in expressing its political will.

1.2. Relevant Legal Instruments

The main legal instruments generally relevant to extradition are: The Constitution of the Federal Republic of Nigeria 1999, (1999 Constitution); Extradition Act, 1966; Extradition Act (Modification) Order, 2014 and Federal High Court (Extradition Proceedings) Rules 2015. Other relevant laws are the Evidence Act, 2011; Administration of Criminal Justice Act, 2015; Federal High Court Act, 1973; and criminal or penal laws including the Criminal Code, Penal Code and penal provisions of other laws relating to criminal justice.

a. Constitution of the Federal Republic of Nigerian, 1999

The Nigerian State is a constitutional democracy based on a three tier structure of governance made up of the federal, state and local governments. The Constitution of the Federal Republic of Nigeria 1999 is foundational to the existence of all other laws in the Nigerian legal system. The 1999 Constitution expressly stipulates that it “...is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.”¹¹ The 1999 Constitution is therefore the tool

⁹ Article 3 of The United Nations Convention Against Torture, prohibits states parties from expelling, returning or extraditing a person to another state where there is substantial ground to believe such a person will be subjected to torture.

¹⁰ Mr. Umaru Dikko (Abduction) British Parliament Hansard No. HC Deb 06 July 1984 Vol 63 cc609-17, pp. 609-615; A. Akinsanya (1985) The Dikko Affair and Anglo-Nigerian Relations. The International and Comparative Law Quarterly, Vol. 34 No. 3 pp. 602-609; and Kassim-Momodu, Momodu (1986) Extradition of Fugitives by Nigeria. The International and Comparative Law Quarterly, Vol. 35, No. 3 pp. 526 -527.

¹¹ Section 1(1) Constitution of the Federal Republic of Nigeria 1999.

by which the validity or legality of all existing laws, within the country, are determined. It is in this sense that the 1999 Constitution stipulates that if any other law is inconsistent with its provisions, “that other law shall, to the extent of the inconsistency, be void.”¹²

By virtue of the 1999 Constitution, the power to make laws and procedures regarding extradition is vested exclusively in the Federal Government of Nigeria.¹³ Thus, the state and local governments are devoid of powers to legislate on matters connected to extradition as this is an exclusive preserve of the federal government.¹⁴ Similarly, the Constitution confers adjudicatory powers over extradition matters on the Federal High Court to the exclusion of any other court of first instance.¹⁵ Thus, all extradition applications or any challenge to the validity or legality of pre-extradition steps are matters to be dealt with by the Federal High Court. However appellate proceedings may be instituted at the Court of Appeal and subsequently at the Supreme Court, both of which are federal courts.¹⁶ Essentially, the Constitution provides the general foundational legal framework for extradition law and practice in Nigeria.

b. Extradition Act, 1966

The Extradition Act, 1966 was enacted on 31 December 1966 and came into operation in January 1967. It was enacted to repeal all previous extradition laws made by or applicable to Nigeria and to provide for a more comprehensive legal regime with respect to extradition of fugitive offenders.¹⁷ While the Constitution provides the general foundational legal framework for extradition law and practice, the Extradition Act is the primary legislation for specific matters. As the primary statute regulating extradition in Nigeria, it recognises two separate categories of States. States in the first category are those that have an extradition agreement with Nigeria and in respect of which an agreement order has been made and

¹² Section 1(3) Constitution of the Federal Republic of Nigeria 1999.

¹³ Second Schedule, Exclusive Legislative List; Item 27 1999 Constitution of Nigeria (as amended)

¹⁴ State Governments can legislate on matters on the concurrent and residual lists in the 1999 Constitution while and Local Governments can legislate on matters on the residual list.

¹⁵ Section 251(1) (i) 1999 Constitution of Nigeria (as amended).

¹⁶ See Section 233 of the Constitution of the Federal Republic of Nigeria 1999 for the appellate jurisdiction of the Supreme Court. See also Sections 240 and 241 of the Constitution of the Federal Republic of Nigeria 1999 for the appellate jurisdiction of the Court of Appeal.

¹⁷ Preamble, Extradition Act, 1966.

published in the Federal Gazette.¹⁸ The second category consists of Commonwealth States.¹⁹ This categorisation is significant because while it is necessary to enter into separate and individual bilateral (or infrequently, multilateral) extradition treaties with States in the first category,²⁰ there is no such requirement for the second category of Commonwealth States.²¹

The Extradition Act initially conferred magistrates with the jurisdiction to determine extradition proceedings. However, this position changed with the coming into force of the 1999 Constitution. Section 251(1) (i) of the 1999 Constitution grants the Federal High Court exclusive jurisdiction to entertain and determine all extradition related matters. This change in jurisdiction created an apparent conflict because the Extradition Act was not immediately amended to align with the new constitutional provision. In order to remedy this anomaly, the President of Nigeria on 23 May 2014 issued an executive order to amend the Extradition Act. The Extradition Act (Modification) Order 2014 expressly modified the Extradition Act by not only replacing the magistrate with the judge of the Federal High Court but by also transferring the supervisory powers from High Courts of the States to the Federal High Court. For the purposes of reading and interpreting the Extradition Act, the Extradition Act (Modification) Order must be seen as an integral part of the Extradition Act. The two must be read together.

c. Federal High Court (Extradition Proceedings) Rules, 2015

The Federal High Court (Extradition Proceedings) Rules, 2015 were made pursuant to powers conferred on the Chief Judge of the Federal High Court by the 1999 Constitution.²² These powers enable the Chief Judge of the Federal High Court to make procedural rules relating to matters over which the Federal High Court has jurisdiction. Although the Extradition Act has certain procedural provisions, they are inadequate and do not cover many areas of proceedings. The Federal High Court (Extradition Proceedings) Rules were made to ensure clarity in extradition proceedings and to promote efficient and expeditious hearing of extradition applications. Details of steps for extradition proceedings which are not provided in the Extradition Act are provided in the Federal High Court (Extradition Proceedings) Rules. It is however instructive that in terms of hierarchy of application, the Federal High

¹⁸ Section 1 Extradition Act, 1966.

¹⁹ Section 2, *ibid.*

²⁰ Section 1 Extradition Act, 1966.

²¹ Section 2, *ibid.*

²² Section 254 of the 1999 Constitution.

Court (Extradition Proceedings) Rules is subordinate to the Extradition Act. In the event of any conflict between the two, the Extradition Act will prevail.²³

d. Evidence Act, 2011

The Evidence Act applies to all criminal proceedings with the exception of a field general court martial.²⁴ It is also applicable in all civil judicial proceedings except those civil causes and matters before the Sharia Court of Appeal, Customary Court of Appeal, Area Court or Customary Court.²⁵ Extradition proceedings are not listed among the proceedings which are excluded from the application of the Evidence Act. The Evidence Act is therefore applicable to extradition proceedings before the Federal High Court. Among other matters, the Evidence Act governs the admissibility and weight of evidence, the burden of proof as well as the competence and compellability of witnesses. In *Attorney-General of the Federation v Olayinka Johnson (AKA Big Brother, AKA Rafiu Kofoworola, (AKA Gbolahan Opeyemi Akinola*, the Court emphasised the importance of properly presenting the facts relevant to the extradition request.²⁶ The presentation of these facts is regulated by the Evidence Act.

The Evidence Act is particularly important in extradition proceedings because foreign laws are regarded as matters of facts which require proof. Thus the existence of the foreign law, which a fugitive is accused of violating, is a matter of fact. However, in proving the existence of foreign law, the Evidence Act is read in conjunction with the Extradition Act. By this exercise, the relevant foreign law is deemed to exist if mentioned in the warrant issued by the foreign court.²⁷

With regards to evidence in Nigeria needed for use in other countries, the Extradition Act 1966 in section 16 permits that testimony of any witness in Nigeria may be obtained in a criminal matter pending in any court or tribunal in other countries just as it may be obtained in civil matters under any law in force in any part of Nigeria. The proviso here as spelt out in

²³ Section 254 of the 1999 Constitution.

²⁴ Section 256 (1) (b) Evidence Act 2011.

²⁵ Section 256 (1) (b) *ibid*.

²⁶ *ibid* p 35 of Judgment.

²⁷ Section 6(1) Extradition Act, 1966.

section 16 is that this has to be on a reciprocal basis and does not include criminal matters of political character. Though the position remains essentially the same in the revised and amended Extradition Act²⁸, the reciprocal provision in the original Act is omitted in the new Act. Section 18 of the new Extradition Act provides that:

Taking of evidence in Nigeria for use abroad The testimony of any witness in Nigeria may be obtained in relation to any criminal matter pending in any court or tribunal in another country in like manner as it may be obtained in relation to any civil matter under any law for the time being in force in any part of Nigeria as regards the taking of evidence there in relation to civil or commercial matters pending before tribunals in other countries: Provided that this section shall not apply in the case of any criminal matter of a political character.

The implication of this is that the only restriction on the taking of evidence in Nigeria for use in other countries is with regards to criminal matters of political character.

e. Federal High Court Act, 1973

The Federal High Court Act, 1973, regulates the exercise of powers and general administration of the Federal High Court. The Act confers exclusive jurisdiction over extradition on the Federal High courts in the country.²⁹ This is consistent with the provisions of the Constitution.³⁰ The Federal High Court Act has several provisions which are generally applicable to the Federal High Court and by this reason relevant to Federal High Court proceedings including extradition proceedings.

For instance, where the Judge who is to preside over extradition proceedings is unable or fails to attend the proceedings on the day appointed, and no other Judge is able to attend in his stead, the Court shall stand adjourned from day-to-day until a Judge shall attend or until the Court shall be adjourned or closed by order under the hand of a Judge.³¹ Pursuant to the Act, the Judge in extradition proceedings may at any time or at any stage before final

²⁸ Section 18 Extradition Act, 1966 as amended. The Extradition Act, Cap E25, Laws of the Federation of Nigeria, 2004.

²⁹ Section 7(1)(i) Federal High Court Act.

³⁰ Section 251 (1)(i)1999 Constitution.

³¹ Section 21, Federal High Court Act, 1973.

judgment, either with or without application from any of the parties, transfer the proceedings to any other Judge of the Federal High Court.³²

The Act also empowers the Judge in extradition proceedings to compel any person present in Court to give evidence or produce any document in his possession or in to his power.³³ The person ordered to testify or produce a document does not have to be a party to the extradition proceedings.³⁴ Where the person who is ordered to testify or produce documents refuses to comply, s/he may be punished by the Court.³⁵

f. Penal Laws

Nigeria criminal law jurisprudence is pluralistic to the extent that apart from penal laws made by the Federal Government, the State and Local Governments also enact theirs. The criminal laws made by the Federal Government are applicable throughout the federation of Nigeria but the laws made by a State or Local Government are limited in territorial application to the State or Local Government in which the law is made.³⁶

Some of the most relevant penal laws applicable to extradition in Nigeria include:

- Advance Fee Fraud and Other Fraud Related Offences Act 2006
- Armed Robbery and Fire Arms (Special Provisions) Act Nos. 5 and 28 of 1986;
- Banks and Other Financial Institutions Act 1991
- Code of Conduct Bureau and Tribunal Act 1989
- Corrupt Practices Act and Other Related Offences Act 2000
- Cyber Crimes (Prohibition, Prevention, Etc.) Act 2015.
- Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act 1994
- Fiscal Responsibility Act 2007
- Miscellaneous Offences Act 1984
- Money Laundering Act 2011;
- Penal Code (Northern State) Federal Provisions Act No. 25 of 1960;

³² Section 22, *ibid.*

³³ Section 52, *ibid.*

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *Aoko v Fagbemi* (1960) 1 ALL NLR (PT2).

- Public Procurement Act, 2007
- Terrorism (Prevention) (Amendment) Act No. 25 of 2013; and
- Terrorism Prevention Act 2011
- Criminal Code Act 1916;
- Criminal Code Laws of various Southern States;
- Economic and Financial Crimes Commission (Establishment) Act 2004;
- Independent Corrupt Practices and Other Related Offences Act 2000; and
- Penal Code Laws of various Northern States.

g. Administration of Criminal Justice Act

The Administration of Criminal Justice Act (ACJA) 2015, regulates criminal procedure in federal courts including the Federal High Court. In relation to extradition, the ACJA is most relevant to procedural steps that relate to pre-proceedings and post-proceedings steps which are not provided for in either the Extradition Act or the Federal High Court (Extradition Proceedings) Rules. For example, there are protective provisions of the ACJA that are relevant to all persons who are denied their liberty on account of criminal accusations, proceedings or sanctions. One of such provisions relates to persons in detention pending extradition who will be included in the monitoring activities of the Administration of Justice Monitoring Committee.³⁷

1.3. Appropriate Forum

The Federal High Court is the adjudicatory body that has exclusive jurisdiction on extradition matters.³⁸ Previously, jurisdiction over extradition proceedings was vested in the Magistrate Courts.³⁹ However, the Constitution of the Federal Republic of Nigeria 1979, reversed this when it conferred exclusive jurisdiction over extradition matters on the Federal High Court. This exclusivity was retained in the Constitution of the Federal Republic of Nigeria 1999 which succeeded the 1979 Constitution. It thus became necessary to modify the Extradition Act to resolve its inconsistency or

³⁷ Sections 469, 470 Administration of Criminal Justice Act (ACJA), 2015.

³⁸ Section 251 (1)(i) 1999 Constitution of the Federal Republic of Nigeria (as amended) see also section 7(1) (i) Federal High Court Act.

³⁹ Section 6, 7, 8 and 9 of the Extradition Act 1966 before amendment in 2014.

conflict with provisions of the 1999 Constitution. To this end, the United Nations Office on Drugs and Crime (UNODC) in collaboration with the Federal High Court and some Nigerian experts had a series of consultations, meetings and roundtable discussions on modification of the Nigerian extradition law. This cumulated in the Extradition Act (Modification) Order 2014. By this Executive Order, the Extradition Act was amended to conform with the Constitution and clearly indicate that the Federal High Court has exclusive jurisdiction on extradition matters.

The Extradition Act (Modification) Order 2014 was promulgated pursuant to section 315 of the 1999 Constitution of Nigeria which allows the President of Nigeria to modify any existing law so as to bring it into conformity with the Constitution.⁴⁰ Section 315 is a saving provision of the 1999 Constitution and it enables the continuing application of laws which were in existence prior to the coming into force of the 1999 Constitution. The rationale behind the section, is to avoid the tedious task of re-enacting pre-1999 laws. All pre-1999 existing laws including the Extradition Act 1966 and Orders made thereunder are deemed valid and in force subject to the modification that will bring them into conformity with the provisions of the Constitution.⁴¹

In, *Attorney General of the Federation v. Godwin Chiedo Nzeocha*,⁴² counsel to the Respondent objected to the jurisdiction of the Federal High Court to adjudicate on extradition matters. Essentially, counsel argued that since the Extradition Act mentioned magistrate courts as having jurisdiction in extradition matters, the Federal High Court lacked jurisdiction to adjudicate over the extradition proceedings brought against the Respondent. The Federal High Court ruled that by virtue of section 251(1) of the Constitution, the Federal High Court has exclusive jurisdiction over extradition matters.

In determining the question of jurisdiction, the Court noted that in the worst case scenario “the Federal High Court and the Magistrates Court shall have and exercise concurrent jurisdiction in respect of extradition matters.”⁴³ This worst case scenario envisaged by the Court has now been eliminated by the Extradition Act (Modification Order) 2014 which clarifies the issue of the exclusive jurisdiction of the Federal High Court.

⁴⁰ A.G. Abia v. A.G. Federation (2003) 12 SC 1.

⁴¹ Orhiunu v. A.G. Federation (2005) 1 NWLR (906) 39.

⁴² Attorney General of the Federation v. Godwin Chiedo Nzeocha Charge No. FHC/L/335c/2011.

⁴³ *ibid.* p 12.

In *Orhiunu v. AttorneyGeneral of Federation*,⁴⁴ the Court of Appeal emphasised, in respect to the jurisdiction of the Federal High Court, that exclusive jurisdiction conferred on the Federal High Court by the Constitution cannot be limited otherwise than by the same Constitution.

Prior to the promulgation of the 2014 executive order which modified the Extradition Act, the High Courts of the States did not have jurisdiction to hear extradition applications but had the jurisdiction to discharge a fugitive from custody if not surrendered to the requesting State within 2 months of the committal order by which the fugitive is held in custody pending surrender to the requesting State.⁴⁵ This jurisdiction to discharge a fugitive from custody is now conferred on the Federal High Court by virtue of the Extradition Act (Modification Order) 2014.⁴⁶

1.4. Territorial Jurisdiction

The jurisdiction of the Federal High Court to adjudicate on extradition proceedings is based on the presence of the fugitive on Nigerian territory. It does not matter if the fugitive is a Nigerian or not. In *Attorney General of the Federation v. Dion Kendrick Lee*,⁴⁷ the fugitive was a non-Nigerian who was found in Nigerian territory and extradited to the UK by order of the Federal High Court sitting in Lagos. Unlike countries, such as Brazil,⁴⁸ that do not extradite their citizens, Nigerian citizens are liable to be extradited subject to the procedures contemplated and provided by the Extradition Act.⁴⁹ However, the Attorney General is empowered by the Extradition Act to decline to process an extradition request where the alleged fugitive is a citizen of Nigeria.⁵⁰

Extradition proceedings will apply to all persons physically present in Nigeria with the exception of persons who are immune from legal process in Nigeria.

⁴⁴ (2005)1 NWLR (906) 39.

⁴⁵ Section 12 Extradition Act before 2014 modification.

⁴⁶ Section 12 Extradition Act as amended.

⁴⁷ *Attorney General of the Federation v. Dion Kendrick Lee* Charge No: FHC/L/465C/11.

⁴⁸ Article LI Constitution of Brazil, provides that no Brazilian shall be extradited, except for a naturalized Brazilian for a common crime committed prior to naturalization, or proven involvement in unlawful traffic in narcotics and similar drugs, as provided by law. Translated version of the Brazilian Constitution is available at https://www.constituteproject.org/constitution/Brazil_2014.pdf (last visited on 15/07/16).

⁴⁹ Section 21 of the Extradition Act, describe a 'fugitive criminal' as any person without distinction as to nationality.

⁵⁰ Section 6(3) Extradition Act.

Persons immune from legal process include those with diplomatic immunity,⁵¹ the President and Vice President of the Federal Republic of Nigeria,⁵² and the Governors and Deputy Governors of the States.⁵³ Jurisdiction in extradition proceedings is therefore *in personam* and not exercised on the basis of nationality or citizenship. Thus proceedings under the Extradition Act cannot be instituted against Nigerian nationals who are fugitives outside Nigeria's territory. Based on the *in personam* jurisdictional basis in extradition, only natural persons are subject to extradition and extradition proceedings. To this extent, a company or other legal persons cannot be the subject of extradition proceedings. Rather such legal persons can be subject to other arrangements such as confiscation of proceeds of crime.

1.5. Treaties and Arrangements

There is no obligation in customary international law to extradite. Subject to a few exceptions, such as the situation relating to Commonwealth States, extradition is generally regulated by conventional international law through bilateral treaties. Although international agreements on extradition are mostly bilateral, there are also some multilateral conventions on the subject. It is noteworthy that only parties to a particular treaty, bilateral or multilateral, are bound by its provisions.⁵⁴

In *George Udeozor v. Federal Republic of Nigeria*,⁵⁵ the Court of Appeal held that the right of one State (country in the present circumstance), to request of another, the extradition of a fugitive accused of 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. In *A.G Federation v. Olayinka Johnson*⁵⁶ it was argued on behalf of the respondent that there was no extradition treaty in existence between Nigeria and the United States of America. This erroneous argument was based upon the contention that Legal Notice No. 33 of 1967 made pursuant to the Extradition Act is not applicable in Nigeria because it has not been domesticated by the National Assembly pursuant to section 12 (1) of the

⁵¹ See generally, Diplomatic Immunities and Privileges Act, 1962.

⁵² Section 308 1999 Constitution.

⁵³ *ibid.*

⁵⁴ Article 37, Vienna Convention on the Law of Treaties, 1969 (VCLT) provides that "A treaty does not create either obligations or rights for a third State without its consent."

⁵⁵ *George Udeozor v. Federal Republic of Nigeria* CA/L/376/05.

⁵⁶ *A.G Federation v. Olayinka Johnson* SUIT NO. FHC/L/16C/2013.

1999 Constitution. This argument was rejected by the court on the basis that the Legal Notice is an integral part of the Extradition Act which is valid existing law under the Constitution. The Legal Notice adopts the extradition treaty between the United Kingdom and United States of America of 1931 as binding on Nigeria.

a. Extradition Treaties Relevant to Nigeria

Extradition treaties that are directly relevant to the territory of Nigeria fall into two distinct periods in time. On the one hand, there are pre-independence treaties entered into by the British colonial administration. On the other hand, there are post-independence treaties entered into by Nigeria as a sovereign State.

The applicability of pre-independence treaties to Nigeria derives from a devolution of treaty agreement between Nigeria and Britain. On October 1, 1960, the territories formerly comprising of the British Colony and Protectorate of Nigeria attained sovereign independence as a State known as the Federation of Nigeria.⁵⁷ Using the instrumentality of an exchange of letters, dated October 1, 1960, between the High Commissioner for the United Kingdom in the Federation of Nigeria and the Prime Minister of the Federation of Nigeria, Nigeria agreed to assume, from October 1, 1960, all obligations and responsibilities of the United Kingdom which arise from any valid international instrument insofar as such instruments may be held to have application to or in respect of Nigeria.⁵⁸ These letters together embody a treaty. It is instructive to emphasise that a treaty can be by exchange of letters or may be embodied in several documents such as the October 1, 1960 letters exchanged between Nigeria and the United Kingdom. Indeed, the Vienna Convention on the Law of Treaties clearly recognises that a treaty may be embodied in a single instrument or two or more instruments.⁵⁹ The nomenclature of such instruments are not prejudicial to the treaty they create.⁶⁰

⁵⁷ Federation of Nigeria Independence Act, 1960.

⁵⁸ Federation of Nigeria: International Rights and Obligations; Exchange of letters between the Federation of Nigeria and the Government of the United Kingdom, 1960 (Nigeria, International Rights and Obligations).

⁵⁹ Article 1 (a) Vienna Convention on the Law of Treaties (VCLT). See also, Articles 11 and 13 VCLT.

⁶⁰ Article 1(a) *ibid*.

It will therefore appear that by virtue of the Nigeria International Rights and Obligations Treaty (created by exchange of letters), Nigeria is bound by pre-1960 extradition treaties relating to the territory of Nigeria but entered into between the United Kingdom and other States. However, Nigeria has indicated that certain pre-1960 extradition treaties are no longer in force in respect of the country. Teslim Olawale Elias, a former Attorney-General of Nigeria has been quoted as saying: "...the State practice of Nigeria is to study each treaty or other international agreement with a view to its adoption, with or without modification, or to re-negotiate it with the other contracting party or parties".⁶¹ The Nigerian government needs to review, decide on and make clear pronouncements of its position each of the pre-1960 extradition treaties. Such clarity will not only benefit Nigeria – its courts and relevant government departments, but also the countries and territories which are the original parties to the pre-1960 treaties with the United Kingdom. It has been suggested that it is also in Nigeria's interest to enter into negotiations with countries having pre-1960 extradition treaties with Britain with the aim of extending these treaties to Nigeria subject to appropriate modifications.⁶²

Generally, extradition treaties between nations are executory in character⁶³ and are binding on domestic courts. However, for extradition treaties to be justiciable before Nigerian Courts and implemented by the executive arm of government, they must be domesticated by means of an order made pursuant to the Extradition Act. The Extradition Act categorically states that:

Where a treaty or other agreement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment, the President may by order published in the Federal Gazette apply this Act to that country.⁶⁴

Therefore, whether a particular pre-1960 treaty is in force or not, the Extradition Act requires an order to be made regarding the treaty in the

⁶¹ ILC, Succession of States in Respect of Bilateral Treaties - Study Prepared by the Secretariat (Extract from the Yearbook of the International Law Commission: -1970, Vol. II, Document: -A/CN4/229) p. 113. Generally, it is deemed that most newly independent countries inherit the treaty obligations of their former colonial governments. A U.S. court adopted this position in *Sabatier v. Dabrowski* 586. F.2d 866 (1st Cir. 1978), when recognizing Canada's succession to the Great Britain – U.S. extradition treaty of 1842.

⁶² Kassim-Momodu, Momodu *op. cit.* p. 525.

⁶³ *Ibid*, See also *Valentine v. US*, 299 U.S. 5, 57 S.Ct. 100.

⁶⁴ Extradition Act, 1966, Section 1(1).

Federal Gazette before the treaty can be implemented. In the event that 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. This does not mean that the treaty is no longer in force, nor does it mean that Nigeria's obligations under the treaty have been vacated. It only means that Nigeria has not taken the municipal steps for implementing the treaty.⁶⁵ The extradition treaties between Great Britain and Liberia signed on 16 December 1892 and the United States of America signed on 22 December 1931 have been recognised by Nigeria as binding on it, subject to certain modifications. The respective orders have been issued on these two treaties⁶⁶ and the Extradition Act recognises the orders made in relation to the United States of America and Liberia.⁶⁷

Post-1966, Nigeria has entered into a number of extradition treaties including the Extradition Treaty between the Peoples' Republic of Benin, Republic of Ghana, Federal Republic of Nigeria and the Republic of Togo 1984; the Economic Community of West African States on Extradition 1994; and the Extradition Treaty Between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa which has been domesticated by means of a Ratification and Enforcement Act 2005.

b. Extradition Arrangements within West Africa.

The sixteen ECOWAS⁶⁸ nations concluded the Economic Community of West African States Convention on Extradition in Abuja Nigeria on the 6th day of August 1994. About ten years earlier, on the 10th day of December 1984, Nigeria was party to the Extradition Treaty between the Peoples' Republic of Benin, the Republic of Ghana, and the Republic of Togo,⁶⁹ which was the first multilateral treaty on extradition in the

⁶⁵ For more on this, see Okebukola, E. O., *Treaty Law and Practice in Nigeria* (Forthcoming 2016).

⁶⁶ Extradition (Liberia) Order 1967, L.N. 32 of 1967; and Extradition (USA) Order 1967, L.N. 33 of 1967.

⁶⁷ First Schedule, Extradition Act.

⁶⁸ Economic Community of West African States, made up of Benin, Bukina Faso, Cape Verde, Cote D'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

⁶⁹ Extradition Treaty Between The Peoples' Republic of Benin, The Republic of Ghana, The Federal Republic of Nigeria, and The Republic of Togo, 1984. It is interesting to note that the four nations, parties to the Treaty had military governments and military leaders with absolute powers at that time.

continent of Africa⁷⁰. Prior to the conclusion of that treaty in 1984, Nigeria had extradition arrangement with only the Republic of Liberia, United States of America, the British Commonwealth nations and the British dependent territories.⁷¹ The provisions of the 1984 Treaty between the four countries who are all members of ECOWAS, and the 1994 Convention on Extradition among the sixteen ECOWAS countries, including those four nations are essentially the same.

Ordinarily, it will be expected that each of the parties to the 1984 Treaty will be at liberty to decide which of the two treaties to use amongst themselves if and when the need arises. However, Article 32 (1) of the ECOWAS Convention on Extradition 1994 provides that the:

“Convention shall supersede the provisions of any Treaties, Conventions or Agreements on extradition concluded between two or several States except as provided under paragraph 3, Articles 4 of the Convention” Paragraph 3, Article 4 of the Convention provides that “Implementation of this Article shall not affect any prior or future obligations assumed by States under the provisions of the Geneva Convention of 12 August 1949 and its additional Protocols and other multilateral international conventions”.

It can be argued that the 1984 Treaty is a multilateral international convention and so ought to be saved under Article 4 paragraph 3 of the 1994 Convention Treaty. However, since the four parties in the 1984 Treaty are all parties in the 1994 Convention Treaty, and since there is the likelihood that a fugitive for extradition could escape to any of the countries in the region that is not a party to the 1984 Treaty, it may be more prudent for the parties to the 1984 Treaty to rely on the arrangement that has a wider territorial application, which is the 1994 Convention Treaty, in the process of extraditing a fugitive from within the ECOWAS region.

⁷⁰ See Kassim-Momodu, Momodu, 1985, Extradition: The Treaty Between Benin, Ghana, Nigeria and Togo, *Nigerian Current Law Review*, p. 155.

⁷¹ See Kassim-Momodu, Momodu, 1985. Extradition Arrangement in the Sub-Region: The Case of Nigeria, Benin, Togo and Ghana. *Nigerian Forum*, Nigerian Institute of International Affairs: Lagos

c. Commonwealth States

Ordinarily, the Extradition Act is only applicable to a State that has an extradition treaty with Nigeria. However, the Extradition Act makes an exception of Commonwealth States to the extent that the Act is applicable to “every separate country within the Commonwealth”.⁷² For the purposes of the Extradition Act, a separate country within the Commonwealth, refers to “each sovereign and independent country within the Commonwealth”.⁷³ If any sovereign and independent country within the Commonwealth has a dependent territory, such a territory will be regarded as a part of the Commonwealth for extradition proceedings if the President of the Federal Republic of Nigeria makes an order published in the Federal Gazette designating such a territory as forming part of the Commonwealth country in issue.⁷⁴ However, the President will only make such an order if the country, to which the dependent territory is attached, has signified to the Federal Government that it desires that the dependent territory should be designated as part of the Commonwealth for the purposes of extradition.⁷⁵

If it appears to the President that a Commonwealth country to which section 2 of the Extradition Act is applicable no longer contains provisions substantially equivalent to the provisions of the Extradition Act, s/he may by order published in the Federal Gazette modify the application of the Extradition to that country.⁷⁶ The modifications as specified in the order may be by way of addition, alteration or omission.⁷⁷ A Commonwealth country may however still enter into an extradition treaty with Nigeria. In this event, the extradition relationship between Nigeria and the country shall cease to be governed by section 2 of the Extradition Act.⁷⁸ Rather the relationship shall be based on the extradition treaty between the Nigeria and the country.⁷⁹

d. Reciprocity

The principle of reciprocity is a well-established in international law and international relations. Nigeria requires and can observe reciprocity in respect of all forms of requests concerning international cooperation in criminal

⁷² Section 2(1), Extradition Act.

⁷³ Section 2(2) (a), Extradition Act.

⁷⁴ *ibid.*

⁷⁵ Section 2(3) Extradition Act.

⁷⁶ Section 2(4) Extradition Act

⁷⁷ *ibid.*

⁷⁸ Section 2(5), Extradition Act.

⁷⁹ *ibid.*

matters whether or not Nigeria and the requesting State are parties to a bilateral or multilateral agreement. However, the request for the extradition of any fugitive suspect or criminal to Nigeria under the Extradition Act must be based on either a bilateral or multilateral legal instrument.⁸⁰

⁸⁰ See Section 1 (d) of Guidelines for Authorities outside the Federal Republic of Nigeria (1st Edition) issued on 1st day of October 2013 by the Federal Ministry of Justice.

CHAPTER 2

Pre-Application Matters

Extradition proceedings in Nigeria are *sui generis* and strictly guided by the Extradition Act and Extradition Proceedings Rules. The requesting State and Nigeria's Federal Ministry of Justice have the duty to ensure that certain extradition prerequisites are fulfilled. The 1999 Constitution guarantees freedoms including those relating to movement, liberty and dignity of the person.⁸¹ In protection of the constitutionally guaranteed rights, the courts will not in the name of extradition "carelessly surrender citizens and non-citizens alike unless the Court is satisfied on the facts and position of the law."⁸² Prior to commencing extradition proceedings in the Federal High Court, a number of matters must be considered so as to present the required facts in the context of applicable law, otherwise the extradition application is likely to fail.

2.1. Commission of Offence

The person(s) against whom extradition proceedings will be commenced must have committed an offence for which s/he is wanted or has been convicted. This goes to the essence of the extradition proceedings. The contention that the alleged fugitive has committed an offence or has been convicted of one for which s/he has a pending sentence are matters of fact. The evidence relating to those facts must be presented to the Court before an extradition application can be granted. Statutorily, the requisite evidence is in the form of duly authenticated warrant of arrest or certificate of conviction issued in the requesting country.⁸³

2.2. Extraditable Offences

It is not enough to show that the alleged fugitive has committed an offence, it must be shown that the alleged offence is an extraditable offence. Extradition treaties normally expressly identify the extraditable crimes. Where the extradition request is ostensibly made in respect of an extradition crime but is

⁸¹ Sections 34 and 35 of the 1999 Constitution guarantee right to dignity and liberty respectively.

⁸² Attorney-General of the Federation v. Olayinka Johnson (AKA Big Brother), AKA Rafiu Kofoworola), (AKA Gbolahan Opeyemi Akinola) Suit No. FHC/L/16C/2013 p. 35 of Judgment.

⁸³ Section 6(1) Extradition Act, 1966.

in reality aimed at prosecuting or punishing the fugitive on account of the fugitive's race, religion, nationality or political opinions, the request will be refused.⁸⁴ In *George Udezor v. Federal Republic of Nigeria*,⁸⁵ it was stated that the general rule is that extraditable crimes must be those commonly recognised as *malum in se* (acts criminal by their very nature) and not those which are *malum prohibitum* (acts made crimes by statute).

The Extradition Act has a two-layered mechanism for preventing extradition for non-extraditable offences. First, the Attorney-General is required to refuse an extradition request where the alleged offence is not extraditable.⁸⁶ The judiciary serves as the second layer - In the event that the Attorney-General requests for the extradition for a non-extraditable offence, the Court is bound by law to refuse the request.⁸⁷

Political offences are not extraditable. Political offences are either pure political offences 'or relative political offences'. The pure political offences are acts or conducts that are directed against government or sovereign authorities of state without elements of common crime. These crimes violate the State and not any individual person. Example of such offences are treason, sedition, espionage and to a large extent disagreement with state ideology.⁸⁸ Offences in this category are generally not extraditable. The relative political offences involve a common crime committed in connection with a political act.

2.3. Specialty

The doctrine of specialty prohibits the requesting State from prosecuting for crimes other than those (or that) for which the extradition took place. The Extradition Act imposes the duty on the Attorney-General to ensure that, so long as the fugitive has not had a reasonable opportunity of returning to Nigeria, the law of the requesting State provides that the fugitive will not be detained or tried for any offence committed before his surrender except for the extradition offence supported by the facts on which the fugitives'

⁸⁴ Section 3(2) (a) Extradition Act, 1966.

⁸⁵ *George Udezor v. Federal Republic of Nigeria* CA/L/376/05

⁸⁶ Section 3(1) Extradition Act, 1966.

⁸⁷ *ibid.*

⁸⁸ Kenelly, J. J. (1987) The Political Offense Exception; Is the United States- United Kingdom Supplementary Extradition Treaty, the Beginning of the End? American University International Law Review Vol. 2 Iss. 1 Article 4 p.208.

surrender was granted.⁸⁹ Where there is no such legal provision in the requesting State, the Attorney-General is obliged to ensure that that special arrangements have been made to ensure that the fugitive will be tried only for the offences for which s/he was extradited.⁹⁰

Thus, Nigeria cannot surrender a fugitive criminal where it appears that he may be tried for an offence which is not included in the extradition request. Conversely, Nigeria can only try a fugitive criminal for the offences for which s/he was surrendered.⁹¹ However, where the fugitive commits an offence after s/he has been surrendered to the requesting State, s/he may be prosecuted for the post-surrender offence.

2.4. Double Jeopardy

Even where it is established that the alleged fugitive has committed an extraditable offence, extradition proceedings will fail if the wanted person had been previously acquitted or convicted. This is the principle against double jeopardy. In recognition of the principle of double jeopardy, the Extradition Act expressly prohibits the surrender of a fugitive criminal by the court if it is established that 'he has been convicted of the offence for which his surrender is sought; or has been acquitted thereof.'⁹² In the case of a conviction, the fugitive criminal may be extradited if s/he has escaped from serving the sentence or is otherwise unlawfully at large.⁹³

2.5 Unacceptable Trials and Prosecutions

Where the offence committed by the fugitive is not political and is otherwise extraditable, an extradition request will nonetheless be rejected if the fugitive offender 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.⁹⁴ If the Attorney General makes a request for extradition and the fugitive will be subjected to an unfair trial or unlawful discrimination in the requesting State, the fugitive may prove the relevant facts to the notice of the Judge. If the Court finds the fugitive's facts to be admissible

⁸⁹ Section 3(7) Extradition Act.

⁹⁰ *ibid.*

⁹¹ Section 15, Extradition Act.

⁹² Section 3(4), Extradition Act.

⁹³ *ibid.*

⁹⁴ Section 3 (2) (b), Extradition Act.

and credible, the extradition request will be refused.⁹⁵

2.6 Dual Criminality and Returnable Offences

Extradition treaties normally incorporate the double or dual criminality principle. Under this principle, offences are considered as extraditable when they are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least two year(s), or by a more severe penalty. Where the extradition proceedings relate to a treaty, the treaty will specify the extraditable offences. The inclusion of an offence in an extradition treaty is sufficient authority that the mentioned offence has fulfilled the double criminality requirement.

However, since the Extradition Act is generally applicable to Commonwealth countries without the necessity of a separate treaty, double criminality in relation to Commonwealth countries is relates to offences described as returnable offences. For the purposes of the Extradition Act, "...a returnable offence is an offence however described, which is punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the Commonwealth country seeking [the fugitive's] surrender."⁹⁶ The essence of the provision in section 20(1) of the Act, for a minimum sentence of two years is to ensure that a fugitive is not surrendered on a trivial offence.⁹⁷

An offence is returnable and satisfies the double criminality principle if the conduct involved attracts criminal penalty under the penal laws of Nigeria. It is therefore irrelevant if the offence is not categorised in the same way in Nigeria or if it does not have the same nomenclature or classification. In *Attorney-General of the Federation v. Rasheed Abayomi Mustapha*,⁹⁸ the Respondent was accused of certain offences punishable by the laws of the USA. The court held that the conduct in issue is punishable by the Criminal Code, the EFCC Act, Miscellaneous Offences Act, Advance Fee Fraud and other Fraud Related Offences Act etc. For this reason, the court held that it can never be argued that the offences are unknown to Nigerian Law.⁹⁹

⁹⁵ *ibid.*

⁹⁶ Section 20 (2) Extradition Act.

⁹⁷ *George Udeozor v. Federal Republic of Nigeria* CA/L/376/05.

⁹⁸ *Attorney General of the Federation v. Rasheed Abayomi Mustapha* Charge No: FHC/L/218C/2011.

⁹⁹ *ibid.*, p. 36.

2.7 Death Penalty

As a general rule, capital punishment in the requesting State is not a bar to extradition from Nigeria. This may not be unconnected to fact that Nigerian statutes still contain offences punishable by death and new ones are being introduced. In 2013 the United Nations reported that Nigeria had adopted an amendment to its terrorism prevention law with several offences carrying the death penalty.¹⁰⁰ Nigeria also rejected recommendations on the abolition of the death penalty during the 2014 Universal Periodic Review conducted on the platform of the United Nations Human Rights Council.¹⁰¹

Notwithstanding the absence of a rule prohibiting extradition for capital offences, the Extradition Act prohibits the surrender of a fugitive where the offence in issue is trivial in nature or there has been an unduly long intervening period.¹⁰² So, extradition may not be refused on the sole ground that the offence attracts capital punishment. However, the fugitive shall not be surrendered if having regard to all the circumstances in which the offence was committed, the Attorney-General or a court dealing with the case is satisfied that, by reason of the trivial nature of the offence or the 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.

2.8. Torture

A fugitive criminal may not be surrendered for extradition by Nigeria if it is established that he may be subjected to torture by the requesting State. Nigeria is a state party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention expressly prohibits state parties from expelling, returning “refouler”, or extraditing any person to a state where there are substantial grounds for believing that he would be in danger of being subjected to torture.¹⁰³ Acts that constitute torture are those by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third

¹⁰⁰ Question of Death Penalty: Report of the Secretary General. 1 July 2013, A/HRC/24/18 p. 10; Terrorism (Prevention) (Amendment) Act 2013.

¹⁰¹ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14412&LangID=E> (Accessed on 7 June 2016)

¹⁰² Section 3 (3) (a) Extradition Act.

¹⁰³ Article 3, United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.¹⁰⁴

The torture envisaged by the Convention does not extend to those arising from lawful sanction in accordance with the penal laws of the requesting state. In the event that Nigeria extradites a fugitive to a requesting State where he would be tortured, Nigeria shall have state responsibility for the violation of an international obligation.

2.9. Offences under Military Law

Under the United Nations Model Treaty on Extradition,¹⁰⁵ it is a mandatory ground for refusing extradition if the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law.¹⁰⁶ However, in Nigeria, a fugitive criminal may be surrendered notwithstanding that the offence in issue is an offence only under military law or law relating only to military obligations.¹⁰⁷

2.10. Existing or Imminent Proceedings in Nigeria

Where criminal proceedings are pending in any court in Nigeria for the same offence for which surrender is sought, the fugitive criminal shall not be surrendered.¹⁰⁸ Similarly, where the fugitive criminal has been charged with an offence under federal, state or local government legislation, s/he shall not be surrendered until such time as s/he has been discharged.¹⁰⁹ If s/he is convicted or was a convict at the time the extradition request was made, s/he shall not be surrendered until such time that the sentence has expired or otherwise terminated.¹¹⁰

¹⁰⁴ Article 1.1. *ibid.*

¹⁰⁵ A/RES/45/116 United Nations Model Treaty on Extradition.

¹⁰⁶ Article 3 (c) United Nations Model Treaty on Extradition.

¹⁰⁷ Section 4(1) Extradition Act.

¹⁰⁸ Section 3(5) Extradition Act.

¹⁰⁹ Section 3(6)(a) Extradition Act.

¹¹⁰ Section 3(6)(b) Extradition Act.

2.11. Offences Committed before the Entry into Force of an Extradition Treaty or the Extradition Act

A person may be extradited for an offence committed before the relevant Extradition Treaty or Order was made. Every fugitive criminal of a country to which the Act applies shall, subject to the provisions of the Act, be liable to be arrested and surrendered in the manner provided by the Act, whether the offence in respect of which the surrender is sought was committed before or after the commencement of the Act or the application of this Act to that country.¹¹¹

2.12. Checklist of pre-application requirements

The Federal Ministry of Justice has a policy document that provides guidance for Requests for Mutual Legal Assistance in Criminal Matters.¹¹² This document explains the steps a requesting State needs to take in seeking extradition. This document is to be used in the context of applicable statutes and rules of court and in all events, the following pre-extradition requirements must be met.

Pre-Extradition Requirement

1. Extradition request must be made through the diplomatic channels of the requesting State.
2. Extradition request cannot be made by an individual or non-State group or organisation.
3. The extradition request must be made to the Attorney-General of the Federation.
4. The request to the Attorney-General of the Federation may be made through the Ministry of Foreign Affairs.
5. The person(s) against whom extradition proceedings will be commenced must have committed an offence for which s/he is wanted or has been convicted.
6. There must be a duly authenticated warrant of arrest or certificate of conviction issued in the requesting country.

¹¹¹ Section 5 Extradition Act.

¹¹² Federal Ministry of Justice, Requests for Mutual Legal Assistance in Criminal Matters: Guidelines for authorities outside the Federal Republic of Nigeria, 2013.

7. The offence in issue must be an extraditable offence.
8. The requesting must not be such that will detain or try the fugitive for any offence committed before the fugitive's surrender except for the extradition offence.
9. The fugitive must not have been previously acquitted of the extradition offence.
10. The fugitive must not have been previously convicted and served the sentence for the extradition offence.
11. The requesting State must be such that will not subject the fugitive to the kind of trial or prosecution that is prohibited by the Extradition Act.
12. The offence however described, must be punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the requesting State.
13. The offence must not be trivial in nature.
14. There must not have been an unduly long intervening period between when the crime was committed and when extradition request was made.
15. The requesting State must be such that will not subject the fugitive to torture
16. There must not be criminal proceedings pending in any court in Nigeria for the same offence for which surrender is sought.
17. There must not be a pending charge against the fugitive under federal, state or local government legislation.
18. The fugitive must not have an unexpired criminal sentence in Nigeria.

2.13. Provisional Warrant of Arrest Prior to Filing of Extradition Application

A judge of the Federal High Court may upon the receipt of information supported by evidence that a fugitive criminal is in Nigeria, suspected to be in Nigeria or on the way to Nigeria issue a provisional warrant of arrest of the

fugitive.¹¹³ Before issuing the provisional warrant, the judge shall ensure that the alleged offence is extraditable,¹¹⁴ and there is sufficient evidence or information to justify the issuance of a warrant of arrest.¹¹⁵ The Offence must also be one for which the court would have issued a warrant of arrest if committed in Nigeria.¹¹⁶ As directed by the arrest warrant, the alleged fugitive shall be brought before the judge, who issued the arrest warrant, within 48 hours or such longer period as the court may deem reasonable.¹¹⁷

The Court may adjourn the proceedings on the application of either party, or on its own motion following a provisional arrest under section 8 of the Act and pending receipt of the extradition application of the Attorney,¹¹⁸ or the extradition request.¹¹⁹ The court may also adjourn proceedings where the court dealing with a warrant to which section 8 of the Act applies is informed that another warrant has been received in the Federal Republic of Nigeria.¹²⁰

2.14. Preliminary Hearing after Provisional Warrant of Arrest

Where a fugitive is brought before the court following the execution of a provisional arrest warrant, the court shall inform the fugitive of: the allegation against him;¹²¹ the entitlement to consent to extradition;¹²² and the effect of such consent.¹²³ Subsequently, the court may remand the fugitive in custody or admit him to bail pending the application for the extradition of the fugitive by the Attorney-General.¹²⁴ The court may adjourn the case to a date not later than 30 days from the day the fugitive was arrested.¹²⁵ It is important to emphasise that despite any similarities between the two, the post-arrest proceedings are not arraignment proceedings.

At the end of the post-arrest proceedings, the court shall pursuant to section 8(5) of the Extradition Act transmit the records of the proceeding to the

¹¹³ Section 8 Extradition Act; Order III Federal High Court (Extradition Proceedings) Rules, 2014.

¹¹⁴ Order III Rule 2 (a) Federal High Court (Extradition Proceedings) Rules, 2014.

¹¹⁵ Order III Rule 2 (b) Federal High Court (Extradition Proceedings) Rules, 2014.

¹¹⁶ Section 8 (1) Extradition Act.

¹¹⁷ Order III Rule 3 Extradition Proceedings Rules.

¹¹⁸ Order X Rule 4 (b) (i) Extradition Proceedings Rules 2015.

¹¹⁹ Order X Rule 4 (b) (ii) Extradition Proceedings Rules 2015.

¹²⁰ Order X Rule 4 (e) Extradition Proceedings Rules 2015

¹²¹ Order IV Rule 1 (a) (i) Extradition Proceedings Rules.

¹²² Order IV Rule 1 (a) (ii) Extradition Proceedings Rules.

¹²³ Order IV Rule 1 (a) (iii) Extradition Proceedings Rules.

¹²⁴ Order IV Rule 1(b) Extradition Proceedings Rules.

¹²⁵ Order IV Rule 1 (c) Extradition Proceedings Rules.

Attorney-General.¹²⁶ On the return date, which shall be not later than 30 days from the day the fugitive was arrested, or the Attorney-General informed the court that an extradition request has been received in respect of the fugitive, the Attorney-General shall file and serve the application for the extradition of the fugitive within 48 hours or such longer time as the court may allow¹²⁷ and the matter shall be set down for hearing within 14 days from the date of the preliminary hearing.¹²⁸

On the return date if the Attorney-General has not indicated that that an extradition request has been received in respect of the fugitive, or if Attorney-General positively informs the court that no such request is made for the extradition of the fugitive, the fugitive shall be discharged.¹²⁹ A discharge shall not operate as a bar against future arrest of the fugitive if a request is made in future.¹³⁰ The court may, where necessary, require a fugitive to attend a preliminary hearing by live audio- visual link.¹³¹

¹²⁶ Order IV Rule 2 Extradition Proceedings Rules.

¹²⁷ Order IV Rule 3 (a) (i) Extradition Proceedings Rules.

¹²⁸ Order IV Rule 3 (a) (ii) Extradition Proceedings Rules.

¹²⁹ Order IV Rule 3 (b) Attorney-General.

¹³⁰ Section 8 (7) Extradition Act.

¹³¹ Order 10 Rule 3 Extradition Proceedings Rules.

CHAPTER 3

Extradition Procedure

All cases and matters before the courts in Nigeria are either civil or criminal. The proper classification of a case is important because of the applicable procedural rules and standards. The proceedings are criminal to the extent that they deal with a criminal charge or conviction raised in the requesting State. However, unlike regular criminal proceedings, extradition proceedings do not result in a determination of whether the alleged fugitive is guilty or innocent, nor do they end in a post-conviction sentence. Extradition proceedings are therefore a peculiar kind of criminal proceedings.¹³²

A most fundamental significance of the distinction is the standard of proof which is higher in criminal matters than in civil matters. The standard in criminal cases is *proof beyond reasonable doubt*, while in civil cases it is sufficient to prove on a *balance of probabilities or preponderance of evidence*. Where the person sought to be extradited files a Fundamental Human Rights enforcement case, the case will be a civil matter even though it arises from, or is linked to, extradition proceedings.

3.1. Initiator of Extradition Proceedings

Nigeria's extradition proceedings are structured towards prompt and efficient disposition of issues. The procedure starts with a request for the surrender of a fugitive criminal, made in writing to the Attorney-General of the Federation of Nigeria.¹³³ The request is to be made by a diplomatic representative or consular officer of the country making the extradition request.¹³⁴ Upon receiving the request, the Attorney-General has the discretion as to whether or not to initiate extradition proceedings. The Attorney-General cannot be compelled by order of mandamus or otherwise to initiate extradition proceedings where he has exercised the discretion to not proceed.

¹³² R v. Governor of Brixton Prison, Ex parte Levin [1997] A.C. 741 at para. 746.

¹³³ Section 6 Extradition Act, 1966.

¹³⁴ *ibid.*

In *George Udeozor v. Federal Republic of Nigeria*¹³⁵, the Court held that the Extradition Act actually reposes the responsibility and powers to ascertain the conditionality for acceding to an extradition request on the Attorney- General not on the Court. By the provisions of the Act, the Attorney- General, who is the Chief Legal Officer of the Federal Republic of Nigeria, has the discretion to exercise the power to initiate extradition proceedings. The Court of Appeal emphasised that by the provisions of section 6(1) and (2) of the Act, it is the duty of the Attorney-General to receive the request for the surrender of a fugitive criminal in Nigeria. Section 6(2) of the Act reposes the discretion in the Attorney-General to signify to the court that such a request has been made and he does that only after he satisfies himself on the basis of the information accompanying the request, that the provisions of section 3(1-7) are complied with.

Nothing in the Act gives the court the powers to question the discretion of the Attorney-General in those matters. The question of whether the Attorney-General had complied with the provisions of section 3(1) - (7) of the Act is a question of fact which can be brought to the attention of the trial court only by affidavit evidence. The allegation that the Attorney General has not complied with section 3(1) - (7) of the Evidence Act cannot be substantiated by Counsel's submissions which are not based on affidavit evidence. No amount of brilliant submission of Counsel can take the place of legal evidence.¹³⁶

3.2. The Extradition Request.

Prior to filing the extradition application by the Attorney-General, certain preliminary or preparatory steps are required to be taken by both the requesting State and the Attorney-General. On the part of the requesting State, communication of the extradition request must be made in writing by a diplomatic representative or consular officer.¹³⁷ The significance of allowing the extradition request to be made by a diplomatic or consular staff is to allow the implementation of an extradition agreement where either diplomatic or consular relations is absent, not yet physically established or severed.

¹³⁵ Op Cit

¹³⁶ *George Udeozor v. Federal Republic of Nigeria* CA/L/376/05.

¹³⁷ Section 6 (1) Extradition Act.

Especially as regards severance, it is important to emphasise that severance of diplomatic relations do not *ipso facto* involve the severance of consular relations.¹³⁸ So where Nigeria has broken off diplomatic relations with a State, such a State can still make its extradition request through its consular officer and such a request will be valid under section 6 of the Extradition Act. The request may be by means of *note verbale* sent through Nigeria's Ministry of Foreign Affairs.¹³⁹ If however, the *note verbale* is sent directly to the Attorney-General, it remains valid for the purposes of the Extradition Act. The request for extradition must be accompanied by a duly authenticated warrant of arrest or certificate of conviction issued by the requesting state.¹⁴⁰ The Extradition Act does not require the request to be in any particular format. All that is required is for the extradition request to be in writing and to contain all relevant facts and supporting documents.

3.3. Multiple requests. What Happens in Case of Multiple Request for the Same Person?

If more than one State requests for the surrender of the same alleged fugitive criminal, whether for the same offence or different offences, the Attorney-General has the discretion to determine which request is to be accorded priority, and accordingly may refuse the other request or requests.¹⁴¹ In determining which request is to be accorded priority, the Attorney-General considers all the circumstances of the case, especially, the relative seriousness of the offences, if different;¹⁴² the relative dates on which the requests were made;¹⁴³ and the nationality of the fugitive and the place where he is ordinarily resident.¹⁴⁴

3.4. The Substantive Extradition Application

Upon receiving the request, the Attorney-General may either exercise his discretion to apply to the court for the exercise of the court's extradition jurisdiction or refuse the request without giving any explanation for the refusal. Where s/he intends to process the extradition request, an application

¹³⁸ Article 2 Paragraph 3, Vienna Convention on Consular Relations.

¹³⁹ Attorney-General of The Federation v. Olayinka Johnson (Aka Big Brother), (Aka Rafiu) Kofoworola), (Aka Gbolahan Opeyemi Akinola), Suit No. FHC/L/16C/2013.

¹⁴⁰ Section 6 (1) Extradition Act.

¹⁴¹ Section 6(4) Extradition Act.

¹⁴² Section 6(4) (a) Extradition Act.

¹⁴³ Section 6(4) (b) Extradition Act.

¹⁴⁴ Section 6(4) (c) Extradition Act.

for extradition will be made to the Federal High Court for the purpose of surrendering the alleged fugitive criminal to the requesting State. Prior to the conferment of extradition jurisdiction on the Federal High Court, the Attorney General used to give an order to the magistrate court to deal with an extradition case in accordance with the Extradition Act. Now, however, the Attorney General cannot order the Federal High Court rather s/he applies to the Federal High Court to deal with the case in accordance with the Extradition Act.¹⁴⁵

In the case of *Attorney-General of The Federation v. Olayinka Johnson (Aka Big Brother), (Aka Rafiu) Kofoworola), (Aka Gbolahan Opeyemi Akinola)*,¹⁴⁶ the Court noted that Section 6 of the Extradition Act provides for a written request for surrender of a fugitive criminal by the Attorney-General of the Federation without requiring that the application should be worded in a particular way. This case was decided before the coming into force of the Federal High Court (Extradition Proceedings) Rules 2014.

Since the Federal High Court (Extradition Proceedings) Rules 2014 came into operation, the application for extradition by the Attorney-General pursuant to section 6 of the Extradition Act shall be in the format provided in the form contained in the Schedule to the Extradition Proceedings Rules. The application is required to be supported by the following:

1. Particulars of the fugitive whose extradition is requested;¹⁴⁷
2. A request for the surrender of the fugitive by the requesting state;¹⁴⁸
3. A duly authenticated warrant of arrest or certificate of conviction issued in the requesting State;¹⁴⁹
4. The particulars of the offence specified in the extradition request;¹⁵⁰
5. Particulars of the corresponding offence in Nigeria;¹⁵¹
6. Supporting affidavits;¹⁵²
7. Written Address;¹⁵³ and
8. Any other relevant document.¹⁵⁴

¹⁴⁵ Order 2(e) Extradition Act (Modification) Order 2014.

¹⁴⁶ Suit No. FHC/L/16C/2013.

¹⁴⁷ Order V Rule 1 (a) Extradition Proceedings Rules.

¹⁴⁸ Order V Rule 1 (b) Extradition Proceedings Rules.

¹⁴⁹ Order V Rule 1 (c) Extradition Proceedings Rules.

¹⁵⁰ Order V Rule 1 (d) Extradition Proceedings Rules.

¹⁵¹ Order V Rule 1 (e) Extradition Proceedings Rules.

¹⁵² Order V Rule 1 (f) Extradition Proceedings Rules.

¹⁵³ *ibid* Order V Rule 4.

The application and supporting documents must be served on the alleged fugitive offender who is at liberty to employ the services of legal practitioners.¹⁵⁵ Following service of the extradition application, the fugitive (Respondent) is at liberty to either consent to the extradition or file a counter-affidavit in opposition of the extradition application.¹⁵⁶ Where the fugitive chooses to file a counter application, he must file the counter affidavit within 5 days of being served with the extradition application.¹⁵⁷ The court may however extend the time within which the counter affidavit is to be filed, where he intends to oppose the application for extradition.¹⁵⁸ The fugitive is required to file any other application within the time allowed for filing the counter affidavit.¹⁵⁹ If for example the fugitive intends to file a motion for the judge to recuse himself or to raise any other objection to the suit, such a motion is to be filed within 5 days of being served with the application or any further time period allowed by the court. Upon being served with the fugitive's counter-affidavit the Attorney General may file a reply on points of law within 48 hours.¹⁶⁰

The documents in support of the extradition request must not be frivolous and must present prima facie evidence of the allegation against the Respondent. In *Attorney-General of the Federation v. Jeffrey Okafor*,¹⁶¹ the learned trial judge said:

When I read through these documents produced by the authorities in the UK to support the request made to the Central Authority in Nigeria, I have no doubt that the request was not frivolous but based on prima facie evidence of a thorough investigation conducted into the incident in which the Respondent appears prima facie to be involved as a suspect.¹⁶²

¹⁵⁴ Fair hearing and justice require that parties are allowed to present documents that are relevant to a case before the court, subject to rules of evidence and procedure.

¹⁵⁵ Order V Rule 2 Extradition Proceedings Rules.

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*

¹⁵⁹ *ibid.*

¹⁶⁰ Order V Rule 3 Extradition Proceedings Rules.

¹⁶¹ *Attorney-General of the Federation v. Jeffrey Okafor* Charge No: FHC/ABJ/CR/180/2014.

¹⁶² *ibid.*, p. 4.

The courts shall take judicial notice of the documents supplied by the representatives of the State making the extradition request, such documents require no additional proof whether by means of oral evidence or otherwise. The court in *Attorney-General of the Federation v. Rasheed Abayomi Mustapha*,¹⁶³ held that judicial notice is taken of the seal of the officers who authenticate the documents in support of the extradition request. The question of the authenticity of supporting documents from the requesting State has been statutorily settled by the Extradition Act.

For the purposes of the extradition proceedings, any warrant issued in a country other than Nigeria;¹⁶⁴ any deposition or statement on oath or affirmation taken in any such country, or a copy of any such deposition or statement;¹⁶⁵ and any certificate of conviction issued in any such country,¹⁶⁶ shall be taken to be duly authenticated if either it is authenticated in any manner provided by law;¹⁶⁷ or if it complies with the requirements of subsection (3) of Section 17 of the Extradition Act and in addition is authenticated by the oath or affirmation of some witness or by being sealed with the official seal of a minister of state of the country in which it was issued or taken. The requirements of subsection (3) of Section 17 of the Extradition Act are that: a warrant must purport to be signed by a Judge, magistrate or officer of the country in which it was issued;¹⁶⁸ any deposition or statement on oath or affirmation taken in a requesting State, or a copy of any such deposition or statement, must purport to be certified under the hand of a Judge, magistrate or officer of the State in which it was taken to be the original or a copy, as the case may be, of the document in question;¹⁶⁹ a certificate of conviction must purport to be certified by a Judge, magistrate or officer of the country in which the conviction is stated to have taken place.¹⁷⁰

3.5. Post-Extradition Application Warrant of Arrest

Although the court may upon the request of the Attorney-General issue a provisional arrest warrant before the filing of the extradition application, there

¹⁶³ *Attorney-General of the Federation v. Rasheed Abayomi Mustapha* Charge No: FHC/L/218C/2011 p. 36.

¹⁶⁴ Section 17 (1) (a) Extradition Act.

¹⁶⁵ Section 17 (1) (b) Extradition Act.

¹⁶⁶ Section 17 (1) (c) Extradition Act.

¹⁶⁷ Section 17 (2) (a) Extradition Act.

¹⁶⁸ Section 17 (3) (a) Extradition Act.

¹⁶⁹ Section 17 (3) (b) Extradition Act.

¹⁷⁰ Section 17 (3) (c) Extradition Act.

is no requirement of law that the fugitive must be in custody before the extradition application can be filed. It is therefore sometimes the case that the fugitive would not be in custody at the time the extradition application is filed. In such an event, the court may issue a warrant of arrest for the alleged fugitive criminal.¹⁷¹ The post-extradition application warrant of arrest is issuable if such evidence is produced as would in the opinion of the judge justify the issue of the warrant if the offence in question had been committed in Nigeria or the fugitive had been convicted of it in Nigeria.¹⁷² The post-extradition application may be executed anywhere in Nigeria.¹⁷³

A fugitive criminal arrested on a post-extradition application warrant shall be brought before a judge of the Federal High Court as soon as is practicable after s/he is arrested.¹⁷⁴ The application for the arrest warrant may be heard and issued in open court or in private.¹⁷⁵ In considering the application for an arrest warrant, the judge shall determine whether the offence in respect of which extradition is requested is an extraditable offence,¹⁷⁶ and there is no bar to extradition under section 3 of the Extradition Act.¹⁷⁷

3.6. Extradition Hearing

At the hearing of an extradition application, the Attorney-General or counsel representing the Attorney-General will be the first to begin by addressing the Court and argue for the surrender of the fugitive to the requesting State. Next, the fugitive or their legal representative will argue against the grant of the extradition application. Following the counter arguments, the party that began will reply and the matter will close for the court's decision to be read in open court.

At the extradition hearing, the court will consider whether: the offence specified in the application for extradition is an extraditable offence;¹⁷⁸ a bar to extradition exists under the Extradition Act;¹⁷⁹ extradition will be

¹⁷¹ Section 7 (1) Extradition Act.

¹⁷² *ibid.*

¹⁷³ Section 7 (2) Extradition Act.

¹⁷⁴ Section 7 (3) Extradition Act.

¹⁷⁵ Order VI Rule 3 Extradition Proceedings Rules 2015.

¹⁷⁶ Order VI Rule 2 (a) Extradition Proceedings Rules 2015.

¹⁷⁷ Order VI Rule 2 (b) Extradition Proceedings Rules 2015.

¹⁷⁸ Order VIII Rule 1 (a) Extradition Proceedings Rules 2015.

¹⁷⁹ Order VIII Rule 1 (b) Extradition Proceedings Rules 2015.

compatible to the fugitive's Human Rights;¹⁸⁰ or if having regard to all the circumstance of which the offence was committed, be unjust or oppressive or too severe a punishment to extradite the fugitive.¹⁸¹ If any of these matters is resolved in favour of the fugitive the court will decide whether in the circumstances it is appropriate to discharge the fugitive.¹⁸²

All applications challenging the competence of the proceedings or the jurisdiction of the court shall be filed and argued together with the substantive extradition application.¹⁸³ Where the court discharges the fugitive it may make an ancillary order including reporting restrictions, travelling restrictions, probation or any other or directions it deems reasonable.¹⁸⁴ Where the court does not discharge the fugitive, it shall exercise its power to order the fugitive's extradition.¹⁸⁵ A fugitive who is not represented by counsel has the right to be informed by the Court that s/he has a right of appeal.¹⁸⁶ Following the grant of the extradition application, the court has the power to consider any ancillary application, including an order on reporting restrictions, travelling restrictions, probation, or any direction or directions the court may deem fit in the circumstance.¹⁸⁷ No party shall be allowed more than two adjournments during the course of the hearing except where the court considers it absolutely necessary.¹⁸⁸

All evidence adduced at the extradition proceedings shall be by affidavit and no oral evidence shall be called for any matter unless the court requires clarification of relevant facts or issues which cannot be clarified by affidavit evidence alone.¹⁸⁹ Where a party applies to introduce additional evidence at an extradition hearing and the Extradition Proceedings Rules do not specifically make provisions for same, recourse shall be made to the Criminal Procedure Act, with such adaptations as the court may direct.¹⁹⁰ Where a party introduces in evidence a fact admitted by another party, or the parties

¹⁸⁰ Order VIII Rule 1 (c) Extradition Proceedings Rules 2015.

¹⁸¹ Order VIII Rule 1 (d) Extradition Proceedings Rules 2015.

¹⁸² Order VIII Rule 1 (e) Extradition Proceedings Rules 2015.

¹⁸³ Order VIII Rule 5 Extradition Proceedings Rules 2015.

¹⁸⁴ Order VIII Rule 2 Extradition Proceedings Rules 2015.

¹⁸⁵ Order VIII Rule 3 (a) Extradition Proceedings Rules 2015.

¹⁸⁶ Order VIII Rule 4 Extradition Proceedings Rules 2015.

¹⁸⁷ Order VIII Rule 3 (b) Extradition Proceedings Rules 2015.

¹⁸⁸ Order VIII Rule 6 Extradition Proceedings Rules 2015.

¹⁸⁹ Order IX Rule 2 Extradition Proceedings Rules 2015

¹⁹⁰ Order IX Rule 1 Extradition Proceedings Rules 2015.

jointly admit a fact, the Court shall record such admission.¹⁹¹

The extradition proceedings shall be in open court although the court has the powers to: impose reporting restrictions;¹⁹² withhold information from the public;¹⁹³ or order a hearing in private.¹⁹⁴ Notwithstanding the power to conduct proceedings in private, the Court shall exercise its powers in the presence of the fugitive.¹⁹⁵ The court may however proceed in the absence of the fugitive, where the fugitive is represented and his presence is impracticable by reason of ill health or disorderly conduct.¹⁹⁶

The purpose of the hearing in the trial court upon the application of the Attorney-General is not for the trial of the fugitive criminal. Rather, it is to invoke the exercise of the judicial powers, of the court over the fugitive accused as the court would over an accused person standing trial before it. In the circumstance, those powers are preliminary to the eventual trial of the fugitive accused, such as the power to remand or to release on bail pending the completion of investigation.¹⁹⁷ There is no need to go through the full arraignment procedure as done in criminal trials. The reference in section 9(1) of the Extradition Act is to confer on the trial court, the special jurisdiction and powers to perform the preliminary judicial functions requisite to enhance the administrative processes for the completion and execution of the order of the Attorney-General to surrender the alleged fugitive criminal to the requesting country. The fugitive is not standing trial for the offence for which the extradition order is sought. There is thus no legal requirement to follow full arraignment steps as in a criminal trial.¹⁹⁸

During the hearing, the Court may adjourn on the application of either party, or on its own motion: to allow additional information to be brought before it;¹⁹⁹ where it is informed that the fugitive is charged with an offence or is serving a custodial sentence within Nigeria;²⁰⁰ and where it appears to it that

¹⁹¹ Order IX Rule 3 Extradition Proceedings Rules 2015.

¹⁹² Order X Rule 1 (a) Extradition Proceedings Rules 2015.

¹⁹³ Order X Rule 1 (b) Extradition Proceedings Rules 2015.

¹⁹⁴ Order X Rule 1 (c) Extradition Proceedings Rules 2015.

¹⁹⁵ Order X Rule 2 (a) Extradition Proceedings Rules 2015.

¹⁹⁶ Order X Rule 2 (b) Extradition Proceedings Rules 2015.

¹⁹⁷ *George Udezor v. Federal Republic of Nigeria* CA/L/376/05.

¹⁹⁸ *ibid*

¹⁹⁹ Order X Rule 4 (a) Extradition Proceedings Rules 2015.

²⁰⁰ Order X Rule 4 (c) Extradition Proceedings Rules 2015.

the fugitive is not fit to be extradited but the court does not discharge the fugitive notwithstanding the unfitness for extradition.²⁰¹ In exercising its powers under the Act, the court shall give each party an opportunity to make representations.²⁰²

3.7. Standard of Proof

Usually the requesting State has to show that there is prima facie evidence of guilt against the fugitive. Where the commission of crime is directly in issue in any civil or criminal proceedings, the standard of proof in that respect is proof beyond reasonable doubt.²⁰³ However, an extradition proceeding is not a trial of the fugitive for the commission of the offence contained in the extradition request nor a review of the validity of the conviction by the court of the requesting country.²⁰⁴ The standard of proof required by the Extradition Act is a lesser standard of a prima facie evidence. The court is enjoined by the Extradition Act to grant extradition request by committing the fugitive to prison or other lawful custody to await the Attorney-General's order for his surrender when the evidence adduced or produced would, according to the law of Nigeria, justify committal of the prisoner for trial if the offence had been committed in Nigeria.²⁰⁵

The standard is that required before the courts in Nigeria in committing an accused to face trial which is the establishment of a prima facie case.²⁰⁶ In *Ajidagba v. Inspector General of Police*,²⁰⁷ the Supreme Court held that “prima facie” only means that there is ground for proceeding. A *prima facie* case is not the same as proof which comes later when the court has to find whether the accused is guilty or not.

3.8. Surrender of the Fugitive

There have been conflicting and somewhat unclear decisions as regards the period within which the fugitive is to be surrendered once the court has ordered his extradition. In *Attorney-General of the Federation v. Lawal Olaniyi Babafemi Aka*,

²⁰¹ Order X Rule 4 (d) Extradition Proceedings Rules 2015.

²⁰² Order X Rule 5 Extradition Proceedings Rules 2015.

²⁰³ Section 135 (1) Evidence Act.

²⁰⁴ *George Udeozor v. Federal Republic of Nigeria* CA/L/376/05.

²⁰⁵ Section 9 Extradition Act.

²⁰⁶ *Ikomi v State* (1986) 5 SC.

²⁰⁷ (1958) 3 FSC 5.

“*Abdullahi*”, “*Ayatollah Mustapher*” (*Babafemi*)²⁰⁸ the Court ordered that fugitive shall be surrendered to the officials of the United States of America not later than fifteen days from the date of the extradition orders. This suggests that the surrender and extradition could be earlier than fifteen days from the date of the extradition order. However, in *Attorney-General of the Federation v. Uche Okafor Prince*²⁰⁹, the Court ordered that the fugitive was to be surrendered for extradition only after fifteen days (15) from the date of that judgment in accordance with Section 10 of the Extradition Act. This suggests that the surrender and extradition could not be earlier than fifteen days from the date of the extradition order. In *Attorney-General of the Federation v. Olayinka Johnson a.k.a. Big Brother, a.k.a. Rafiu Kofoworola, a.k.a. Gbolahan Opeyemi Akinola*²¹⁰, the Court ordered that the fugitive shall be committed to await his extradition to United State of America within thirty (30) days of that order to face the trial for the offences allegedly committed. This suggests that the fugitive may be surrendered anytime within the stated period of 30 days. This could be less than 15 days from the date of the Judgment or more than 15 days. In *Attorney-General of the Federation v Jeffrey Okafor*²¹¹, the Court ordered extradition to be carried out within 14 days of the Judgment. Thus extradition could even be a day after the judgment provided it was done within 14 days. In *Attorney General of the Federation v. Dion Kendrick Lee*²¹², it was ordered that extradition of the fugitive offender from Nigeria should be after 15 days of the judgment. In *Attorney General of the Federation v. Emmanuel Ekhatore*²¹³, extradition was to be within the next 15 days. In *Attorney General of the Federation v. Rasheed Abayomi Mustapha*²¹⁴, extradition was to be after the expiration of fifteen days from the judgment.

The correct position is that where the court has made an order for the extradition of the fugitive, s/he shall not be surrendered until the expiration of

²⁰⁸ In *Attorney-General of The Federation v. Lawal Olaniyi Babafemi Aka, “Abdullahi”, “Ayatollah Mustapher” (Babafemi)* FHC/ABJ/CR/132/2013

²⁰⁹ *Attorney-General of the Federation v. Uche Okafor Prince* FHC/ABJ/CR/28/2013

²¹⁰ *Attorney-General of the Federation v. Olayinka Johnson (Aka Big Brother), (Aka Rafiu) Kofoworola), (Aka Gbolahan Opeyemi Akinola* FHC/L/16C/2013

²¹¹ *Attorney-General of the Federation v. Jeffrey Okafor* FHC/ABJ/CR/180/2014

²¹² *Attorney-General of the Federation v. Dion Kendrick Lee*, FHC/L/465C/2011

²¹³ *Attorney-General of the Federation v. Emmanuel Ekhatore* FHC/L/1C/2011

²¹⁴ *Attorney-General of the Federation v. Rasheed Abayomi Mustapha*, FHC/L/218C/2011

a period of 15 days starting from the day the extradition order was made or where s/he applied for a writ of habeas corpus and it is issued, until the court has given its decision on the writ.²¹⁵ Thus a period of 15 days must lapse before the fugitive is surrendered. Judicial decisions that ordered or permitted the surrender of a fugitive before the expiration of 15 days were given *per incuriam*.

3.9. Application by the Fugitive to Be Discharged After Failure to Comply with Time Limit

A fugitive must be served with a copy of any warrant under which s/he was arrested within 48 hours after arrest. Failure to serve the warrant of arrest entitles the arrested fugitive to apply to the court so as to be discharged.²¹⁶ The fugitive may also apply to the court for an order discharging him or her, if s/he is not brought before the court within 48 hours of being arrested or for such longer period as the court may have allowed.²¹⁷ Where there is failure of the Attorney-General of the Federation to file an application for extradition of the fugitive within 30 days of being remanded under a provisional warrant of arrest pursuant to section 8(6) of the Act, the fugitive may apply to the Court to be discharged.²¹⁸ Finally, in accordance with section 12 of the Act, failure to issue a surrender order is a ground upon which the fugitive may apply to be discharged.²¹⁹

The application for discharge by the fugitive shall be in writing, stating the grounds for the application and a written address on point of law.²²⁰ The application shall then be set-down for hearing within 5 days of the filling of same.²²¹

3.10. Withdrawal of Extradition Request

The court will exercise its powers to discharge a fugitive where the applicant files a notice that the extradition request has been withdrawn after the commencement of the preliminary hearing or before the conclusion of the extradition hearing.²²²

²¹⁵ Section 10 (1) Extradition Act

²¹⁶ Order XIII Rule 1(a) Extradition Proceedings Rules 2015.

²¹⁷ Order XIII Rule 1(b) Extradition Proceedings Rules 2015.

²¹⁸ Order XIII Rule 1(c) Extradition Proceedings Rules 2015.

²¹⁹ Order XIII Rule 1(d) Extradition Proceedings Rules 2015.

²²⁰ Order XIII Rule 2 Extradition Proceedings Rules 2015.

²²¹ Order XIII Rule 3 Extradition Proceedings Rules 2015.

²²² Order XII Extradition Proceedings Rules 2015.

3.11. Mandatory Grounds for Refusal

The Extradition Act sets out about ten grounds or conditions upon which an extradition application will not be granted in Nigeria. Where the alleged fugitive establishes any of the stated grounds or conditions, then the extradition request against him must fail.

First, the extradition request will be refused where the offence is of a political character.²²³

Second, it will be rejected where the request for surrender, although purporting to be made in respect of an extradition crime, was in fact made for the purpose of prosecuting or punishing the fugitive on account of his race, religion, nationality or political opinions or was otherwise not made in good faith or in the interest of justice.²²⁴

Third, it will be rejected in circumstances in which the fugitive 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 opinions²²⁵ In *Attorney-General of the Federation v. Jeffrey Okafor*,²²⁶ in granting the application to extradite the Respondent to the United Kingdom, the Court directed itself that the Respondent would be accorded fair trial if extradited to the United Kingdom to face his trial in relation to the indictments which formed the basis of the extradition application.

Fourth, it will be rejected where by reason of the trivial nature of the offence for which his surrender is sought 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.²²⁷ In *George Udeozor v. Federal Republic of Nigeria*,²²⁸ the Court of Appeal held that; The essence of the provision in section 20(1) of the Act, for a minimum sentence of two years is to ensure that a fugitive is not surrendered on a trivial offence.

²²³ Section 3(1) Extradition Act.

²²⁴ Section 3(2) (a) Extradition Act.

²²⁵ Section 3(2) (b) Extradition Act.

²²⁶ *Attorney-General of the Federation v. Jeffrey Okafor* Charge No: FHC/ABJ/CR/180/2014.

²²⁷ Section 3(3) (a) Extradition Act.

²²⁸ *supra*.

Fifth the extradition application will be refused if 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 offender.²²⁹

Sixth if s/he has already been tried, convicted and served the sentence for the offence for which his surrender is sought, the extradition application, for the purpose of serving the same sentence again, will be rejected.²³⁰

Seventh, if s/he has already been acquitted of the offence for which his surrender is sought, the extradition application, for the purpose of being tried for the same offence again, will be rejected.²³¹ Eighth, the request will be refused if it is established that criminal proceedings for the offence for which his surrender is sought are pending against the fugitive in Nigeria.²³² In *Attorney-General of the Federation v. Olaniyi Jones*,²³³ it was held that an extradition request will be rejected by the Court if criminal proceedings are pending against the alleged fugitive on the offence for which his surrender is sought.²³⁴ Therefore, prior to commencing extradition proceedings, the Attorney-General's office must discontinue criminal proceedings against the alleged fugitive on the crimes for which extradition is sought. In the case of *Olaniyi Jones*, the Court found that it was only after the Attorney-General's office had commenced extradition proceedings that criminal proceedings relating to the matter were discontinued against the Respondent.²³⁵ The court held that the Attorney-General's office had contravened section 3(5) of the Extradition Act. The court held that this contravention affected the competence of the totality of the extradition application. The extradition application was therefore rejected.²³⁶

Ninth, the extradition application will be rejected where the fugitive criminal has been charged with an offence, under Nigerian law, other than the offence

²²⁹ Section 3(3) (b) Extradition Act.

²³⁰ Section 3(4) (a) Extradition Act.

²³¹ Section 3(4) (b) Extradition Act.

²³² Section 3(5) Extradition Act.

²³³ Attorney General of the Federation v. Olaniyi Jones Charge No: FHC/L/12c/12

²³⁴ Extradition Act, 1966 Section 3(5).

²³⁵ Attorney General of the Federation v. Olaniyi Jones Charge No: FHC/L/12c/12 p. 16.

²³⁶ *ibid.*

for which his surrender is sought, but has neither been discharged nor acquitted of the charge.²³⁷

Tenth, the court will refuse the extradition application where the fugitive is serving a sentence imposed by a court in Nigeria in respect of an offence other than the offence for which his surrender is sought, unless his punishment has been served or otherwise terminated.²³⁸

3.12. Bail Pending Extradition

By virtue of section 8(5) of the Extradition Act, the alleged fugitive can be released on bail following provisional arrest. However, the bail is not automatic and the detained person will have to convince the court that s/he has satisfied the conditions of the grant of bail in criminal matters. In *Federal Republic of Nigeria v. Mr Olugbeniga Adebisi*,²³⁹ the Respondent in his bail application stated that he had been in detention for more than a year before the commencement of extradition proceedings. Despite the long period of detention, the court refused to grant bail pending extradition because the court was not satisfied that the circumstances supported the grant of bail pending extradition. In particular, the court considered the criminal records of the Respondent in the USA and China. In opposing the bail application, the counsel from the Central Authority Unit (CAU)²⁴⁰ presented affidavit evidence that the Respondent absconded to China from the USA after allegedly committing crimes in the USA. He subsequently committed offences in China and was tried, convicted and sentenced to prison in China.

It is also apparent from the case of *Attorney-General of the Federation v. Kingsley Edegbe (No. 2)*,²⁴¹ that bail is not automatic and the applicant will have to satisfy the established legal requirements for the grant of bail in criminal cases. In *Attorney General of the Federation v Emmanuel Ekhatior*,²⁴² the Respondent was detained for a period in excess of the statutory period. The court held that the Attorney-General did not furnish “cogent, concrete or convincing reasons” as to why the alleged fugitive was kept in custody for such a long period of time. The extradition request was granted and the

²³⁷ Section 3(6) (a) Extradition Act.

²³⁸ Section 3(6) (b) Extradition Act.

²³⁹ *Federal Republic of Nigeria v. Mr Olugbeniga Adebisi* Suit No. FHC/L/229C/2008.

²⁴⁰ The administrative and prosecutorial procedures are conducted by the Central Authority Unit (CAU). The CAU is vested in the Attorney-General of the Federation.

²⁴¹ *Attorney-General of the Federation v. Kingsley Edegbe (No2)* Suit No: FHC/ABJ/CS/907/2013.

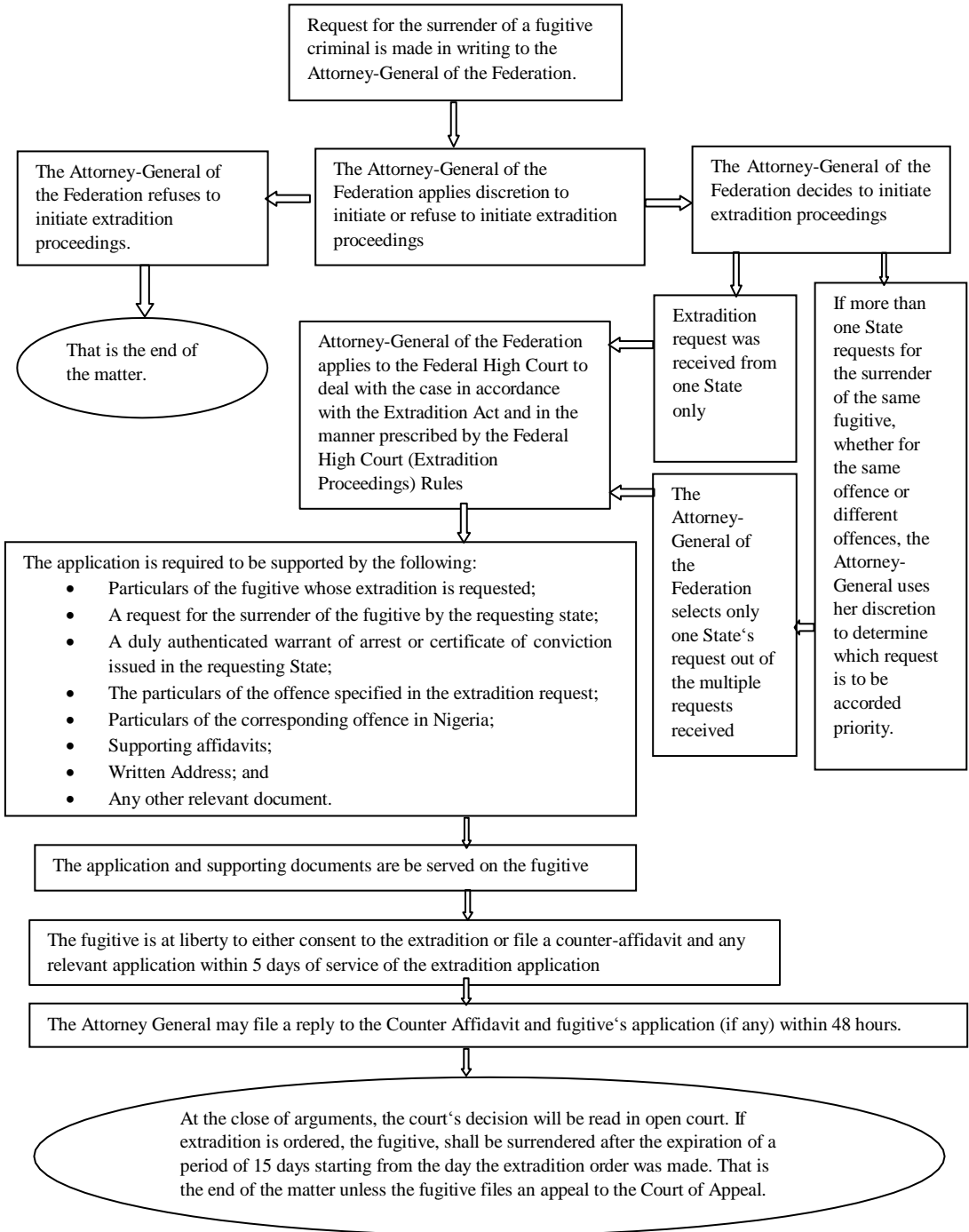
²⁴² *Attorney General of the Federation v. Emmanuel Ekhatior* Suit No: FHC/L/1C/2011.

order was made for the alleged fugitive to be extradited to the USA. Nevertheless, in view of the extra-statutory detention, the court awarded the sum of three million Naira in favour of the alleged fugitive, as compensation. The Court in *Attorney-General of the Federation v. Olaniyi Jones*,²⁴³ emphasised that a fugitive detained for more than two months is “entitled to the remedy of a discharge.”²⁴⁴

²⁴³ *Attorney General of the Federation v. Olaniyi Jones* Charge No: FHC/L/12c/12 p. 17.

²⁴⁴ *ibid* p. 17

3.13. Extradition Procedure Chart



CHAPTER 4

Non-Extradition Treaty Arrangements

Apart from the rendition by means of extradition treaties, there are other forms by which a fugitive may be returned to a requesting State. A fugitive whose visa has expired may be deported, a diplomatic agent may be declared persona non grata or the requesting State may be assisted under some other non-treaty arrangement. In addition, extradition provisions may be contained in treaties which are not specifically designated as extradition treaties.

4.1. Mutual Assistance Arrangements

Mutual Assistance Arrangements are not necessarily related to extradition although they may serve as rendition tools. These arrangements may cover issues such as service of documents, examinations of witness, production of judicial or official records, tracing the proceeds of criminal activities, search of places, persons and objects, seizure of proceeds and tools of crimes, assistance in obtaining evidence as well as confirmation and enforcement of orders for forfeiture of the proceed of criminal activity.

4.2. Tangential Extradition Provisions

Nigeria is signatory to a number of multilateral treaties arrangements which provide deal with other matters but also contain provisions relating to extradition. Some of these international agreements are the United Nations Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988;²⁴⁵ United Nations Convention Against Transnational Organised Crime and Protocol Thereto;²⁴⁶ United Nations Convention

²⁴⁵ Article 6 (2) and (3) United Nations Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 provide that the offences created by the convention are to be deemed as included in bilateral extradition treaties between parties to the convention. Consequently, where there is no bilateral extradition treaty between Nigeria and another state party, Nigeria and that party are obliged to create mutual extradition obligations in respect of the offences under the Convention.

²⁴⁶ Article 16 (3) and (5) (a) United Nations Convention Against Transnational Organised Crime and Protocol Thereto. The offences created by the convention are required to be deemed as included in bilateral extradition treaties between parties to the convention. Nigeria is a party to the convention. As a consequence of being s party to the convention, where there is no bilateral extradition treaty between Nigeria and another state party, Nigeria and that party are obliged to create mutual extradition obligations in respect of the offences under the convention.

Against Corruption;²⁴⁷ African Union Convention on Preventing and Combating Corruption²⁴⁸ The applications of these multilateral treaties of mutual cooperation has been a subject of divergent judicial interpretation by Nigeria courts opening the debate on the conflict of supremacy between international law and municipal law. In *Attorney General of the Federation v. Kinglsey Edegbe*,²⁴⁹ an application was made for the extradition of the respondent before the Federal High Court Abuja upon a request by the Authorities of the Netherland in relation to offence of traffic in human persons. The Applicant contented that even though there is no existing bilateral extradition treaty between Nigeria and the Netherland, the offences for which the surrender of the respondent is sought, is provided for by the United Nations Convention Against Transnational Organised Crimes and its Protocol which Nigeria has ratified and that such forms the legal basis for the extradition request. In refusing the grant of the extradition request the court held that an extradition agreement must be domesticated pursuant to section 12 (1) of 1999 Constitution and section 1 (1) Extradition Act before the extradition provisions of the treaty can be implemented in Nigeria.

Section 12(1) 1999 Constitution provides that

No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly

A literal reading of section 12(1) of the 1999 Constitution suggests that the purpose of the provision is to ensure that a treaty does not become binding on Nigeria until the National Assembly domesticates it by passing an Act making the treaty a Nigerian legislation. Notable examples of Treaties enacted into Nigerian Law are Geneva Conventions of 1949 which have been enacted into the Geneva Conventions Act, and African Charter of Human and

²⁴⁷ Article 44 (4), (5), (6) United Nations Convention Against Corruption provide that offences created by this convention are required to be deemed as included in bilateral extradition treaties between parties to the Convention, including Nigeria. Therefore, where there is no bilateral extradition treaty between Nigeria and another state party, Nigeria and that party are obliged to create mutual extradition obligations in respect of the offences under Convention.

²⁴⁸ Article 15 (2), (3) African Union Convention on Preventing and Combating Corruption that the convention provides the basis for mutual cooperation among members of the African Union's fight against Corruption. Offences under the Convention are deemed to be included in The domestic laws and bilateral extradition treaties of all state parties. Parties are enjoined to grant to each other extradition request in relations to offences under the Convention where no bilateral treaties exist.

²⁴⁹ Suit No. FHC/ABJ/CS/907/2013.

Peoples' Right Act.

It is a well-established doctrine that the Constitution is the supreme source of law in the Nigerian legal system. This position is emphasised by section 1 of the 1999 Constitution which provides that the Constitution is supreme; its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria, and that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall not only prevail, but that other law shall be void to the extent of the inconsistency.

However, treaties which are the subject matter of section 12(1) the 1999 Constitution are governed by international law. As indicated in Article 2(1)(a) of the Vienna Convention on the Law of Treaties (VCLT) a treaty is “an international agreement concluded between States in a written form and governed by international law whether embodied in a single instrument or two or more related instruments, and whatever its particular designation.” In practice, the International Court of Justice (ICJ) will not allow a State to rely on its own municipal laws including its constitution in order to avoid treaty obligations. This was demonstrated in the *Land and Maritime Boundary between Cameroon and Nigeria* case.²⁵⁰ There the ICJ stated that “there is no general legal obligation for states to keep themselves informed of legislative and constitutional developments in other states which are or may become important for the international relations of these states”. Thus any State entering into a treaty with Nigeria is not automatically taken as being aware of section 12 (1) 1999 Constitution. Furthermore, Article 27 VCLT provides that a “party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” In effect, Nigeria is not permitted to refuse to perform treaty obligations by invoking section 12 (1) 1999 Constitution.

In all events, Nigeria is obliged to take steps to make the extradition provisions (and other provisions) of a treaty implementable in Nigeria. For this to be, the President has to make order pursuant to section 1 (1) of the Extradition Act. This order will make the extradition provisions of the treaty applicable in Nigeria. It would appear that this order incorporates the extradition provisions of the treaty into the Extradition Act.

²⁵⁰ <http://www.icj-cij.org/docket/> (last visited on 17/07/16)

The decision in the *Kingsley Edegbe*²⁵¹ case is therefore not authority for the proposition that an undomesticated treaty is not in force as a source of international obligations for Nigeria. Indeed, such a treaty will not only be in force against Nigeria but Nigeria shall also have state responsibility in relation to the treaty. However, following the decision in the *Kingsley Edegbe* case, a treaty entered into by Nigeria will be justiciable as a basis for extradition in Nigerian Courts only after the relevant order has been made by the President pursuant to the Extradition Act.

4.3. Transfer of Prisoners Procedure

Whether or not an extradition treaty is in place between two States, they may enter into an international agreement by which prisoners convicted of criminal offences are transferred to their country of citizenship to serve out their prison terms. These arrangements may be multilateral as demonstrated by the Scheme for the Transfer of Convicted Offenders within the Commonwealth which is open to all Commonwealth countries who accept to use it as a basis for the transfer of sentenced persons. Nigeria is a signatory to this scheme. The prisoner transfer procedure may also be bilateral as seen in the 2014 agreement between Nigeria and the United Kingdom for the transfer of prisoners.

4.4. The Role of Interpol

Interpol as an international crime prevention police force has played a major role in the apprehension of international wanted fugitives. Extradition involves the apprehension of persons who might not be easily identified by domestic police of the state in which their arrest is sought hence, the need for collaboration with Interpol. Indeed, one of the principal roles of Interpol is to ensure and promote the widest possible mutual assistance between all national police authorities within the limit of the law existing in the different countries.²⁵²

Interpol through its alert system issues international arrest warrants for the apprehension of fugitive criminals on behalf of a requesting State. Interpol Notices are international requests for cooperation or alerts allowing police in member countries to share critical crime-related information. The Red Notice

²⁵¹ Attorney General of the Federation v. Kingsley Edegbe, Suit No. FHC/ABJ/CS/907/2013

²⁵² Article 2, Interpol Constitution 1956.

indicates that the persons concerned are wanted by national jurisdictions for prosecution or to serve a sentence based on an arrest warrant or court decision. The fugitive in the case of *Federal Republic of Nigeria v. Mr. Olugbeniga Adebisi* was arrested by Interpol on his way to Nigeria after escaping from the United States of America to China.²⁵³

²⁵³ Federal Republic of Nigeria v. Mr. Olugbeniga Adebisi Suit No. FHC/L/229C/2008 p. 9.

APPENDIX I

DOMESTIC INSTRUMENTS, ORDERS, POLICY DOCUMENTS, AND RULES

APPENDIX I: DOMESTIC INSTRUMENTS, ORDERS, POLICY DOCUMENTS AND RULES

The municipal instruments and laws relating to extradition fall into four distinct categories. The first category consists of legislative instruments that are made by or deemed to be made by the National Assembly. The second category consists of orders or proclamations made by the executive arm of the Federal Government. The third consists of rules and practice direction made by the judiciary. Policy documents issued by governmental Ministries, Departments and Agencies are in the fourth category. These instruments are reproduced below.

1. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

Legislative Powers

4. (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

Exclusive Legislative List

Item: 27. Extradition

Jurisdiction of Federal High Court

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

...

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

2. EXTRADITION ACT NO. 87 OF 1966

ARRANGEMENT OF SECTIONS

Application of Act

1. Power to apply Act by order.
2. Application of Act to Commonwealth countries.

Restrictions on surrender of fugitives

3. Restrictions on surrender of fugitives.
4. Offences under military law.

Surrender of fugitives

5. Liability of fugitives to surrender.
6. Requests for surrender, and powers of Attorney-General thereon.
7. Power of magistrate to issue warrant on receipt of order under section 6.
8. Power of magistrate to issue provisional warrant.
9. Hearing of case by magistrate and committal or discharge of prisoner.
10. Surrender of fugitive in due course after committal.
11. Postponement of surrender of fugitives.
12. Discharge of fugitive if not removed from Nigeria within limited time.
13. Seizure and surrender of property.
14. General power of Attorney-General to order release of fugitive.
15. Fugitive surrendered to Nigeria not triable for previous crimes.
16. Transit of surrendered fugitives through Nigeria.

Evidence

17. Duly authenticated documents to be received in evidence.

18. Taking of evidence in Nigeria for use abroad.

General

19. Forms.
20. Returnable offences.
21. Interpretation.
22. Saving for proceedings begun before commencement of Act.
23. Short title.

SCHEDULES

FIRST SCHEDULE

Countries in respect of which orders under section 1 are in force

SECOND SCHEDULE

Forms for use for the purposes of this Act

EXTRADITION ACT

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.

[1966 No. 87.]

[31st January, 1967]

[Commencement. L.N. 28 of 1967.]

Application of Act

1. Power to Apply Act by Order

- (1) Where a treaty or other agreement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment, the President may by order published in the Federal Gazette apply this Act to that country.
- (2) An order under subsection (1) of this section shall recite or embody the terms of the extradition agreement, and may apply this Act to the country in question subject to such conditions, exceptions and qualifications as may be specified in the order.
- (3) While an order under subsection (1) of this section is in force in respect of any country, this Act shall apply to that country subject to the provisions of the order and to the terms of the extradition agreement as recited or embodied therein.
- (4) The power to vary an order made under subsection (1) of this section shall include power, where the terms of the relevant extradition agreement have been varied, to amend so much of the order as recites or embodies those terms; and if an extradition agreement to which an order relates is determined, or otherwise ceases to have effect, the President shall forthwith revoke the order.
- (5) Every order made under subsection (1) of this section, which applies this Act to any country, shall include a provision inserting in the First Schedule of this Act, an entry consisting of the name of that country and the year and number of the Legal Notice containing the order; and where any such order is varied or revoked, the varying or revoking order shall include a provision amplifying or

deleting the relevant entry in that Schedule, as the case may require.

[First Schedule.]

- (6) An order under this section, applying this Act to a country with which an extradition agreement is in force on the date on which this Act is made, may be made at any time after that date, but shall not come into force before the commencement of this Act.

2. Application of Act to Commonwealth Countries

- (1) Subject to the provisions of this section, this Act shall apply to every separate country within the Commonwealth.
- (2) For the purposes of this Act, each of the following areas shall be treated as constituting a separate country within the Commonwealth, that is to say-
 - (a) each sovereign and independent country within the Commonwealth together with such (if any) of that country's dependent territories, as the President may by order published in the Federal Gazette designate as forming part of that country for the purposes of this Act; and
 - (b) each country within the Commonwealth which, not being sovereign and independent, is not a territory for the time being designated under paragraph (a) of this subsection as forming part of some other country for the purposes of this Act.
- (3) An order under subsection (2) (a) of this section designating a Dependent territory as forming part of a sovereign and independent Country shall be made if, but only if, that country has signified to the Federal Government that it desires that territory to be so designated for the purposes of this Act.
- (4) If it appears to the President that the law of a country to which this Act applies by virtue of subsection (1) of this section no longer contains provisions substantially equivalent to the provisions of this Act, as it applies to countries within the Commonwealth, the President may by order published in the Federal Gazette direct that this Act shall apply in relation to that country with such modifications (whether by way of addition, alteration or omission) as may be specified in the order; and where an order under this subsection is in force with respect to any country, this Act shall have effect in relation to that country with the modifications specified in the order.

- (5) In the case of a country to which this Act applies by virtue of subsection (1) of this section, that fact shall not prevent an order from being made under section 1 (1) of this Act in respect of that country if an extradition agreement is made with that country, and on the coming into force of an order under section 1 (1) of this Act in respect of such a country, this section shall cease to apply to that country and any order made under subsection (4) of this section in respect of that country, shall cease to have effect.

3. Restrictions on Surrender of Fugitives

- (1) A fugitive criminal shall not be surrendered 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.
- (2) A fugitive criminal shall not be surrendered if it appears to the Attorney-General or a court dealing with the case-
- (a) 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; or
 - (b) 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,
- (3) A fugitive criminal shall not be surrendered if the Attorney- General or A court dealing with the case is satisfied that, by reason of-
- (a) the trivial nature of the offence for which his surrender is sought; or
 - (b) 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.
- (4) A fugitive criminal shall not be surrendered if the Attorney- General or a court dealing with the case is satisfied that, whether in Nigeria or elsewhere, he-
- (a) has been convicted often 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.
- (5) 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.
- (6) 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 time as he has been discharged whether by acquittal or on the expiration of his sentence, or otherwise.
- (7) 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 in that country for any offence committed before his surrender other than any extradition offence which may be proved by the facts on which his surrender is granted.
- (8) A fugitive criminal shall not be surrendered until the expiration of the period of fifteen days beginning with the day on which he is committed to prison to await his surrender.
- (9) In this section, “a court dealing with the case” in relation to a fugitive criminal, means any magistrate dealing with the fugitive’s case in pursuance of section 8 of this Act or any court before which the fugitive is brought on or by virtue of an application made by him or on his behalf for a writ of habeas corpus.

4. Offences under Military Law

- (1) A fugitive criminal may be surrendered notwithstanding that the Attorney-General or a court dealing with the case is satisfied that the offence constitutes an offence only under military law or law relating only to military obligations.
- (2) In this section, a court dealing with the case “in relation to a fugitive criminal” means any magistrate dealing with the fugitive’s case in pursuance of section 8 of this Act or any court before which

the fugitive is brought on or by virtue of an application made by him or on his behalf for a writ of habeas corpus.

5. Liability of Fugitives to Surrender

Every fugitive criminal of a country to which this Act applies shall, Subject to the provisions of this Act, be liable to be arrested and surrendered in the manner provided by this Act, whether the offence in respect of which his surrender is sought was committed before or after the commencement of this Act or the application of this Act to that country, and whether or not there is concurrent jurisdiction in any court in Nigeria over that offence.

6. Requests for Surrender, and Powers of Attorney-General Thereon

- (1) A request for the surrender of a fugitive criminal of any country shall 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.
- (2) Where such a request is made to him, the Attorney-General may by an order under his hand signify to a magistrate that such a request has been made and require the magistrate to deal with the case in accordance with the provisions of this Act, but shall not make such an order if he decides on the basis of information then available to him that the surrender of the fugitive criminal is precluded by any of the provisions of subsections (1) to (7) of section 3 of this Act.
- (3) Except in so far as an extradition agreement in force between Nigeria and the requesting country otherwise provides, the Attorney-General may refuse to make an order under this section in respect of any fugitive criminal who is a citizen of Nigeria.
- (4) If the surrender of the same fugitive criminal is requested in accordance with this section by more than one country, whether for the same offence or different offences, the Attorney-General shall determine which 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 the circumstances of the case, and in 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.

7. Power of Magistrate to Issue Warrant on Receipt of Order under Section 6

- (1) A warrant for the arrest of a fugitive criminal, whether accused of or unlawfully at large after conviction of an extradition offence, may be issued by a magistrate on receipt of an order of the Attorney-General under section 6 of this Act relating to the fugitive, if such evidence is produced as would in the opinion of the magistrate justify the issue of the warrant if the offence in question had been committed in Nigeria or the fugitive had been convicted of it in Nigeria.
- (2) A warrant issued under this section may be executed anywhere in Nigeria.
- (3) A fugitive criminal arrested on a warrant issued under this section shall be brought before a magistrate as soon as is practicable after he is so arrested.

8. Power of Magistrate to Issue Provisional Warrant

- (1) A provisional warrant for the arrest of a fugitive criminal, whether accused of or unlawfully at large after conviction of an extradition offence, may be issued by a magistrate without any order of the Attorney-General under section 6 of this Act, if such information and evidence is produced as would, in the opinion of the magistrate, justify the issue of a warrant for the arrest of the fugitive, if the offence in question had been committed in the district or division in which he has jurisdiction or the fugitive had been convicted of the offence there.
- (2) A provisional warrant may be issued under this section in respect of a person who is, or is suspected of being, on his way to Nigeria, in any case where such a warrant could be issued if he were, or were suspected to be, in Nigeria; and references in this section to a fugitive criminal shall be construed accordingly.
- (3) A magistrate issuing a provisional warrant under this section shall forthwith send to the Attorney-General a report of the fact, together with the information and evidence on which he acted or certified copies thereof, and on receipt of the report the Attorney-General may, if he thinks fit, order the warrant to be cancelled and the fugitive criminal, if already arrested, to be released.

- (4) A provisional warrant issued under this section may be executed anywhere in Nigeria.
- (5) A fugitive criminal arrested on a provisional warrant issued under this section shall be brought before a magistrate as soon as is practicable after he is so arrested, and the magistrate-
 - (a) shall remand him, either in custody or on bail, pending receipt from the Attorney- General of an order under section 6 of this Act signifying that a request for his surrender has been received, or an order under subsection (3) of this section for the cancellation of the warrant and the release of the fugitive; and
 - (b) shall forthwith inform the Attorney-General of the fact that the fugitive has been arrested and remanded as aforesaid, and for the purposes of paragraph (a) of this subsection, the magistrate shall have the same powers of remand as if the fugitive were brought before him charged with an offence committed within his jurisdiction.
- (6) Without prejudice to section 14 of this Act, if within the period of thirty days beginning with the day on which he was arrested, no such order as is mentioned in subsection (5) (a) of this section is received from the Attorney-General, the fugitive criminal shall be released at the end of that period.
- (7) The release of any person under subsection (3) or (6) of this section shall not prejudice his subsequent arrest and surrender if a request for his surrender is afterwards made.

9. Hearing of Case by Magistrate and Committal or Discharge of Prisoner

- (1) When a fugitive criminal is brought before a magistrate on a warrant under section 7 of this Act, or when, in the case of a fugitive criminal brought before a magistrate on a provisional warrant under section 8 of this Act and remanded in pursuance of subsection (5) of the said section 8, an order of the Attorney-General under section 6 of this Act relating to that fugitive is received, the magistrate shall proceed with the case in the same manner, as near as may be, and shall have the same jurisdiction and powers, as if the fugitive were brought before him charged with an offence committed within his jurisdiction.

- (2) The magistrate shall receive any evidence which may be tendered to show that the offence of which the fugitive criminal is accused or alleged to have been convicted is not an extradition offence or that the surrender of the fugitive is for some other reason precluded by this Act or by the extradition agreement (if any) in force between Nigeria and the country seeking his surrender.
- (3) In the case of a fugitive criminal accused of an offence claimed to be an extradition offence, if there is produced to the magistrate, a warrant issued outside Nigeria authorising the arrest of the fugitive, and the magistrate is satisfied-
 - (a) that the warrant was issued in a country to which this Act applies, is duly authenticated, and relates to the prisoner;
 - (b) that the offence of which the fugitive is accused is an extradition offence in relation to that country;
 - (c) that the evidence produced would, according to the law of Nigeria, justify the committal of the prisoner for trial if the offence of which he is accused had been committed in Nigeria; and
 - (d) that the surrender of the fugitive is not precluded by this Act (and in particular by any of subsections (1) to (6) of section 3 thereof) and, where the country requesting the surrender of the fugitive is one to which this Act applies by virtue of an order under section 1 of this Act, is also not prohibited by the terms of the extradition agreement as recited or embodied in the order, the magistrate shall, subject to subsection (5) of this section, commit the fugitive to prison to await the order of the Attorney-General for his surrender.
- (4) In the case of a fugitive criminal alleged to be unlawfully at large after conviction of an offence claimed to be an extradition offence, if there is produced to the magistrate a certificate of the fugitive's conviction of that offence, and the magistrate is satisfied-
 - (a) that the certificate of conviction records a conviction in a country to which this Act applies, is duly authenticated and relates to the prisoner;
 - (b) that the offence of which the fugitive is stated to have been convicted is an extradition offence in relation to that country; and
 - (c) that the surrender of the fugitive is not precluded by this Act (and in particular by any of subsections (1) to (6) of section 3 of this Act and,

where the country requesting the surrender of the fugitive is one to which this Act applies by virtue of an order under section 1 of this Act, is also not prohibited by the terms of the extradition agreement as recited or embodied in the order, the magistrate shall, subject to subsection (5) of this section, commit the fugitive to prison to await the order of the Attorney- General for his surrender.

- (5) If, on committing a fugitive criminal to prison under subsection (3) or (4) of this section, the magistrate is of the opinion that it would be dangerous to the life or prejudicial to the health of the fugitive to remove him from prison, he may order him to be detained in custody in any place named in the order instead of in prison, and while so detained the fugitive shall be deemed to be in legal custody.
- (6) On committing a fugitive criminal to prison under this section the magistrate shall-
 - (a) inform the fugitive that he will not be surrendered until after the expiration of fifteen days beginning with the day on which he is so committed, and that he has a right to apply for writ of habeas corpus; and
 - (b) forthwith send to the Attorney-General a certificate of the committal and such report on the case as the magistrate thinks fit.
- (7) Where the circumstances are not such as to require the magistrate to commit the prisoner to prison under the provisions of subsections (3), (4), (5) and (6) of this section, the magistrate shall order the prisoner to be discharged.

10. Surrender of Fugitive in Due Course After Committal

- (1) A fugitive criminal committed to prison under section 9 of this Act, shall not be surrendered before the expiration of fifteen days beginning with the day on which he is so committed or, if a writ of habeas corpus has been issued, until the court has given its decision on the return to the writ, whichever is the later.
- (2) Subject to the provisions of subsection (1) of this section and, where a writ of habeas corpus has been issued, if the fugitive criminal is not discharged by the decision of the court on the return to the writ, the Attorney- General, unless it appears to him that the surrender of the fugitive is precluded by law, may by order direct the fugitive to be surrendered to any person authorized by the country requesting the

surrender to receive him, and the criminal shall be surrendered accordingly.

- (3) Any person to whom an order under subsection (2) of this section directs a fugitive criminal to be surrendered may receive, hold in custody and convey out of Nigeria the person surrendered to him in pursuance of the order, and if the person so surrendered escapes from any custody to which he has been delivered in pursuance of the order, he shall be liable to be retaken in the same manner as any person who escapes from lawful custody.

11. Postponement of Surrender of Fugitives

- (1) Subject to subsection (2) of this section, where a fugitive criminal-
 - (a) has been charged with an offence triable before any court in Nigeria; or
 - (b) is serving a sentence imposed by any court in Nigeria,

then, until such time as he has been discharged (whether by acquittal, the expiration or remission of his sentence or otherwise howsoever) he shall not be surrendered except as permitted by any law in force in Nigeria.

- (2) Subject to the provisions of this Act, a prisoner serving such sentence as is referred to in subsection (1) (b) of this section, may at the discretion of the President, be returned temporarily to another country within the Commonwealth in which he is accused of a returnable offence to enable proceedings to be brought against the prisoner in relation to that offence, on such condition as may be agreed between the President and that country requesting the surrender of the prisoner.

12. Discharge of Fugitive if not Removed from Nigeria within Limited Time

If a fugitive criminal who has been committed to prison under section 9 of this Act is not surrendered and conveyed out of Nigeria within two months beginning with the day on which he is so committed or, if a writ of habeas corpus has been issued, within two months beginning with the day on which the court gives its decision on the return to the writ, whichever is the later, the High Court of the territory in which he is, may, on application made by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make the application has been given to the Attorney-General, order the fugitive to be discharged from custody.

13. Seizure and Surrender of Property

- (1) A police officer who on a warrant under section 7 of this Act or provisional warrant under section 8 of this Act arrests a fugitive criminal accused of an extradition offence, may seize and detain any property found in the possession of the fugitive at the time of the arrest which appears to him to be reasonably required as evidence for the purpose of proving that the fugitive committed the offence of which he is accused.
- (2) Any property seized under subsection (1) of this section shall, if an order for the surrender of the fugitive is made under section 10 (2) of this Act, be handed over to such person as the Attorney-General may direct, being a person who in his opinion is duly authorised by the country obtaining the surrender to receive it.
- (3) Nothing in this section shall prejudice any rights which any person may have in any property which falls to be handed over under this section; and where any such rights exist, the property shall not be handed over under this section except on condition that the country obtaining the surrender of the fugitive criminal in question shall return it as soon as may be after the trial of the fugitive.

14. General Power of Attorney-General to Order Release of Fugitive

If it appears to the Attorney-General at any time, in the case of any fugitive criminal who is on remand or awaiting his surrender under this Act-

- (a) that his surrender is precluded by this Act or by the extradition agreement (if any) in force between Nigeria and the country seeking his surrender; or
- (b) that a request for his surrender is not forthcoming or, where such a request has been made, that it is not being proceeded with, the Attorney-General may order all proceedings for the surrender of that fugitive to the country in question to be discontinued and the fugitive, if in custody, to be released.

15. Fugitive Surrendered to Nigeria not Triable for Previous Crimes

Where, in accordance with the law of any county within the Commonwealth or in pursuance of an extradition agreement between Nigeria and another country (whether within the Commonwealth or not), any person accused of or unlawfully at large after conviction of an offence committed within the jurisdiction of Nigeria is surrendered to Nigeria by the county in question,

then, so long as he has not had a reasonable opportunity of returning to that country, that person shall not be detained (whether under this Act or otherwise), tried or otherwise dealt with in Nigeria for or in respect of an offence committed by him before his surrender to Nigeria other than-

- (a) the offence for which he was surrendered or any lesser offence which may be proved by the facts on which his surrender was granted; or
- (b) any other offence (being one corresponding to an offence described in section 20 of this Act) of the same nature as the offence for which he was surrendered:

Provided that a person falling within this section shall not be detained or tried for an offence by virtue of paragraph (b) of this section without the prior consent of the country surrendering him.

16. Transit of Surrendered Fugitives through Nigeria

(1) Transit through Nigeria of a person being or about to be conveyed from one country to another on his surrender pursuant to-

- (a) a treaty or other agreement in the nature of an extradition agreement, whether or not Nigeria is a party thereto; or
- (b) the law of any country within the Commonwealth relating to the surrender of persons wanted for prosecution or punishment, may, subject to the provisions of any relevant extradition agreement and to such conditions, if any, as the Attorney-General thinks fit, be granted by the Attorney-General upon a request to that effect made by the country to which he is being or is about to be conveyed.

(2) The Attorney-General on granting transit of any person under this section may make arrangements for his transit to be supervised by the Nigeria Police Force; and where such arrangements have been made, the person in transit shall be treated as being in lawful custody so long as he is accompanied by a member of that force, and if he escapes, shall be liable to be retaken accordingly.

Evidence

17. Duly Authenticated Documents to be Received in Evidence

(1) In any proceedings under this Act, any of the following documents, if duly authenticated, shall be received in evidence without further proof, namely-

- (a) any warrant issued in a country other than Nigeria;
 - (b) any deposition or statement on oath or affirmation taken in any such country, or a copy of any such deposition or statement;
 - (c) any certificate of conviction issued in any such country.
- (2) For the purposes of this Act, any such document as is mentioned In subsection (1) of this section shall be taken to be duly authenticated-
- (a) if, apart from this section, it is authenticated in any manner for the time being provided by law; or
 - (b) if it complies with the requirements of subsection (3) of this section and is authenticated by the oath or affirmation of some witness or by being sealed with the official seal of a minister of state of the country in which it was issued or taken.
- (3) The requirements of this subsection are as follows-
- (a) a warrant must purport to be signed by a Judge, magistrate or officer of the country in which it was issued;
 - (b) a document such as is mentioned in subsection (1) (b) of this section, must purport to be certified under the hand of a Judge, magistrate or officer of the country in which it was taken to be the original or a copy, as the case may be, of the document in question;
 - (c) a certificate of conviction must purport to be certified by a Judge, magistrate or officer of the country in which the conviction is stated to have taken place.
- (4) For the purposes of this Act judicial notice shall be taken of the official seals of ministers of state of countries other than Nigeria.

18. Taking of Evidence in Nigeria for Use Abroad

The testimony of any witness in Nigeria may be obtained in relation to any criminal matter pending in any court or tribunal in another country in like manner as it may be obtained in relation to any civil matter under any law for the time being in force in any part of Nigeria as regards the taking of evidence there in relation to civil or commercial matters pending before tribunals in other countries:

Provided that this section shall not apply in the case of any criminal matter of a political character.

General

19. Forms

- (1) The forms set out in the Second Schedule to this Act may, with such variations as the circumstances of the particular case may require, be used in the circumstances to which they relate, and when so used shall be good and sufficient in law.

[Second Schedule.]

- (2) The Attorney-General may by order published in the Federal Gazette amend the said Second Schedule.

20. Returnable Offences

- (1) A fugitive criminal may only be returned for a returnable offence offence.
- (2) For the purposes of this Act, a returnable offence is an offence however described, which is punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the Commonwealth country seeking his surrender.
- (3) Offences described in subsection (2) of this section are returnable offences notwithstanding that any such offences are of a purely fiscal nature under the laws of the country seeking the return of the fugitive and punishable as prescribed in subsection (2) of this section.

21. Interpretation

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say-

“Attorney-General” means the Attorney-General of the Federation;

“certificate of conviction” includes any judicial document stating the fact of conviction;

“court” includes a tribunal established by an Act or any other enactment;

“extradition agreement” has the meaning assigned by section 1 of this Act;

“fugitive criminal” or “fugitive” means (without prejudice to section 8 (2) of this Act)-

- (a) any person accused of an extradition offence committed within the jurisdiction of a country other than Nigeria; or
- (b) 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;

“magistrate” means a chief magistrate, a senior magistrate or a magistrate grade I or grade II;

“territory” means a State or the Federal Capital Territory;

“warrant” includes any judicial document authorising the arrest of a person accused or convicted of an offence.

(2) References in this Act to a person being unlawfully at large includes references to a person being at large in breach of a condition of a licence to be at large.

(3) For the purposes of this Act-

- (a) every colony, dependent territory and constituent part of any country to which this Act applies by virtue of section 1 thereof; and
- (b) every vessel and aircraft of any country, whether within the Commonwealth or not, shall be treated as being within the jurisdiction of, and as forming part of, that country.

22. Saving for Proceedings Begun before Commencement of Act

Where, before the commencement of this Act-

- (a) a requisition for the surrender of any person has been made to any authority in Nigeria under the Extradition Acts 1870 to 1935 or the Fugitive Criminals Surrender Act; or [Cap. 73 of 1958 Edition.]
- (b) a warrant for the apprehension of any person has been endorsed in Nigeria under section 3 of the Fugitive Offenders Act 1881, the Acts or Act in question shall, for the purposes of any proceedings arising out of that requisition or warrant, continue to apply as if this Act had not been made, and the person in question shall be liable to be apprehended and surrendered accordingly.

23. Short Title

This Act may be cited as the Extradition Act.

SCHEDULES

FIRST SCHEDULE

[Section 1(5).]

Countries in respect of which orders under section 1 are in force

Country	Legal Notice containing the order
1. Liberia	L.N. 32 of 1967.
2. The United States of America	L. N. 33 of 1967.

SECOND SCHEDULE

[Section 19 (1).]

Forms for use the purposes of this Act

FORM I

[Section 6 (2).]

Form of order of Attorney-General to a magistrate

To the Chief /Senior/Grade I/Grade II magistrate

at.....

WHEREAS, in pursuance of the Extradition Act a request has been made to me by a diplomatic representative/consular officer

of.....for the surrender
of accused
of/unlawfully at large after conviction of the offence of within the
jurisdiction of.....

NOW I,

Attorney-General of the Federation, by this order under my hand, signify to you that this request has been made, and require you to deal with the case in accordance with the provisions of the Extradition Act.

Given under my hand this..... day of.....20.....

.....
Attorney-General of the Federation

FORM II

[Section 7.]

Form of warrant of arrest for issue after receipt of order of Attorney-General

To each and all police officers.

Whereas the Attorney-General of the Federation has by order under his hand signified to me that a request had been made to him for the surrender ofaccused of/unlawfully at large after conviction of the offence ofwithin the jurisdiction of.....
you are therefore hereby commanded to arrest the said.....wherever he may be found in Nigeria and bring him before me or some other magistrate, to show cause why he should not be surrendered in pursuance of the Extradition Act.

Dated this.....day of20

.....
Magistrate

FORM III

[Section 8.]

Form of provisional warrant of arrest

To each and all police officers.

Whereas it has been shown to me

that.....is accused of/unlawfully at large after conviction of the offence ofwithin the jurisdiction of.....

You are therefore hereby commanded to arrest the said..... wherever he may be found in Nigeria and bring him before me or some other magistrate, to be further dealt with in accordance with the provisions of the Extradition Act.

Dated this..... day of..... 20...

.....
Magistrate

FORM IV

Form of warrant of committal

[Section 9.]

Toa
police officer, and to the superintendent of prison
..... having been brought before me
this.....day of.....20.....

to show cause why he should not be surrendered in pursuance of the
Extradition Act on the ground of his being accused of/unlawfully at large
after conviction of the offence of within the jurisdiction
of.....and no sufficient
cause having been shown to me why he should not be surrendered in
pursuance of the said Act:

You, the said police officer, are hereby commanded to convey the
said.....safely to the said prison
and there deliver him to the superintendent thereof, together with this
warrant; and you, the superintendent of the said prison, are hereby
commanded to receive the
said..... into
your custody, and to keep him there until he is delivered thence pursuant to
the provisions of the said Act.

DATED this.....day of.....20.....

.....
Magistrate

SECOND SCHEDULE

FORM V

[Section 10.]

Form of order by Attorney-General for surrender of fugitive criminal

To the superintendent of.....prison,
and toa police
officer.

Whereas..... being
accused of/unlawfully at large after conviction of the offence of.....
.....within the jurisdiction of
..... was
delivered into the custody of you, the superintendent of
.....prison, by warrant
dated..... pursuant to the
Extradition Act:

Now in pursuance of the said Act I hereby order you, the said superintendent,
to deliver the said into the custody of the
said..... a police officer; and I
hereby order you, the said police officer, to receive the
said..... into your custody, and to convey him to
.....and there place him in the custody of any
person or persons authorised by..... to receive him.

DATED this.....day of.....20.....

Attorney-General of the Federation

EXTRADITION ACT
SUBSIDIARY LEGISLATION

3. EXTRADITION ACT MODIFICATION ORDER, 2014

S.I. No. 41 of 2014, published Gazette No. 119 in Vol. 101 of 24 December, 2014

The Constitution of the Federal Republic of Nigeria, 1999 (as amended)
Extradition Act (Modification) Order, 2014

[23rd Day of December, 2014]

In exercise of the powers conferred upon me by virtue of section 315 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and all other powers enabling me in that behalf, I, DR. GOODLUCK EBELE JONATHAN, President of the Federal Republic of Nigeria, hereby make the following Order -

1. The Extradition Act, Cap E25, Laws of the Federation of Nigeria, 2004 (in this Order referred to as the “Principal Act”) is modified as set out in this Order.
2. The following sections of the Principal Act are modified 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 word “judge”.

3. This Order may be cited as the Extradition Act (Modification) Order, 2014.

MADE at Abuja this 23rd day of December, 2014.

DR. GOODLUCK EBELE JONATHAN, GCFRN
President, Federal Republic of Nigeria

EXPLANATORY NOTE

(This Note does not form part of the above Act but is intended to explain its purport)

This Order seeks to modify the Extradition Act, Cap. E25 Laws of the Federation of Nigeria, 2004, to bring the provisions of the Act in conformity with Section 251 of the Constitution of the Federal Republic of Nigeria 1999.

4. FEDERAL HIGH COURT (EXTRADITION PROCEEDINGS) RULES, 2015

ARRANGEMENT OF ORDERS

Order:

Order I	Objective
Order II	Application
Order III	Provisional arrest warrant
Order IV	Preliminary hearing after provisional arrest
Order V	Extradition application
Order VI	Issue of arrest warrant upon application for extradition
Order VII	Preliminary hearing upon arrest pursuant to an extradition application
Order VIII	Extradition hearing
Order IX	Introduction of Additional Evidence at Extradition Hearing
Order X	Exercise of the powers of the Court
Order XI	Duty of the Court Registrar
Order XII	Discharge where extradition request is withdrawn
Order XIII	Fugitive's application to be discharged after failure to comply with time limit
Order XIV	Transitional provisions
Order XV	Interpretation
Order XVI	Citation

Schedule

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999
FEDERAL HIGH COURT (EXTRADITION PROCEEDINGS) RULES,
2015

In exercise of the powers conferred on me by section 254 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and all other powers enabling me in that behalf, I, **Ibrahim Ndahi Auta OFR, Chief Judge of the Federal High Court of Nigeria**, make the following Rules -

[21 May 2015] Commencement

ORDER I
OBJECTIVE

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) minimise the time spent during extradition proceedings as a result of interlocutory applications, undue adjournments and other causes of delay.

ORDER II
APPLICATION

These Rules shall apply to all extradition proceedings under the Extradition Act, CAP E25, Laws of the Federation of Nigeria 2004, save to the extent and as may otherwise be directed by the Chief Judge.

ORDER III
PROVISIONAL ARREST WARRANT

- 1. 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.
- 2. 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.
3. 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.

ORDER IV

PRELIMINARY HEARING AFTER PROVISIONAL ARREST

1. Where a fugitive is brought before the Court after arrest under a provisional arrest warrant pursuant to Order III of these Rules, the Court shall—
 - (a) explain to the fugitive in the language he understands, with assistance, where necessary —
 - (i) the allegation in respect of which the warrant was issued,
 - (ii) that he may consent to extradition, and
 - (iii) the effect of such consent;
 - (b) remand the fugitive in custody or admit him to bail pending the receipt of an application if any from the Attorney-General, requesting the extradition of the fugitive; and
 - (c) adjourn the matter to a return date not later than 30 days from the day the fugitive was arrested.
2. The Judge shall then cause a report of the proceedings to be sent to the Attorney-General in accordance with section 8(5) of the Act.
3. On the return date, where the Judge finds that the Attorney-General has —
 - (a) transmitted an order indicating that that an extradition request has been received in respect of the fugitive, the —
 - (i) Attorney-General shall be directed to file and serve his application within 48 hours or such other time as may be ordered, and

- (ii) matter shall be set down for hearing within 14 days from the date of the preliminary hearing; or
- (b) not transmitted to the Judge an order that an extradition request has been received in respect of the accused fugitive or has positively informed the court that no such request has been received, the judge shall discharge the fugitive.

4. The Judge may consider any relevant application and make appropriate orders.

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.
3. Upon being served with the counter affidavit of the fugitive, the Applicant may file a reply on point of law within 48 hours.

4. Every application under these Rules shall be accompanied by a Written Address which shall be succinct argument in support of the grounds of the application.

ORDER VI

ISSUE OF ARREST WARRANT UPON APPLICATION FOR EXTRADITION

1. This Order applies where the Applicant files an extradition application pursuant to section 6 of the Act.
2. Where the Applicant files an extradition application pursuant to section 6 of the Act, the Court shall decide whether -
 - (a) the offence in respect of which an extradition order is requested is an extraditable offence; and
 - (b) there is no bar to the extradition order in accordance with section 3 of the Act.
3. A Judge may consider an application for the issue of an arrest warrant and issue same in private.

ORDER VII

PRELIMINARY HEARING UPON ARREST PURSUANT TO AN EXTRADITION APPLICATION

Where the Applicant files an application for extradition in respect of which a fugitive has been arrested under an arrest warrant pursuant to Order VI, the Court shall, unless the time limit for service of the request has expired —

- (a) set down for hearing, the application for extradition within 14 days of the date of the preliminary hearing; or
- (b) consider any application, including an application for bail pending the extradition hearing; and
- (c) give any direction or directions it deems fit in the circumstance.

ORDER VIII
EXTRADITION HEARING

1. At the hearing of the application for extradition, the Court shall decide whether
 - (a) the offence specified in the application for extradition is an extraditable offence;
 - (b) a bar to extradition applies as provided for under section 3 of the Act
 - (c) extradition would be compatible with the fugitive's human rights;
 - (d) it would, having regard to all the circumstances in which the offence was committed, be unjust or oppressive or too severe a punishment, to extradite the fugitive; and
 - (e) to order the fugitive's discharge after deciding each of (a) to (d) of this rule.
2. Where the Court discharges the fugitive, it may make any ancillary order, including an order on—
 - (a) reporting restrictions;
 - (b) travelling restrictions;
 - (c) probation; or
 - (d) any direction or directions the Court may deem fit in the circumstance.
3. Where the Court does not discharge the fugitive, it shall—
 - (a) exercise its power to order the fugitive's extradition;
 - (b) consider any ancillary application, including an order on—
 - (i) reporting restrictions,
 - (ii) travelling restrictions,
 - (iii) probation, or
 - (iv) any direction or directions the Court may deem fit in the circumstance.
4. Where the fugitive is not represented by a counsel, the Court shall explain to him in the language he, that he has a right of appeal.
5. All applications challenging the competence of the proceedings or the jurisdiction of the Court shall be filed and argued together with the substantive extradition application at the hearing.

6. No party shall be allowed more than two adjournments during the course of the hearing except where the Court considers it absolutely necessary.

ORDER IX
INTRODUCTION OF ADDITIONAL EVIDENCE
AT EXTRADITION HEARING

1. Where a party applies to introduce additional evidence at an extradition hearing and these Rules do not specifically make provisions for same, recourse shall be made to the Criminal Procedure Act, with such adaptations as the Court may direct.
2. All evidence before the Court at extradition proceedings shall be by affidavit and no oral evidence shall be called for any matter unless the Judge upon examination of the affidavit evidence requires clarification of relevant facts or issues.
3. Where a party introduces in evidence a fact admitted by another party, or the parties jointly admit a fact, the Court shall record such admission.

ORDER X
EXERCISE OF THE POWERS OF THE COURT

1. The proceedings shall be in public subject to the powers of the Court to -
 - (a) impose reporting restrictions;
 - (b) withhold information from the public; or
 - (c) order a hearing in private.
2. The Court shall exercise its powers in the -
 - (a) presence of the fugitive; or
 - (b) absence of the fugitive, where the fugitive is represented and his presence is impracticable by reason of ill health or disorderly conduct.
3. The court may, where necessary, require a fugitive to attend a preliminary hearing by live audio-visual link.

4. The Court may adjourn on the application of either party, or on its own motion
 - (a) to allow additional information to be brought before it,
 - (b) following a provisional arrest under section 8 of the Act and pending receipt of –
 - (i) an application of the Attorney - General under section 6 of the Act,
 - (ii) the extradition request;
 - (c) where it is informed that the fugitive is charged with an offence or is serving a custodial sentence within Nigeria,
 - (d) it appears to it that the fugitive is not fit to be extradited, unless the court discharges the fugitive for that reason; or
 - (e) where the court dealing with a warrant to which section 8 of the Act applies is informed that another warrant has been received in the Federal Republic of Nigeria.
4. In exercising its power under the Act, the court shall give each party an opportunity to make representations.

ORDER XI

DUTY OF THE COURT REGISTRAR

The Court Registrar shall promptly serve any decision of the Court to extradite or discharge the fugitive on the —

- (a) Attorney-General; and
- (b) fugitive.

ORDER XII

DISCHARGE WHERE EXTRADITION REQUEST IS WITHDRAWN

The Court shall exercise its powers to discharge the fugitive, where the Applicant files a notice that the extradition request has been withdrawn—

- (a) after the commencement of the preliminary hearing under Order VII; and
- (b) before the conclusion of the extradition hearing.

ORDER XIII
FUGITIVE'S APPLICATION TO BE DISCHARGED
AFTER FAILURE TO COMPLY WITH TIME LIMIT

1. A fugitive may apply to the court to be discharged, for failure —
 - (a) to serve on the fugitive a copy of any warrant under which the fugitive is arrested within 48 hours after arrest;
 - (b) to bring the fugitive before the court within 48 hours after arrest or such longer period as the court may deem reasonable;
 - (c) of the Attorney-General of the Federation to file an application for extradition of the fugitive within 30 days of his remand under a provisional warrant of arrest pursuant to section 8(6) of the Act; or
 - (d) to issue a surrender order, after an extradition order has been made by the Court, in accordance with section 12 of the Act.
2. Unless the court otherwise directs, the fugitive mentioned under this Order shall —
 - (a) apply in writing, file the application in court and serve the Attorney General of the Federation; and
 - (b) state the grounds on which the application is made;
3. The Court Registrar shall fix a date for hearing within 5 days of filing the application.

ORDER XIV
TRANSITIONAL PROVISIONS

From the commencement of these Rules, any pending extradition applications which are in substantial compliance with these Rules shall not be defeated in whole or in part, struck out or prejudiced, adjourned or dismissed or suffer any judicial censure, for failure to comply with these Rules.

ORDER XV
INTERPRETATION

In these Rules —

“*Act*” means the Extradition Act, CAP E25, Laws of the Federation of Nigeria, 2004;

“*Applicant*” means the Attorney-General or an officer authorised by him;

“Attorney – General” means Attorney – General of the Federation;
“Chief Judge” means the Chief Judge of the Federal High Court of Nigeria;

“Court” means the Federal High Court;

“Judge” means a Judge of the Federal High Court;

“Fugitive” includes fugitive criminal and has the meaning assigned in the Act; and

“Preliminary hearing” means a hearing to determine if a fugitive has a *prima facie* extradition case to answer, based on whether there are some substantial evidence in support of the application for extradition. If the judge finds sufficient evidence to proceed on hearing the application for extradition, the case proceeds on trial and where there is no such convincing evidence, the judge will dismiss the application;

“Private” means in chambers or in the Court, where only the parties to the proceedings are allowed to be present;

“Reporting restrictions” include directions on content, context and media, in the reportage of proceedings in the interest of national Security or security of individuals; and

“Territory” means the Federal Republic of Nigeria.

ORDER XVI

CITATION

These Rules may be cited as the Federal High Court (Extradition Proceedings) Rules, 2015

SCHEDULE

[Order V (1)]

Form of Application of the Attorney-General to the Judge

To the Chief Judge, Federal High Court, Abuja

WHEREAS, in pursuance of the Extradition Act, a request has been made to me by a diplomatic representative/consular officer of.....for the surrender of.....
..... accused of/unlawfully at large after conviction for the offence ofwithin the jurisdiction of.....

NOW I,Attorney-General of the Federation, by this application under my hand, signify to you that this request has been made, and require you to deal with the case in accordance with the provisions of the Extradition Act.

Given under my hand this Day of 20.....

Attorney-General of the Federation

MADE at Abuja this day of 20...

HON. JUSTICE IBRAHIM NDAHI AUTA, OFR
Chief Judge, Federal High Court

EXPLANATORY NOTE

(This explanatory Note does not form part of these Guidelines and Practice Directions but intended to explain its purport)

These Rules seeks to ensure clarity of extradition proceedings, set out in detail the requirements for specific Orders; and to minimise the time spent during extradition proceedings as a result of interlocutory applications, undue adjournments and other causes of delay and shall apply to all extradition proceedings under the Extradition Act, CAP E25, Laws of the Federation of Nigeria 2004, save to the extent and as may otherwise be directed by the Chief Judge of the Federal High Court.

5. GUIDELINES ISSUED BY THE FEDERAL MINISTRY OF JUSTICE

Federal Ministry of Justice
Requests for Extradition of a Fugitive
Suspect/Criminal to Nigeria
Guidelines for authorities outside of the Federal Republic of
Nigeria 1st Edition, 1st October 2013

Central Authority Unit, Federal Ministry of Justice
Plot 71 B, Shehu Shagari Way, Maitama District
Abuja – FCT, Nigeria

Requests for Extradition of a Fugitive Suspect/Criminal to Nigeria:
Guidelines for authorities outside of the Federal Republic of Nigeria

SECTION 1:

INTRODUCTION:

Extradition is the surrender by one State (the Requested State) of a person present in its territory to another State (the Requesting State) that seeks the person either in order to prosecute him or her or to enforce a punishment handed down by its courts after conviction of a crime committed within the jurisdiction of the requesting State.

The international community has developed a series of mechanisms for international cooperation in criminal matters concerned in particular with extradition, mutual legal assistance e.t.c. These mechanisms relate to all types of criminality, mostly – international and transnational. However, extradition stands out as the only means of pursuing the suspect. It is the best known and certainly the oldest component of international cooperation in criminal matters. In most, if not all bilateral treaties between Nigeria and any other country in the world, the designated central authority is vested in the Attorney-General of the Federation. This is as a result of the powers of the Attorney-General enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

THE ROLE OF THE CENTRAL AUTHORITY IN EXTRADITION CASES:

a. Powers of the Attorney-General under the Constitution:

The powers of the Attorney-General in extradition cases stem from Section 174(1)(a) of the Constitution which provides that the Attorney-General shall have power to “...institute and undertake criminal proceedings against any

person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly.” There is no controversy to the fact that if there is a request for the surrender of a person and same is for the purpose of prosecution or punishment, the person sought must have violated or committed an extraditable offence.

b. Documents to be Attached to an Extradition Requests:

The documents to be attached to the extradition requests should include the affidavit deposed to by any designated officer, Copy of the Indictment or Charge Sheet, duly authenticated Warrant of Arrest and/or Copy of the Judgment and Sentence past on the fugitive criminal, Copy of the extract of law in which the request is based from the requesting state. The facts of the case are usually contained in the body of the letter of request in detail.

c. When Extradition Request to Nigeria is Appropriate:

The request for extradition to Nigeria is appropriate if the fugitive suspect/criminal is found and located in Nigeria, and his whereabouts including his addresses located in Nigeria along with any other relevant information as to his whereabouts in Nigeria.

The request for the surrender of a fugitive suspect/criminal shall be made in writing, and received by the Attorney-General of the Federation and Minister of Justice from a Diplomatic Representative/Consular Officer of the requesting country, and shall be accompanied by documents mentioned above and a Certificate of Conviction issued in the requesting country, then the Attorney-General may exercise those powers prescribed in the Constitution and the Extradition Act, Cap. E25, Laws of the Federation of Nigeria, 2004 respectively.

d. Reciprocity:

As an international principle and widely appreciated, Nigeria requires and can observe reciprocity in respect of all forms of requests concerning international cooperation in criminal matters whether or not Nigeria and the requesting State are parties to a bilateral or multilateral agreements. However, the request for the extradition of any fugitive suspect/criminal to Nigeria must be based on either a bilateral or multilateral legal instrument.

e. Nigerian Executing Authorities in Extradition Matters:

- i. The administrative and prosecutorial procedures are conducted by the Central Authority Unit in the office of the Attorney-General of the Federation;
- ii. The Central Authority Unit also files the extradition processes in the Court and follow the proceeding to the end;
- iii. The Federal High of Nigeria conducts the judicial processes to the end of the case. If the extradition application is granted, the will thereafter remand the fugitive suspect/criminal in prison custody or in the custody of any law enforcement authority with the requisite mandate to retain the fugitive to await his surrender; and
- iv. The Nigerian Prison Service or any law enforcement authority with the requisite mandate will keep the fugitive suspect/criminal in custody to await his surrender to the authorities of the requesting State in Nigeria.

f. Confidentiality:

In line with established international practice, the Central Authority Unit will neither confirm nor deny the existence of an Extradition request, nor disclose any of its content outside government departments, agencies, the courts or enforcement agencies in Nigeria without the consent of the requesting State. Extradition Requests are not disclosed further than is necessary to obtain the co-operation of the witness or any other person concerned.

To the extent permitted by Nigeria law, evidence obtained from foreign jurisdictions pursuant to an Extradition request will not be used in Nigeria for any other purpose other than that specified in the request without the consent of the foreign jurisdiction.

SECTION 2:

EXECUTION OF INCOMING REQUEST FOR EXTRADITION:

All requests for Extradition must be sent to the Nigeria's central authority, i.e., the Attorney-General of the Federation and Minister of Justice.

a. Who can send an Extradition Request to Nigeria?

Any competent authority designated under the law of the requesting country may make a request to Nigeria.

b. Transmission:

Transmission of extradition request are normally done through Diplomatic Channel, i.e, the Ministry of Foreign Affairs in Nigeria but the Central Authority can accept and acknowledge any request forwarded directly.

c. Where to send Letter of Request for the Extradition of a fugitive suspect/criminal in Nigeria:

The Attorney-General of the Federation and Minister of Justice, Federal Ministry of Justice Plot 71 Shehu Shagari Way, Maitama District, Abuja. FCT, Nigeria

d. Approval of an Incoming Request for Surrender:

The approval of incoming requests for extradition in Nigeria is done by the Attorney-General of the Federation and Minister of Justice and he is the sole body relevant to streamline the process in order to ensure efficiency.

In exercising his powers, the Attorney-General of the Federation and Minister of Justice reviews all incoming requests for extradition, whether or not such requests comply with the requirements in a relevant treaty or legislation, depending on the legal basis of the request, be it bilateral, multilateral, regional as well as domestic laws. The request must not be in contravention of the Constitution of the Federal Republic of Nigeria and the Extradition Act of 2004, before consideration. The reviewing and evaluation process is carried out by the Central Authority Unit in the office of the Attorney-General of the Federation and approved by Attorney-General of the Federation and Minister of Justice.

e. Processing of a Request for Surrender, and Powers of the Attorney-General thereon:

After the approval of the review and evaluation process, the Attorney-General will then exercise his powers as provided under the Extradition Act of 2004 by an order to a Judge under his hand that a request has been made to him by a Diplomatic Representative/Consular Officer of the Requesting State for the surrender of the person accused of/Charged with an extraditable offence or unlawfully at large after conviction of an extraditable offence within the jurisdiction of the requesting State. The Attorney-General will then signify to the Judge in Chambers and to the Court with his name in full that the request has been made to him and require that the Judge deal with the case in accordance with the provisions of the Extradition Act of 2004.

After completion of the administrative procedure, the process is then filed in Court by the officers in the Central Authority Unit on behalf of the Attorney-General and who will in turn follow the court process till the end.

In filing the application process, the Attorney-General will attach an affidavit which must be deposed to by a legal officer in his department and also attach all exhibits thereto, containing the original letter of request, documents and other investigation reports or materials relevant to the case, under the hand and seal of a Judge and the Attorney-General of the requesting State or any designated person as the case may be.

f. Judicial Procedure and Committal or Discharge of Prisoner:

It is important to note that the aim of the whole extradition process in the Nigerian courts, in execution of extradition request, is not to prosecute the suspect or fugitive criminal for the purpose of punishment but to give the suspect an opportunity to clear himself or herself by adducing credible evidence and showing reasonable cause why he or she should not be extradited to face trial or punishment for the alleged offences or penalty stated in the extradition request.

At the conclusion of the extradition proceeding and where the fugitive is unable to show any cause why he or she should not be extradited, the court may grant the Attorney-General's application to extradite the suspect after 15 days to the requesting State to face his trial or punishment. The fugitive is then ordered to be remanded in prison by the judge to await the Order of the Attorney-General for surrender to the authorities of the requesting State present in Nigeria.

g. Notification where the extradition of the fugitive suspect/criminal is no longer required:

Should the extradition of the fugitive suspect/criminal is no longer required, the central authority should be informed immediately, quoting the Reference Number and date of the request.

h. Surrender of Fugitive in due course after Committal:

The Form of Order by the Attorney-General for the surrender of fugitive suspect/criminal is contained in Second Schedule of the Extradition Act of 2004 (FORM V). Before issuing this order the provision of Section 10 (1) of the Act must be observed, that is, "...a fugitive criminal committed to prison...shall not be surrendered before the expiration of fifteen (15) days beginning with the day on

which he is so committed or, if a Habeas Corpus has been issued, until the court has given its decision on the return to the writ, whichever is the later.”

In executing the order contained in FORM V of the Second Schedule of the Extradition Act of 2004, the Attorney-General shall address it to the Head of any law enforcement authority, that is, the superintendent of the Nigerian Prison Service or any other Law Enforcement Authority with the power to hold a fugitive suspect/criminal in its custody by order of the court, stating the alleged offence or penalty imposed on the fugitive in the jurisdiction of the requesting state, with the date the warrant was issued pursuant to the Extradition Act, to deliver or convey the said fugitive to the jurisdiction of the requesting State and there place him or her in the custody of any person or persons authorised by the requesting State to receive him or her. This surrender order must be dated and signed by the Attorney-General of the Federation and Minister of Justice.

Most of the requests for the extradition of fugitive suspects/criminals are from countries with bilateral Agreements with Nigeria. However, Nigeria can entertain any request for the extradition of a fugitive suspect/criminal from any other country as long as it satisfies the requirements of the Extradition Act, Cap. E25, Laws of the Federation of Nigeria and does not violate any laws of Nigeria and the Constitution of the Federal Republic of Nigeria.

SECTION 3:

OTHER MANDATORY ROLE OF THE CENTRAL AUTHORITY:

- a. General Power of Attorney-General to Order Release of Fugitive: Section 14 of the Extradition Act of 2004 provides that if it appears to the Attorney-General of the Federation at any time, in the case of any fugitive criminal who is on remand or awaiting his surrender under the Act-
 - i. that his surrender is precluded by the Extradition Act or by the extradition agreement (if any) in force between Nigeria and the country seeking his surrender; or
 - ii. that a request for his surrender is not forthcoming or, where such a request has been made, that it is not being proceeded with, the Attorney-General may order all proceedings for the surrender of that fugitive to the country in question to be discontinued and the fugitive, if in custody, to be released.

With regard to Section 14(a) above, part of Section 10(2) of the Extradition Act is relevant and provides that “the Attorney-General, unless it appears to him that the surrender of the fugitive is precluded by law....., that is, after the return of the writ of Habeas Corpus and the fugitive is not discharged by the decision of the court the Attorney-General may exercise the power by ordering all proceedings for the surrender of that fugitive to the country in question to be discontinued and the fugitive, if in custody, to be released”.

Section 8(6) of the Extradition Act is also relevant to Section 14(b) to the effect that if within thirty days beginning with the day on which the fugitive was arrested, no such application for the grant of order for the extradition of the fugitive is received from the Attorney-General of the Federation, the fugitive criminal shall be released at the end of that period. However, such release, even though it may not be ordered by the Attorney-General of the Federation, but the failure to make the application to the court, as mentioned in Section 6, by the Attorney-General may be that the formal request for the fugitive’s surrender is not forthcoming or, where such a request has not been made, that is, is not being proceeded with by the requesting country.

b. Transit of Surrendered fugitive through Nigeria:

As the Central Authority and Chief Law Officer of the Nation, the Attorney-General of the Federation and Minister of Justice may, subject to the provisions of any relevant extradition agreement and to such conditions, if any, as he thinks fit, grant upon request by the country to which the fugitive is being or is about to be conveyed, transit through Nigeria from one country to another on his surrender pursuant to:-

- i. a treaty or other agreement in the nature of an extradition agreement, whether or not Nigeria is a party thereto; or
- ii. the law of any country within the Commonwealth relating to the surrender of persons wanted for prosecution or punishment.

The Attorney-General of the Federation, in granting transit under Section 16(1) above may make arrangements for the supervision by the Nigeria Police and the person in transit shall be treated as being in lawful custody so that if he escapes he shall be liable to be retaken.

SECTION 4:

REQUEST FOR THE EXTRADITION OF A FUGITIVE SUSPECT TO NIGERIA:

a. Who can formulate a Request for the Extradition of a Fugitive suspect/criminal from Nigeria:

Extradition request from Nigeria can be initiated by any competent/executing or law enforcement authority but it is only the central authority that can formulate, sign and direct the transmission of a formal request for extradition of fugitive suspect/criminal from another jurisdiction to face trial or punishment in Nigeria.

b. Preparation of Outgoing Requests:

The preparation of an outgoing extradition request can involve many individual prosecutors from the central authority unit, the law enforcement officials who have conducted investigations and are most familiar with the case are involved by providing evidentiary materials to support the extradition request. Apart from formulating the letter of request for extradition, the central authority officials are usually equipped with the requisite expertise and technical know-how of international cooperation in order to shed light on matters such as treaty requirements, unique legal concepts and points of contact in the requested state. Diplomatic officials from the Foreign Affairs Ministry may also be involved because of the political considerations of seeking a suspected fugitive. In this regard, the process is as streamlined as possible to minimise delay.

For all extraditable offences in Nigeria, the central authority is required to draft outgoing requests after all the necessary evidentiary requirements are forwarded by the investigating competent authority and duly evaluated by the officials of the central authority in the office of the Attorney-General of the Federation.

The practice in Nigeria ensures that requests contain sufficient evidence and information to comply with the demands of the requested state. This is to avoid the clash and assumption of legal responsibility by the competent authorities and the powers of the Attorney-General of the Federation. Presently, the competent authorities can only initiate the request by forwarding application requesting the Attorney-General of the Federation, as

the central authority, to formulate a request for the extradition of a suspected fugitive criminal to the requested country. This application must be accompanied with all the necessary investigation documents and exhibits to support the request.

After an extradition request is drafted by the experts in the central authority unit, other necessary documents are evaluated and attached. The Attorney-General then approves, by appending his signature and date.

c. Language of the Request and Translation:

In formulating a request for extradition, the central authority must ensure that the request, after being drafted and concluded in English, is translated in a language that is understood by the officials of the requested state who are involved in executing the request. This is in order to comply with the principle of international best practice to forward a request in the official language of the requested state.

d. Formal Transmission of Requests for Extradition:

Transmission of requests for extradition can impact in the efficiency of cooperation in practice. The most commonly used channels of communication around the world are the Diplomatic Channels, through central authorities and through direct law enforcement bodies. In Nigeria, the channel of communication is from the law enforcement agencies to the central authority through the diplomatic channel.

This approach requires that all law enforcement authorities in Nigeria will prepare a request and send it by application to the Attorney-General who will evaluate same before formulating a formal request for extradition of any suspect located in any country other than Nigeria and forward it to Ministry of Foreign Affairs for onward transmission through the Diplomatic Authorities of the requested state, who then forwards it to the appropriate competent or central authority, for execution.

e. Transmission between Central Authorities:

Whilst many countries are entering into arrangement and taking a different approach by replacing the diplomatic channels with “Central Authorities”, Nigeria have both to contend with, in terms of extradition requests, whether it is formulating a request for extradition or receiving one.

The Nigeria Central Authority is responsible for the receipt, handling and also directing the transmission of all requests for Extradition and Mutual Legal Assistance (MLA) on behalf of the country. In the bilateral treaties that Nigeria signed with certain many countries, it is agreed that the Central Authority should be the Attorney-General of the Federation and Minister of Justice of the contracting states so that communication is made directly without recourse to diplomatic channel. This makes communication easier in terms of transmission of requests for MLA.

However, the procedure is not the same in the case of cooperation on extradition. The reason being that all extradition arrangement that Nigeria is a signatory to, are of international nature dealing with specific types of crime, that is, Multilateral and Regional.

This approach has increased the effectiveness of international cooperation by avoiding delays that may be caused by the diplomatic channels. Given that the Nigeria central authority is involved in enforcing criminal laws, the central authority is the only body that can execute the request itself immediately and it is the only body better positioned to order the judicial body or courts to deal with such extradition requests in accordance with the provisions of the Extradition Act, Cap. E25, Laws of the Federation, 2004.

Direct communication between central authorities in dealing with extradition requests may provide a visible point of contact for other countries that are seeking the surrender of a person in Nigeria.

SECTION 5:

URGENT PROCEDURE FOR EXTRADITION:

a. Provisional Arrest as an Emergency Measure for Extradition:

Another important role of the Nigeria Central Authority is to request from a court of competent jurisdiction for an order of provisional arrest of a person located outside Nigeria who has committed an extraditable offence. The provisional arrest may occur in the case of urgency and as an emergency measure to arrest a person sought for extradition before a formal extradition request is made. It is noteworthy that a request for provisional arrest generally requires less supporting documentation than formal extradition and hence takes less time to make.

After the person sought has been provisionally arrested, the central authority will then formulate a formal extradition request within a certain time period, otherwise, the person is released. However, the release of the person under the provisions of Extradition Act mentioned above shall not prejudice his subsequent rearrest and surrender if a request for his surrender is afterwards made.

Transmission of request for provisional arrest is normally effected through diplomatic channel. However, in urgent situations the Nigeria central authority would prefer to use the Interpol in the Office of the Nigerian Inspector-General of Police for record and accountability. Other jurisdictions accept urgent requests via alternate media for the purpose of preparation, example, post, telegraph or other means affording a record in writing. In Nigeria, the formal request must still be sent through regular channels before the arrest will be effected.

ANNEX A:

MLA/EXTRADITION TREATIES NIGERIA IS PARTY TO:

INTERNATIONAL AGREEMENTS THAT NIGERIA HAS RATIFIED

(as of September 2013)

- 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (The Vienna Convention of 1988)
- 2000 United Nations Convention against Transnational Organized Crime (UNTOC)
- 2003 United Nations Convention against Corruption (UNCAC)
- 2000 Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children
- 2002 Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth including amendments made by Law Ministers in April 1990 and November 2002 (“Harare Scheme”)
- 2002 London Scheme for Extradition within the Commonwealth

REGIONAL AGREEMENTS THAT NIGERIA IS PARTY TO

- 1992 ECOWAS Convention on Mutual Legal Assistance (Convention A/P.1/7/92)
- 1994 ECOWAS Convention on Extradition (Convention A/P.1/8/84)
- 2003 The African Union Convention on Preventing and Combating Corruption

BILATERAL AGREEMENT/TREATIES

- 1984 Extradition Treaty Between The Peoples' Republic of Benin, The Republic of Ghana, The Federal Republic of Nigeria, and The Republic of Togo, signed on 10 December, 1984
- 1987 Treaty between the Federal Republic of Nigeria and the United States of America on Mutual Legal Assistance in Criminal Matters signed in Washington on 2 November, 1987
- 1989 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Nigeria Concerning the Investigation and Prosecution of Crime and the Confiscation of the Proceeds of Crime Signed at London on 18th September, 1989
- 2005 Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2005
- 2005 Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2005
- 1935 Bilateral Extradition Treaty between United States of America and the United Kingdom of December 22, 1931 made applicable to Nigeria in June 24, 1935
- 1967 Extradition (United States of America) Order 1967, Legal Notice 33 of 1967

DOMESTIC LAWS

- 1999 The Constitution of the Federal Republic of Nigeria, 1999 (as amended)
- 2004 Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act, Cap. M24, Laws of the Federation of Nigeria, 2004
- 2004 Extradition Act, Cap. E25, Laws of the Federation of Nigeria, 2004
- 2004 Foreign Judgement (Reciprocal Enforcement) Act, Cap. F35, Laws of the Federation of Nigeria, 2004

6. MUTUAL ASSISTANCE IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH (ENACTMENT AND ENFORCEMENT) ACT 1998

ARRANGEMENT OF SECTIONS

SECTION

1. Enactment and enforcement of the provisions of the Scheme for Mutual Assistance in Criminal Matters.
2. Objects of the Act.
3. Designating a Central Authority, etc.
4. Action in the requesting country.
5. Action in the requested country.
6. Refusal of assistance.
7. Measures of compulsion.
8. Act not applicable to arrest or extradition.
9. Confidentiality.
10. Limitation on use of information or evidence.
11. Expenses of compliance.
12. Contents of request for assistance.
13. Identifying and locating persons.
14. Service of documents.
15. Examinations of witness.
16. Production of judicial or official records.

17. Personal appearance of witnesses in the requesting country.
18. Personal appearance of persons in custody.
19. Other assistance.

Part II

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SCHEDULE

Countries to which this Act applies

MUTUAL ASSISTANCE IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH (ENACTMENT AND ENFORCEMENT) ACT

An Act to make legislative provision to give force of law to the Scheme for
Mutual Assistance in Criminal Matters within the Commonwealth

[1998 No. 13.]

[Commencement]

1. Enactment and enforcement of the provisions of the Scheme of Mutual Assistance in Criminal Matters

- (1) As from the commencement of this Act, the provisions of the Scheme for Mutual Assistance in Criminal Matters within the Commonwealth as are set out in this Act shall have the force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.
- (2) This Act shall apply to every separate country within the Commonwealth.
- (3) For the purposes of this Act, each of the following areas shall be treated as a separate country, that is to say-
 - (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates; and
 - (b) each country within the Commonwealth which though not sovereign and independent, is not designated for the purposes of paragraph (a) of this subsection.
- (4) An order under subsection (3) (a) of this section designating a dependent country as forming part of a sovereign and independent country shall be made if, but only if, the dependent country has signified to the Government of the Federation that it desires that its territory be designated as part of the independent country, for the purposes of this Act.
- (5) If it appears to the President that the laws of a country to which this Act applies by virtue of subsection (3) of this section contains provisions substantially equivalent to the provisions of this Act, the President may by order published in the Gazette direct that this Act shall apply in relation to that country with such modifications (whether by way of addition, alteration or omission) as may be specified in the order, and where an order under this section is in force in relation to a country, this Act shall have effect in relation to that country with the modification specified in that order.
- (6) Every order made under subsection (5) of this section applying this Act to a country shall include a provision inserting in the Schedule to this Act an entry consisting of the name of that country and the year and number of the statutory instrument containing the order and where any such order is varied or revoked, the varying or revoking order shall include a provision deleting the relevant entry in that Schedule, as the case may require.

[Schedule.]

2. Objects of the Act

(1) The purpose of this Act is-

- (a) to increase the level and scope of assistance rendered between Commonwealth governments in criminal matter;
 - (b) to augment, but in no way to derogate, from, similar existing forms of formal and informal cooperation between Commonwealth countries; and
 - (c) to encourage the development of enhanced cooperation arrangements in other fora.
- (2) This Act makes provision for the giving of assistance by the competent authorities of one country (in this Act referred to as “the requested country”) in criminal matters arising in another country (in this Act referred to as “the requesting country”).
- (3) Assistance which may be exchanged between Nigeria and any other Commonwealth country under this Act include, that is to say-
- (a) identifying and locating criminal offenders;
 - (b) the service of relevant documents;
 - (c) examination of witnesses;
 - (d) search and seizure of assets;
 - (e) obtaining evidence;
 - (f) facilitating the personal appearance of witnesses before an administrative panel, a court, a tribunal or such similar proceedings;
 - (g) effecting a temporary transfer of a person in custody to enable him appear as a witness;
 - (h) securing the production of official or judicial records;
 - (i) tracing, seizing and forfeiting the proceeds of criminal activities.

3. Designating a Central Authority

- (1) For the purposes of this Act, the President may by an order published in the Federal Gazette designate any person as the Central Authority or competent authority for Nigeria for the purposes of this Act.

(2) Accordingly-

- (a) all requests from Nigeria to any other country in the Commonwealth; and
- (b) all requests to Nigeria from any other Commonwealth country, concerning any assistance to which section 2(3) of this Act relates, shall be channelled through the person or authority designated for the purposes of this Act.

4. Action in the requesting country

- (1) A request for any assistance specified under section 2(3) of this Act may be commenced by any law enforcement agency, public prosecution or judicial authority competent to do so under the law of the requesting country.
- (2) The designated Central Authority of the requesting country, if he is satisfied that the request can properly be made under this Act, shall transmit the request to the Central Authority of the requested country and shall ensure that the request contains all the supporting information required under the provisions of this Act.
- (3) The designated Central Authority of the requesting country shall as far as practicable, provide such additional information as the Central Authority of the requested country may seek.

5. Action in the requested country

- (1) Subject to this section, where Nigeria is the requested country, the Central Authority shall, in an appropriate case, grant the assistance requested as expeditiously as practicable; and for that purpose, the Central Authority of Nigeria shall ensure that all competent authorities in Nigeria comply with the request.
- (2) If the Central Authority in Nigeria considers that-
 - (a) the request does not comply with the provisions of this Act;
 - (b) in accordance with the provisions of this Act, the assistance ought to be refused either in whole or in part; or
 - (c) there are circumstances which are likely to cause a significant delay in complying with the request then the Central Authority of Nigeria shall promptly so inform the Central Authority of the requesting country, adducing reasons.

6. Refusal of assistance

- (1) The Central Authority for Nigeria after consultation with the President, may refuse to comply in part or in whole with a request for assistance under this Act if the criminal matter in respect of which the assistance is sought appears to the Central Authority to concern-
 - (a) conduct which does not constitute an offence under any law in force in Nigeria;
 - (b) an offence or proceedings of a political character;
 - (c) conduct which in the requesting country is an offence only under military law or relating to military obligations;
 - (d) conduct in relation to which the person now accused or suspected of having committed an offence had previously been acquitted or convicted by a court in Nigeria.
- (2) The Central Authority for Nigeria after consultation with the President may refuse to comply in whole or part with a request for assistance under this Act-
 - (a) to the extent that it appears to the Central Authority aforesaid that compliance would be contrary to the Constitution of the Federal Republic of Nigeria, 1999 or would be prejudicial to the security, international relations or other essential public interests of Nigeria; or
 - (b) where there are substantial grounds leading the Central Authority to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice on account of any of the reasons aforesaid, to the person affected by the request.
- (3) The Central Authority for Nigeria may after consultation with the President, refuse to comply in whole, or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot lawfully be taken under the any law in force in Nigeria in respect of criminal matters arising in Nigeria.
- (4) An offence shall not be regarded as an offence of a political character for the purpose of subsection (1) (b) of this section, if it is an offence within the scope of any international convention to which both Nigeria and the requesting or requested country, as the case may be, are parties and which

imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

- (5) The provisions of sections 4, 5 and 6 of this Act shall apply *mutatis mutandis* to any case in which Nigeria is either the requesting or requested country, as the case may require.

7. Measures of cooperation

- (1) All competent authorities in Nigeria shall, in complying with a request for assistance under this Act, use only such measures of compulsion as are permissible in matters arising under the laws of Nigeria in respect of criminal matters.
- (2) Where under the laws of Nigeria measures of compulsion cannot be applied to any person in order to secure compliance with a request under this Act but the person concerned is willing to act voluntarily in total or partial compliance with the terms of the request, the competent authority in Nigeria shall make available the necessary facilities.

8. Act not applicable to arrest or extradition

Nothing in this Act shall be construed as authorising the extradition or the arrest with a view to extradition of any person in respect of whom a request for assistance has not been received.

9. Confidentiality

The Central Authority and all competent authorities in Nigeria and the requesting or requested countries respectively, as the case may be, shall use their best endeavours to keep confidential any request and its contents and the information and materials supplied in compliance with a request, unless such disclosure occurs in the course of criminal proceedings or where the disclosure is otherwise authorised by the Central Authority for Nigeria or that other country.

10. Limitation on use of information or evidence

A requesting country under this Act shall not use any information or evidence obtained in response to a request for assistance under this Act in connection with any other matter other than the criminal matter specified in the request without the prior consent of the requested country.

11. Expenses of compliance

- (1) Except as provided in the following provisions of this section, a requesting country shall not incur any claim for expenses arising out of compliance by competent authorities of the requested country.
- (2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to and from the requested country, including the travelling and incidental expenses of accompanying officials, fees of experts and the costs if any translation required by the requesting country.
- (3) If in the opinion of the requested country the expenses to be incurred in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue and in the absence of such agreement, the requested country may refuse to comply with the request.

12. Contents of request for assistance

- (1) A request for assistance under this Act shall contain all appropriate information as specified in this section, that is to say-
 - (a) specify the nature of the assistance requested;
 - (b) indicate any limit within which compliance with the request is desired, stating the reasons therefor;
 - (c) specify the identity of the agency or authority initiating the request;
 - (d) specify the nature of the criminal matter concerned;
 - (e) specify whether or not criminal proceedings have been initiated; and
 - (f) where criminal proceedings have been instituted, disclose the following information, that is to say-
 - (i) the court exercising jurisdiction in the matter;
 - (ii) the identity of the accused person;
 - (iii) the offences of which he stands accused and a summary of the facts;
 - (iv) the stage reached in the proceedings; and
 - (v) any date fixed for further stages in the proceedings;

- (g) where criminal proceedings have not been initiated, the request shall disclose the offence which the Central Authority of the requesting country has reasonable cause to believe have been committed, with a summary of the known facts.
- (2) A request shall normally be in writing but if having regard to the urgency of the matter it is expedient to make a request orally, such request shall be confirmed in writing forthwith.

13. Identifying and locating persons

- (1) Without prejudice to the generality of this Act, a request may seek assistance in identifying or locating persons believed to be within the requested country.
- (2) A request under this section shall indicate the purpose for which the information is requested and shall contain such information as is available to the Central Authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses which would facilitate the identification of the person concerned.

14. Service of documents

- (1) A request under this Act may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.
- (2) A request under this section shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of the requesting country is able to provide pertaining to any outstanding warrants or other judicial orders in criminal matters issued or made against the person to be served.
- (3) The Central Authority of the requested country shall endeavour to have the documents served-
 - (a) in the particular method stated in the request unless such method is incompatible with the law of the requested country; or
 - (b) by any method prescribed by the law of the requested country for the service of documents in criminal proceedings.
- (4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of documents or, if the documents have not been served, as to the reasons which have prevented service.

15. Examination of witness

- (1) A request under this Act may seek assistance in the examination of witnesses in the requested country.
- (2) A request under this section shall in an appropriate case and in so far as the circumstances of the case permit, obtain the following particulars-
 - (a) the name, addresses and official designations of the witnesses to be examined;
 - (b) the questions to be put to the witnesses or the subject-matter about which they are to be examined;
 - (c) whether it is desired that the witness be examined orally or in writing;
 - (d) whether it is desired that the oath be administered to the witness or, as the law of the requested country allows, that they be required to make a solemn affirmation;
 - (e) the provisions of any law of the requesting country as to the privilege or exemption from giving evidence which appears especially relevant to the request; and
 - (f) any special requirement of the law of the requesting country as to the manner of taking evidence relevant to its admissibility in that country.
- (3) A request under this Act may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and may ask questions of the witness.

16. Production of judicial or official records

- (1) A request under this Act may seek the production of judicial or official records relevant to a criminal matter arising in the requesting country.
- (2) For the purposes of this section, “judicial record” means judgments, orders and decisions of courts and tribunals and other documents held by judicial or tribunal authorities and “official record” means documents held by government departments or agencies or prosecution authorities.
- (3) The requested country shall provide copies of judicial or official records not publicly available, to the same extent and under the same circumstances as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

17. Personal appearance of witnesses in the requesting country

- (1) A request under this Act may seek assistance in facilitating the personal appearance of witnesses before a court exercising jurisdiction in the requesting country.
- (2) A request under this section shall specify-
 - (a) the subject-matter upon which it is desired to examine the witness;
 - (b) the reasons for which personal appearance of the witness is required; and
 - (c) the details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witness.
- (3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired; and
 - (a) ask whether they agree to appear;
 - (b) inform the Central Authority of the requesting country of the answer of the witnesses;
 - (c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

18. Personal appearance of witnesses in custody

- (1) A request under this Act may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a country exercising jurisdiction the requesting country.
- (2) A request under this section shall specify-
 - (a) the subject-matter upon which it is desired to examine the witness;
 - (b) the reason for which personal appearance of the witness is required;
- (3) The requested country shall refuse to comply with a request for the transfer of a person in custody if the person does not consent to the transfer.
- (4) The requested country may refuse to comply with a request for the transfer of a person in custody and shall be under no obligation to inform the requesting country or the reason for such refusal.
- (5) Where a person in custody is transferred, the requested country shall notify the requesting country of-

- (a) the dates upon which the person concerned is due under the law of the requested country to be released from custody; and
- (b) the date by which the requested country requires the return of such persons, and shall similarly notify any variations in such dates.
- (6) The requesting country shall keep in custody a person transferred under this section and shall return the person to the requested country when his presence as witness in the requesting country is no longer required; and in any case, by the earlier of the dates specified under subsection (5) of this section.
- (7) The obligation to return any person transferred under this section shall subsist notwithstanding the fact that the witness is a citizen of the requesting country.
- (8) The period during which the person transferred is in custody in the requesting country shall for all purposes be deemed to be service in the requested country of an equivalent period in custody in that country.
- (9) Nothing in this section shall preclude the release in the requesting country without return to the requested country of any person transferred under this section if both the requested and requesting countries agree to such release.

19. Other assistance

After consultation between the requesting and requested countries, either party may seek and receive other terms of assistance in criminal matters not specified in this Act on such terms and conditions as may be agreed between the two countries.

PART II

Provisions as to the proceeds of criminal activities

20. Tracing the proceeds of criminal activities: search and seizure

- (1) A request for assistance under this Part of the Act may seek assistance in-
 - (a) identifying, searching and locating property within the requested country believed to be acquired with the proceeds of criminal activities; and
 - (b) the security of property in the requested country believed to be acquired with the proceeds of criminal activities.

- (2) A request under this section shall contain such information as is available to the Central Authority of the requesting country regarding the nature and location of the property and regarding any person in whose possession or control the property is believed to be.
- (3) A request under this section shall specify so far as is reasonably practicable, all relevant information available to the Central Authority of the requesting country which may be required to be adduced in an application under the laws of the requested country for any necessary warrant, order or authorisation to effect the forfeiture or seizure.
- (4) “Seizure” in this section, includes the taking of measures to prevent any dealing in, transfer or disposal of, or the creation of any charge over property pending the determination of proceedings for the forfeiture of the proceeds of criminal activities.
- (5) The law of the requested country shall apply to determine the disposal of any proceeds of criminal activities forfeited as a result of a request under this section.

21. Other assistance in obtaining evidence

- (1) A request under this Part of the Act may seek other assistance in obtaining evidence.
- (2) A request under this section shall specify as appropriate and, in so far as the circumstances of the case permit-
 - (a) the documents, records or property to be inspected, preserved, photographed, copied or transmitted;
 - (b) the samples of any property to be taken, examined or transmitted; and
 - (c) the site to be viewed or photographed.

22. Confirmation and enforcement of orders for forfeiture of the proceeds of criminal activity

- (1) A request under this Part of the Act may seek assistance in invoking procedures in the requested country leading to the recognition or review and confirmation and the enforcement of an order for the forfeiture of the proceeds of criminal activities made by a court or other authority in the requesting country.

- (2) A request under this section shall be accompanied by a certified copy of the order and shall contain, so far as is reasonably practicable, all such information available to the Central Authority of the requesting country as may be required in connection with the procedures to be followed in the requested country.
- (3) The law of the requested country shall apply to determine the circumstances and manner in which an order may be recognised, confirmed or enforced.

23. Meaning of the proceeds of criminal activities

In this Part of the Act, the expression “proceeds of criminal activities” means any property derived or realized, directly or indirectly, by a person convicted of an offence in the requesting country or against whom criminal proceedings have been instituted in that country as a result-

- (a) of the commission of the offence committed; or
- (b) where the commission of the offence is shown to be part of a course of conduct by the person convicted or charged alone or in association with other persons having as its purpose the carrying out or furtherance of criminal activities, of any part of that course of conduct.

PART III

Miscellaneous Provisions

24. Privilege

- (1) No person shall be compelled in response to a request under this Act to give any evidence in the requested country, which he would not be compelled to give-
 - (a) in criminal proceedings in that country; or
 - (b) in criminal proceedings in the requesting country.
- (2) For the purposes of this section, any reference to giving evidence includes a reference to answering any question and to producing any documents.

25. Indemnity of persons appearing

- (1) Subject to the provisions of section 20 of this Act, any witness appearing in the requested country in response to a request under section 18 of this Act or persons transferred to that country in response to a request under section 18 of this Act shall be immune in the requesting country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of the departure of the witness from the requested country.
- (2) The immunity conferred under subsection (1) of this section shall cease-
 - (a) in the case of a witness appearing in response to a request under section 17 or 18 of this Act, when the witness having had been notified by the appropriate authority that his presence was no longer required and having afforded him the opportunity to leave the country, he has continued to remain in the requesting country or having left it, he has returned to it, and
 - (b) in the case of a person in custody transferred in response to a request made under section 19 of this Act and remaining in custody, when he has been returned to the requested country.

26. Transmission and return of material

- (1) Where compliance with a request under this Act involves the transmission to the requesting country of any document, record or property, the requested country-

- (a) may postpone the transmission of such material if it is required in connection with proceedings in that country, and in such a case shall provide certified copies of a document or record pending transmission of the original; or
 - (b) may require the requesting country to agree to such terms and conditions as may protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.
- (2) Where any document, record or property is transmitted to the requesting country in compliance with a request under this Act, it shall be returned to the requested country when it is no longer required in connection with the criminal matter specified in the request unless that country has indicated that its return is not desired.

27. Authentication

- (1) The requested country shall authenticate all material that is to be transmitted by that country.
- (2) Authentication shall be by a stamp or seal of a Minister, Ministry, government department or Central Authority of the requested country.

28. Notification of designation

Designation of-

- (a) dependent territories under section 1 of this Act; and
- (b) the Central Authority in Nigeria for the purposes of section 3 of this Act, shall be notified to the Commonwealth Secretary-General in London, United Kingdom.

29. Interpretation

In this Act, unless the context otherwise requires-

“assistance” means request for any of the various forms of assistance available under the provisions of this Act;

“Central Authority” means a person designated as such under section 3 of this Act;

“Criminal proceedings” means proceedings have been instituted in a court exercising jurisdiction in that country or that there is reasonable cause to

believe that an offence in respect of which such proceedings would be instituted has been committed;

“requested country” means a country to which a request for assistance under this Act has been made.

“requesting country” means a country making a request for assistance under this Act.

30. Short title and commencement

- (1) This Act may be cited as the Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act.
- (2) This Act shall come into force on such date as the President may by order published in the Federal Gazette, direct.

SCHEDULE

[Section 1 (6).]

Countries to which this Act Applies

Antigua and Barbuda | Australia | The Bahamas | Bangladesh | Barbados | Belize |

Botswana | Brunei Darussalam | Canada | Cyprus | Dominica | Fiji | The Gambia | Ghana |

Grenada | Guyana | India | Jamaica | Kenya | Kiribati | Lesotho | Malawi | Malaysia |

Maldives | Malta | Mauritius | New Zealand | Papua New Guinea | St. Christopher and Nevis | St. Lucia | St. Vincent | Seychelles | Sierra Leone | Singapore | Solomon Islands |

Sri Lanka | Swaziland | Tanzania | Trinidad and Tobago | Tuvalu | Uganda | United Kingdom | Western Samoa | Zambia | Zimbabwe

APPENDIX II

TREATIES, SCHEMES AND ARRANGEMENTS

APPENDIX II: TREATIES, SCHEMES AND ARRANGEMENTS

POST-COLONIAL INSTRUMENTS

1. TREATY ON EXTRADITION BETWEEN THE STATE OF THE UNITED ARAB EMIRATES AND THE FEDERAL REPUBLIC OF NIGERIA, 2016

The Government of the State of the United Arab Emirates and the Government of the Federal Republic of Nigeria (hereinafter referred to as “the Parties”);

DESIRING to promote effective cooperation between the two countries in the prevention and suppression of crimes on the basis of mutual respect for sovereignty and mutual benefit;

PURSUANT to the prevailing laws of the respective Parties.

HAVE AGREED as follows:

Article 1

Obligation to Extradite

Each Party agrees to extradite to the other, upon request and subject to the provisions of this Treaty, any person who is found in the territory of the Requested Party and is wanted in the Requesting Party for any prosecution or trial or execution of a sentence in respect of an extraditable offence committed within the jurisdiction of the Requesting Party.

Article 2

Extraditable Offences

1. For the purpose of this Treaty, extraditable offences are offences that are punishable under the laws of both Parties by a term of imprisonment of not less than two (2) year or by a more severe penalty.
2. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for an extraditable offence, extradition shall be granted only if a period of at least 6 (six) months of such sentence remains to be served.
3. In determining whether an under the laws of both whether:

- a. the Laws of the Parties place the acts or omissions constituting the offence within the same category of offence or describe the offence by the same terminology.
 - b. under the laws of both Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the Requesting Party constitute an extraditable offence under the laws of the Requested Party.
4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraph 1 of the present Article, the Requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.
5. For the purpose of paragraph 1 of this Article, an extraditable offence shall be an offence punishable according to the laws of both Parties if the act or omission constituting the offence was an offence for which extradition could be granted under the laws of both Parties at the time it was committed and also the time the request for extradition is received.
6. An offence shall also be an extraditable offence if it consists of an attempt or a conspiracy to commit, participation in the commission of aiding or abetting, counselling or procuring the commission of, or being an accessory before or after the fact to any offence described in paragraph 1 of this Article.
7. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the Requesting Party.

Article 3

Mandatory Grounds for Refusal

1. Extradition shall not be granted under this of the following circumstances:
 - a. if the offence for which extradition is requested by the Requesting Party is an offence of a political nature;
 - b. if the Requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person 1 s

race, religion, nationality, ethnic origin, political opinions, sex, status or that person's position may be prejudiced for any of those reasons;

- c. if the offence for which extradition is requested is an offence under the military law, which is not also an offence under ordinary criminal law;
 - d. if there has been a final judgment rendered against the person in the Requested Party in respect of the offence for which the person's extradition is requested;
 - e. if the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;
 - f. if the person whose extradition is requested has been or would be subjected in the Requesting Party to torture or cruel, inhuman or degrading treatment;
 - g. if the judgment of the Requesting Party has been rendered *in absentia* the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and has not had or will not have the opportunity to have the case retried in his or her presence;
 - h. if the person whose extradition is requested has undergone the punishment provided by the law of, or a part of, any country or has been acquitted or pardoned by a competent tribunal or authority, in respect of that offence or another offence constituted by the same acts or omissions constituting the offence for which his extradition is requested.
2. For the purpose of this Treaty, the following shall be deemed not to be an offence of a political nature:
- a. an offence against the life or person of any Head of State or a member of his immediate family or any Head of Government or a member of his immediate family, or any member of the United Arab Emirates Supreme Council or any member of their immediate families;
 - b. an offence for which both Parties have the obligation pursuant to a multilateral international convention, the purpose of which is to prevent or repress a specific category of offences,

to either extradite the person sought or submit the case without undue delay to their competent authorities for the purpose of prosecution;

- c. murder;
- d. offences against laws relating to terrorist acts; and
- e. any attempt, abetment or conspiracy to commit any of the offences referred to in sub-paragraphs (a), (b), (c) and (d) of this paragraph.

3. If any question arises as to whether the offence for which the fugitive is sought is an offence of a political nature, the decision of the Requested Party shall be determinative.

Article 4

Optional grounds for refusal

Extradition may be refused in any of the following circumstances:

- a. if the competent authorities of the decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested.
- b. if a prosecution in respect of the offence for which extradition is requested is pending in the Requested Party against the person whose extradition is requested.
- c. if the offence for which extradition is requested is regarded under the laws of the Requested Party as having been committed in whole or in part within that Party.
- d. where the offence for which extradition is sought is punishable by death under the laws of the Requesting Party and is not punishable by death under the laws of the Requested Party I the Requested Party may refuse extradition unless the Requesting Party provides an assurance that the death penalty if imposed will not be carried out.

Article 5

Extradition of Nationals

1. Each Party shall have the right to refuse extradition of its nationals.

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

Article 6

Channels of Communication

For the purpose of this Treaty, the Parties shall communicate with each other through diplomatic channels.

Article 7

Central Authority

1. Each Party shall designate a Central Authority for the purpose of the implementation of this Treaty.
2. The respective Central Authorities are:
 - a. For the Government of the United Arab Emirates, the Central Authority is the Ministry of Justice.
 - b. For the Government of the Federal Republic of Nigeria, the Attorney General of the Federation and Minister of Justice.
3. In case any Party changes its Central Authority, it shall notify in writing the other Party of such change, through diplomatic channels.

Article 8

The Request and The Required Documents

1. A request for extradition shall be made in writing and conveyed with the related documents through diplomatic channels, a statement indicating that the channels.
2. A request for extradition shall be accompanied by:
 - a. as accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location, including a recent photograph or fingerprint records, where available;

- b. a brief statement of the facts of the offence, including the time, place, conduct and consequences of the offence;
 - c. the text of the legal provisions determining the offence and the punishment that can be imposed for the offence, and the legal provisions relating to the lapse of time on the institution of proceedings or on the execution of any punishment for that offence;
 - d. request for seizure, if it is required.
3. A request for extradition which relates to a person sought who has not yet been tried shall, in addition to the documents required under paragraph 2 of this Article, be accompanied by:
- a. a certified copy of an arrest warrant or other documents having the same effect issued by the competent authority of the Requesting Party;
 - b. sworn statements of witnesses concerning their knowledge of the offence.
4. A request for extradition which relates to a person sought who has been convicted or sentenced by the Requesting Party shall, in addition to the documents required under paragraph 2 and 3 of this Article, be accompanied by a certified copy of the conviction or sentence, and:
- a. If the person sought has been convicted but not sentenced, a statement to that effect by appropriate court: or
 - b. if the person sought has been by the competent authority sentence is enforceable and the extent to which the sentence remains to be served.
5. If the person sought has been convicted *in absentia*, the Requesting Party shall submit such documents describing that person has been duly notified and given the opportunity to appear and arrange for his or her defence before the Court of the Requesting Party.
6. The letter of formal request for extradition and other relevant documents submitted by the Requesting Party in accordance with paragraph 2, 3, 4 and 5 of this Article shall be officially signed and stamped by the competent authority of the Requesting Party and be accompanied by translation in the language of the Requested Party or in English language.

Article 9

Decision on the Request for Extradition

1. The Requested Party shall deal with the request for extradition in accordance with the procedures provided for by its national law, and shall promptly inform the Requesting Party of its decision through diplomatic channels.
2. If the Requested Party refuses the whole or any part of the request for extradition, the reasons for refusal shall be notified to the Requesting Party.

Article 10

Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient, that Party may request that additional information be furnished within forty-five (45) days or within a period as agreed between the Parties. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for extradition for the same person and offence.

Article 11

Provisional Arrest

1. In urgent cases, the Requesting State may request for the provisional arrest of the person sought before making a request for extradition. Such request may be submitted in writing through the channels provided for in Article 6 of this Treaty, International Criminal Police Organization (Interpol) or other channels agreed to by both Parties.
2. The request for provisional arrest shall contain the information indicated in paragraph 2 Article 8 of this Treaty, a statement of the existence of documents indicated in paragraph 3 or 4 of Article 8 of this Treaty and a statement that a formal request for extradition of the person sought will follow.
3. The Requested Party shall promptly inform the Requesting Party of the result of its handling of the request.

4. Provisional arrest shall be terminated if within a period of sixty (60) days after the arrest of the person sought, the competent authority of the Requested Party has not received the formal request for extradition.
5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and institution of extradition proceedings of the person sought if the Requested Party has subsequently received the formal request for extradition.

Article 12

Concurrent Requests

Where requests are received from two or more states for the extradition of the same person either for the same offence or for different offences, for the purpose of determining to which of those states the person is to be extradited, the Requested State shall consider all relevant factors, including but not limited to:

- a. whether the request was made pursuant to a treaty;
- b. the gravity of the offences;
- c. the time and place of the commission of the offence;
- d. the nationality and habitual residence of the person sought;
- e. respective dates of the Requests; and
- f. the possibility of subsequent extradition to another state.

Article 13

Rule of speciality

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the Requesting Party for any offence committed prior to surrender other than:
 - a. an offence for which extradition was granted;
 - b. any other offence in respect of which the Requested Party consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present treaty.

2. A request for the consent of the Requested Party under the present article shall be accompanied by the documents mentioned in paragraph 2, 3, 4 and 5 of Article 8 of this Treaty and an official record of any statement made by the extradited person with respect to the offence.
3. Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the Requesting Party and has not done so within thirty (30) days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the Requesting Party after leaving it.

Article 14

Surrender of property

1. If the Requesting Party so requests, the Requested Party shall, to the extent permitted by its national law, seize the proceeds and instrumentality of the offence and other property which may serve as evidence found in its territory and when extradition is granted, shall surrender this property to the Requesting Party.
2. When the extradition is granted, the property mentioned in paragraph 1 of this Article may nevertheless be surrendered even if the extradition cannot be carried out owing to the death, disappearance or escape of the person sought, or any other reasons.
3. The Requested Party may, for conducting any other pending criminal proceedings, postpone the surrender of above-mentioned property until the conclusion of such proceedings, or temporarily surrender that property on condition that the Requesting Party undertakes to return it.
4. The surrender of such property shall not prejudice any legitimate right of the Requested Party or any third party to that property. Where these rights exist, the Requesting Party shall, at the request of the Requested Party, promptly return the surrendered property without charge to the Requested Party as soon as possible after the conclusion of the proceedings.

Article 15

Surrender of the extradited person

1. If the extradition has been granted by the Requested Party, the Parties shall agree on time, place and other relevant matters relating to the execution of the extradition. The Requested Party shall inform the Requesting Party of the period of time for which the person to be extradited has been detained prior to the surrender.

2. If the Requesting Party has not taken over the person to be extradited within thirty (30) days after the date agreed for the execution of the extradition, the Requested Party shall release that person immediately and may refuse a fresh request by the Requesting Party for extradition of that person for the same offence, unless otherwise provided for in Paragraph 3 of this Article.
3. If a Party fails to surrender or take over the person to be extradited within the agreed period for reasons beyond its control, the other Party shall be notified promptly. The Parties shall agree on a new time and place and relevant matters for the execution of the extradition. In this case, the provisions of Paragraph 2 of this Article shall apply.

Article 16

Postponement of surrender

1. If the person sought is being proceeded against or is serving a sentence in the Requested Party for any offence other than for which the extradition is requested, the Requested Party may, after having made a decision to grant extradition, postpone the extradition until the conclusion of the proceedings and the completion of the sentence.
2. If the postponement of the extradition may seriously impede the criminal proceedings in the Requesting Party, the Requested Party may, upon request, temporarily surrender the person sought to the Requesting Party provided that its ongoing criminal proceedings are not hindered, and that the Requesting Party undertakes to return that person unconditionally and immediately upon conclusion of relevant proceedings.

Article 17

Transit

1. When a Party is to extradite a person from a third state through the territory of the other Party, it shall request the other Party for the permission of such transit. No such request is required where air transportation is used and no landing in the territory of the other Party is scheduled.
2. The Requested Party shall, in so far as not contrary to its national law, grant the request for transit made by the Requesting Party.
3. If an unscheduled landing in the territory of the other Party occurred, transit shall be subjected to the provision of Paragraph 1. That Party may, insofar as not contrary to its national law, hold the person in custody for a

period of forty-eight/seventy-two (48/72) hours where applicable while waiting for the request of transit.

Article 18

Expenses

1. All expenses related to the extradition shall be borne by the Party in which territory they were incurred.
2. The expenses of transportation and the transit expenses in connection with the surrender or taking of the extradited person shall be borne by the Requesting Party.
3. In case the said expenses are of an extraordinary nature, the Parties shall consult with each other to settle the same.

Article 19

Compatibility with other treaties

This Treaty shall not affect any rights and obligations of the Parties that arise from other international treaties in which they are both parties, or otherwise.

Article 20

Settlement of disputes

Any dispute arising out of the interpretation, application or implementation of this Treaty shall be resolved through diplomatic channels if the Central Authorities are unable to reach agreement.

Article 21

Ratification, entry into force, amendment and termination

1. This Treaty is subject to ratification; the instruments of ratification shall be exchanged.
2. This Treaty shall enter into force on the thirtieth (30) day after the date of the exchange of the instruments of ratification.
3. This Treaty may be amended by mutual consent of the Parties and the Article shall be applied thereof.
4. Either Party may terminate this Treaty by notice in writing through diplomatic channels at any time. Termination shall take effect six (6) months after the date on which the notice is given. However, proceedings already commenced before notification shall continue to

be governed by this Treaty until conclusion therein.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty in two original texts, in the English and Arabic Languages, both texts being equally authentic.

DONE at Abu Dhabi this 18th day of January, 2016.

FOR THE GOVERNMENT OF THE
STATE OF THE UNITED ARAB EMIRATES

FOR THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF NIGERIA

2. AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA ON THE TRANSFER OF SENTENCED PERSONS

Abuja, 9 January 2014

[The Agreement entered into force on 29 September 2014]

The United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the “United Kingdom”) and the Federal Republic of Nigeria, (hereinafter referred to as “Nigeria”); together referred to as the “Parties” and in singular as “Party”;

Taking into consideration developments in international prisoner transfer arrangements;

Desiring to ensure that wherever possible foreign national prisoners should serve their sentences in their own country;

Reaffirming that sentenced persons shall be treated with respect for their human rights;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

- (a) “transferring State” means the State from which the sentenced person may be, or has been, transferred;
- (b) “receiving State” means the State to which the sentenced person may be, or has been, transferred;
- (c) “sentenced person” means a person who is required to be detained in a prison or any other institution in the transferring State by virtue of a judgment made by a competent court of the transferring State on account of a criminal offence;
- (d) “sentence” means any punishment or measure involving deprivation of liberty ordered by a competent court of the transferring State for a limited or unlimited period of time on account of a criminal offence;

- (e) “judgment” means a final decision or order of a competent court imposing a sentence; and
- (f) “national” means:
 - (i) in relation to the United Kingdom, a British National or any person whose transfer the Government of the United Kingdom considers appropriate having regard to any close ties which that person has with the United Kingdom;
 - (ii) in relation to Nigeria, a person who has the nationality of Nigeria.
- (g) “competent authority” means:
 - (i) in relation to the United Kingdom: For England and Wales the Secretary of State for Justice; for Scotland the Minister of Justice; for Northern Ireland the Minister of Justice; and in relation to the Isle of Man the Minister of Home Affairs;
 - (ii) in relation to Nigeria: The Attorney General of the Federation and Minister of Justice.

ARTICLE 2

General Principles

1. The Parties shall afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Agreement.
2. As between the Parties, this Agreement shall prevail over any multilateral Agreements governing the transfer of sentenced persons to which both Parties may be party.
3. Where both Parties agree and in accordance with the provisions of this Agreement; a sentenced person may be transferred from the territory of the transferring State to the territory of the receiving State with or without the sentenced person’s consent in order for the sentenced person to continue serving the sentence imposed by the transferring State.
4. The transfer of sentenced persons may be requested by either the transferring State or the receiving State.

5. The Parties may establish a committee to formulate guidelines for the implementation of this Agreement.

ARTICLE 3 Conditions for Transfer

Sentenced persons may be transferred under this Agreement only on the following conditions:

- (a) the sentenced person is a national of the receiving State for the purposes of this Agreement;
- (b) either the sentenced person consents to the transfer or the sentenced person, while still serving the sentence, is subject to an order for expulsion, or removal or a deportation order from the transferring State;
- (c) the judgment is final and no other legal proceedings relating to the offence or any other offence committed by the sentenced person are pending in the transferring State;
- (d) the acts or omissions for which the sentence has been imposed constitute a criminal offence according to the law of the receiving State or would constitute a criminal offence if committed on its territory;
- (e) the sentenced person has received a sentence of 12 months or more and has at least 6 months of the sentence to serve at the time the request for transfer is received; in exceptional cases, the Parties may agree to a transfer even if the sentenced person has less than 6 months of the sentence to serve; and
- (f) the transferring and receiving States both agree to the transfer.

ARTICLE 4 Procedures for Transfer

1. Requests for transfer and replies shall be made in writing to the relevant competent authority through the diplomatic channel.
2. If the receiving State requests the transfer of a sentenced person, it shall provide the following information, where available, to the transferring State with the written request for transfer:

- (a) the name, date and place of birth of the sentenced person;
- (b) the location of the sentenced person; and
- (c) the permanent address of the sentenced person in the receiving State.

3. If the transferring State requests the transfer of a sentenced person or, having received a request to transfer under paragraph 2 of this article, is prepared to consider the request for transfer of a sentenced person, it shall inform the receiving State in writing, and provide the following information:

- (a) the name, date and place of birth of the sentenced person;
- (b) the location of the sentenced person;
- (c) if available, the permanent address of the sentenced person in the receiving State;
- (d) a statement of the facts upon which the conviction and sentence were based;
- (e) the nature, duration and date of commencement of the sentence, the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remission to which the sentenced person is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
- (f) a copy of the judgment and information about the law on which it is based;
- (g) if available, any other additional information, including medical or social reports on the sentenced person, which may be of significance for the sentenced person's transfer and for the continued enforcement of the sentence;
- (h) a copy of any written representations made by the sentenced person in accordance with paragraph 2 of Article 8 of this Agreement.

4. If the receiving State, having considered the information which the transferring State has provided, is willing to proceed with the transfer, it shall inform the transferring State in writing, and provide the following information:

- (a) a statement indicating that the sentenced person is a national of, or has relevant ties to, the receiving State for the purposes of this Agreement;

- (b) a copy of the relevant law of the receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the transferring State constitute a criminal offence according to the law of the receiving State, or would constitute a criminal offence if committed on its territory;
 - (c) a statement of the effect, in relation to the sentenced person, of any law or regulation relating to that person's detention in the receiving State after that person's transfer, including a statement, if applicable, of the effect of paragraph 3 of Article 7 of this Agreement upon that person's transfer;
 - (d) statements of any outstanding charges, convictions or criminal investigations in respect of the sentenced person.
5. If the transferring State is willing to proceed with the transfer, it shall provide the receiving State with its written agreement to the terms of the transfer.
6. Where the Parties have agreed to the transfer, they shall make arrangements for the transfer of the sentenced person. Delivery of the sentenced person by the authorities of the transferring State to those of the receiving State shall occur on a date and at a place agreed upon by both Parties.
7. If either Party decides not to agree to the transfer, it shall inform the other Party of its decision in writing.

ARTICLE 5

Effect of Transfer on Transferring State

1. The taking into charge of the sentenced person by the authorities of the receiving State shall have the effect of suspending the enforcement of the sentence by the authorities in the transferring State.
2. The transferring State shall not enforce the sentence if the receiving State considers enforcement of the sentence to have been completed.

ARTICLE 6

Retention of Jurisdiction

The transferring State shall retain exclusive jurisdiction for the review of the judgment and sentence.

ARTICLE 7

Continued Enforcement of Sentence

1. The receiving State shall enforce the sentence as if the sentence had been imposed in the receiving State.
2. The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving State, including those governing conditions of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.
3. If the sentence is by its nature or duration incompatible with the law of the receiving State, that State may, with the agreement of the transferring State prior to transfer, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the receiving State shall be bound by the findings of fact, insofar as they appear from any conviction, judgment, or sentence imposed in the transferring State. The adapted sentence must, as far as possible, correspond with the sentence imposed in the transferring State and shall not be less than the maximum penalty provided for similar offences under the law of the receiving State.
4. The receiving State shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring State to pardon the sentenced person, or of any other decision or measure of the transferring State that results in cancellation or reduction of the sentence.
5. The receiving State shall provide the following information to the transferring State in relation to the continued enforcement of the sentence:
 - (a) when the sentence has been completed;

- (b) if the sentenced person has escaped from custody before the sentence has been completed; or
- (c) if the sentenced person is unable to complete the sentence for any reason.

ARTICLE 8

Rights of Sentenced Persons

1. A sentenced person may express to either the transferring State or the receiving State an interest in being transferred under this Agreement.
2. A sentenced person whose transfer is requested under this Agreement shall:
 - (a) be informed by the transferring State of the substance of this Agreement;
 - (b) have the terms of the transfer explained in writing in the sentenced person's own language;
 - (c) be given the opportunity to make written representations to the authorities of the transferring State before the transferring State provides its written agreement to the terms of the transfer within the meaning of paragraph 5 of Article 4.

ARTICLE 9

Treatment of Sentenced Persons

Each Party shall treat all sentenced persons transferred under this Agreement in accordance with applicable international human rights obligations, particularly regarding the right to life and the prohibition against torture and cruel, inhuman or degrading treatment or punishment.

ARTICLE 10

Transit of Sentenced Persons

If either Party transfers a sentenced person to or from any third State, the other Party shall co-operate in facilitating the transit of such a sentenced person through its territory. The Party intending to make such a transfer shall give advance notice to the other Party of such transit. This Article is without prejudice to the right of either Party to refuse to grant transit in a particular case.

ARTICLE 11

Costs

The Transferring State shall bear the costs of transferring the prisoner into the custody of the authority of the receiving State.

ARTICLE 12

Territorial Application

This Agreement shall apply:

- (a) in relation to the United Kingdom, the territory of the United Kingdom of Great Britain and Northern Ireland and the Isle of Man; and to any other territory for the international relations of which the United Kingdom is responsible and to which this Agreement may be extended by mutual agreement between the Parties by exchange of notes (any such exchange of notes shall specify the relevant competent authority for the purposes of Article 1(g); and
- (b) in relation to Nigeria, to the territory of the Federal Republic of Nigeria.

ARTICLE 13

Temporal Application

This Agreement shall be applicable to the transfer of sentenced persons who have been sentenced either before or after the entry into force of this Agreement.

ARTICLE 14

Settlement of Disputes

Any dispute between the Parties arising out of or in connection with this Agreement shall be resolved through diplomatic channels.

ARTICLE 15

Amendment

This Agreement may be amended at any time by the mutual consent of the Parties. Any amendments or modifications to this Agreement agreed by the Parties shall come into effect when confirmed by an exchange of notes.

ARTICLE 16
Final Provisions

1. Each of the Parties shall notify the other upon completion of their respective internal constitutional and legal procedures required to allow this Agreement to enter into force.
2. This Agreement shall enter into force on the date of the latter notification referred to in paragraph 1 of this Article.
3. Either Party may terminate this Agreement at any time by written notification to the other Party. Such termination shall become effective on the expiration of a six-month period after the date of receipt of notification.
4. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Abuja in duplicate, on this ninth day of January in the year of 2014.

**FOR THE GOVERNMENT OF THE
UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN
IRELAND:**

JEREMY WRIGHT

**FOR THE GOVERNMENT
OF THE FEDERAL
REPUBLIC OF NIGERIA:**

**MOHAMMED BELLO
ADOKE**

3. EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (RATIFICATION AND ENFORCEMENT) ACT 2005

An act to enable effect to be given in the Federal Republic of Nigeria to the Extradition Treaty between the Federal Republic of Nigeria and the republic of South Africa; and for related matters.

WHEREAS the Extradition Treaty between the Federal Republic of Nigeria and the Republic of South Africa was signed by the Vice-President of the Federal Republic of Nigeria and the Deputy President of the Republic of South Africa

AND WHEREAS the Government of the Federal Republic of Nigeria has by a decision duly reached in accordance with her constitutional process ratified the Extradition Treaty between the Federal Republic of Nigeria and the Republic of South Africa on 30th November, 2002;

AND WHEREAS it is necessary and expedient to enact a law to enable effect to be given to the Extradition Treaty between the Federal Republic of Nigeria and the Republic of South Africa;

1. Enforcement of the Extradition Treaty between the Federal Republic of Nigeria and the Republic of South Africa

As from the commencement of this Act, the provisions of the Extradition Treaty between the Federal Republic of Nigeria and the Republic of South Africa which are set out in the Schedule to this Act shall, subject as thereunder provided have the force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

2. Short title

This Act may be cited as the Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2005.

SCHEDULE

[Section 1.]

EXTRADITION TREATY BETWEEN THE FEDERAL REPUBLIC OF
NIGERIA AND THE REPUBLIC OF SOUTH AFRICA

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EXTRADITION TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA

The Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa, (hereinafter referred to as “the Contracting States”);

DESIRING to enhance effective co-operation between the two States in the suppression of crime and, for that purpose, to conclude a treaty for the extradition of offenders;

HAVE AGREED as follows-

ARTICLE 1

Obligation to Extradite

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with or convicted of an extraditable offence.

ARTICLE 2

Extraditable Offences

1. An offence shall be an extraditable offence if it is punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one year, or by a more severe penalty.
2. An offence shall also be an extraditable offence if it consists of attempting or conspiring to commit, aiding, abetting, inducing, counselling or procuring the commission of, or being an accessory before or after the fact to, any offence contemplated in paragraph 1.
3. For the purposes of this article, an offence shall be an extraditable offence whether or not the laws of the Contracting States place the offence within the same category of offences or describe the offence by the same terminology.
4. If an offence has been committed outside the territory of the Requesting State, extradition shall be granted where the laws of the Requested State provide for the punishment of an offence committed outside its territory in similar circumstances.

Where the laws of the Requested State do not so provide, the executive authority of the Requested State may, in its discretion, grant extradition.

5. Extradition shall also be granted in respect of a person convicted of but not yet sentenced, or convicted of and sentenced for an offence as contemplated in this article, for the purpose of sentence, or for enforcing such sentence or the remaining portion thereof, as the case may be.
6. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control, or other revenue matters, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty, or exchange regulation of the same kind as the law of the Requesting State.
7. Where extradition has been granted for an extraditable offence, it shall also be granted for any other offence specified in the request even if the latter offence is punishable by less than one year's deprivation of liberty, provided that all other requirements of extradition are met.

ARTICLE 3

Optional Grounds for Extradition

1. Extradition shall be granted unless the offence for which extradition is sought is punishable by death under the laws of the Requesting State, and is not punishable by death under the laws of the Requested State and the Requested State may refuse extradition unless the Requesting State provides assurances that the death penalty will not be imposed or, if imposed, will not be carried out.
2. In instances in which a Requesting State provides an assurance in accordance with this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.
3. 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.

ARTICLE 4

Nationality

Extradition shall not be refused on the ground that the person sought is a citizen or national of the Requested State.

ARTICLE 5

Political and Military Offences

1. Extradition shall not be granted if the offence for which extradition is requested is an offence of a political character.
2. For the purposes of this Treaty, the following shall not be considered to be offences of a political character—
 - (a) the murder or other willful crime against the person of a Head of State of one of the Contracting States, or a member of the Head of State's family;
 - (b) an offence for which both contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;
 - (c) murder;
 - (d) an offence involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage; and
 - (e) attempting or conspiring to commit, aiding, abetting, inducing, counselling or procuring the commission of, or being an accessory before or after the fact to such offences.
3. Despite paragraph 2 of this article, extradition shall not be granted if the executive authority of 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.
4. The executive authority of the Requested State may refuse extradition for offences under military law which are not offences under ordinary criminal law.

ARTICLE 6

Prior Prosecution

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offence for which extradition is requested.
2. Extradition shall not be precluded by the fact that the competent authorities in the Requested State have decided not to prosecute the person sought for the acts or omissions for which extradition is requested, or to discontinue any criminal proceedings which have been instituted against the person sought for those acts: Provided such discontinuance does not have the effect of acquittal.

ARTICLE 7

Lapse of Time

Extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the Requesting State.

ARTICLE 8

Extradition Procedures and Required

Documents

1. All requests for extradition shall be made in writing and be submitted through the diplomatic channel.
2. The request for extradition shall be supported by—
 - (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
 - (b) a statement of the facts of the offence and the procedural history of the case;
 - (c) a statement of the provisions of the law describing the essential
 - (d) elements of the offence for which extradition is requested;
 - (e) a statement of the provisions of law describing the punishment for the offence;
 - (f) a statement of the provisions of law describing any statute of limitation on the prosecution which shall be conclusive; and
 - (g) the documents, statements or other information specified in paragraph 3 or 4 of this article, as the case may be.

3. A request extradition of a person who is sought for prosecution shall also be supported by—
 - (a) a copy of the warrant or order of arrest, or any document having the same force and effect, if any, issued by a judge or other competent authority;
 - (b) a copy of the indictment, charge sheet or other charging document, if any; and
 - (c) such information as would justify the committal for trial of the person if the offence had been committed in the Requested State, but neither State is required to establish a prima facie case.
4. A request for extradition relating to a person who has been convicted of the offence for which extradition is sought shall also be supported by—
 - (a) a copy of the judgment of conviction, if available, or a statement by judicial officer or other competent authority that the person sought has been convicted or a certified copy of any record of conviction that reflects the charge and the conviction;
 - (b) information establishing that the person sought is the person to whom the conviction refers; and
 - (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out.

ARTICLE 9

Admissibility of Documents

Any document submitted in support of an extradition request shall be received and admitted as evidence in extradition proceedings if such document has been certified as a true copy of the original by a magistrate, judge or any other person authorized to do so and such document has been authenticated by a statement by—

- (a) if the Requested State is the Republic of South Africa, the Attorney-General of the Federation and Minister of Justice of the Federal Republic of Nigeria; or
- (b) if the Requested State is the Federal Republic of Nigeria, the Minister responsible for Justice and Constitutional Development of the Republic of South Africa; or

- (c) person designated by such Minister under the seal of that Minister, identifying the person who has signed the document, including that person's position or title or authenticated in any other manner provided for by the law of the Requested State.

ARTICLE 10

Provisional Arrest

1. In case of urgency, either Contracting State may request in writing the provisional arrest of the person sought pending presentation of the documents in support of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Federal Ministry of Justice in the Federal Republic of Nigeria and the Department of Justice and Constitutional Development in the Republic of South Africa. The facilities of the International Criminal Police Organization (INTERPOL) may be used to transmit such a request. The application may also be transmitted by post, telegraph, telefax or any other means affording a record in writing.
2. The application for provisional arrest shall contain—
 - (a) a description of the person sought;
 - (b) the location of the person sought, if known;
 - (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
 - (d) a description of the laws violated;
 - (e) a statement of the existence of a warrant of arrest or finding of guilt or judgment of conviction against the person sought;
 - (f) a statement that a request for extradition, and supporting documents, for the person sought will follow within the time period specified in this Treaty; and
 - (g) a description of the punishment that can be imposed or has been imposed for the offences.
3. On receipt of the application, the Requested State shall promptly take appropriate steps to secure the arrest of the person sought. The Requesting State shall be notified without delay of the disposal of its Application and the reasons for any denial.
4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant, to

the application of the Requesting State if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required under Article 8.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

ARTICLE 11

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State through the diplomatic channel or in any other manner, of its decision on the request for extradition.
2. If the request is denied in whole or in part, the Requested State shall provide information as to the reasons for the denial of the request. The Requested State shall provide copies of pertinent judicial decisions upon request.
3. If the request for extradition is granted, the competent authorities of the Contracting States shall agree on the time and place for the surrender of the person sought.
4. If the person sought is not removed from the territory of the Requested State within fifteen (15) days of the appointed date, the person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offence.
5. If circumstances beyond its control prevent either the Requested State or the Requesting State from respectively surrendering or receiving the person sought, the State so prevented shall notify the other accordingly and seek to agree on a new date and, if necessary, a new place.

ARTICLE 12

Temporary and Deferred Surrender

1. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by

agreement in writing between the Contracting States.

2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed upon him or her, or any part thereof.

ARTICLE 13

Requests for Extradition by more than one State

1. If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offence or for a different offence, the executive authority of the Requested State shall determine to which of those States it will surrender the person and shall inform the Requesting State of its decision. In making its decision, the Requested State shall consider whether the request was made pursuant to a treaty and all other relevant factors including but not limited to—
 - (a) the time and place where the respective offence or offences were committed;
 - (b) the gravity of the offence if the States are seeking the person for different offences;
 - (c) the circumstances of the case including the nationality of the victim and the State against which the offence was directed;
 - (d) the possibility of re-extradition between the Requesting States, and
 - (e) the chronological order in which the requests were received from the Requesting States

ARTICLE 14

Seizure and Surrender of Property

1. To the extent permitted under its law the Requested State may seize and surrender all articles, documents and evidence connected with the offence in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when extradition cannot be effected due to the death, disappearance or escape of the person sought.

2. Where the said property is liable to seizure or confiscation within the jurisdiction of the Requested State, the Requested State may temporarily surrender the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State within a fixed period of time or as soon as practicable. The Requested State may also defer surrender of such property if it is needed as evidence in criminal proceedings in the Requested State.
3. Any rights which the Requested State or third parties may have to such property shall be duly respected in accordance with the laws of the Requested State.

ARTICLE 15

Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for an offence—
 - (a) for which extradition has been granted or any differently denominated offence based on the same facts on which extradition was granted, provided such offence is extraditable or is a lesser included offence;
 - (b) committed by him or her after his or her extradition; or
 - (c) for which the executive authority of the Requested State has consented to the person's detention, trial, or punishment.
2. For the purposes of paragraph (1) (c) of this Article—
 - (a) the Requested State may require the submission of the documents specified in Article 8; and
 - (b) the person extradited may be detained by the Requesting State for ninety (90) days, or for such longer time as the Requested State may authorize, pending the processing of the request.
3. Paragraphs 1 and 2 of this Article shall not apply if the person extradited—
 - (a) leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
 - (b) has had an opportunity to leave the territory of the Requesting State and has not done so within fifteen (15) days of final discharge in respect of the offence for which that person was extradited and the person was free to do so.

ARTICLE 16

Surrender to a Third State or an International Tribunal

1. Subject to any multilateral agreement to which both Contracting States are parties, neither of the Contracting States may re-extradite or surrender a person extradited to it to any third State or International Tribunal for an offence committed by that person before his or her extradition unless—
 - (a) the Requested State consents to that extradition or surrender; or
 - (b) the person has had an opportunity to leave the territory of the Requesting State and has not done so within fifteen (15) days of final discharge of the offence for which the person was extradited and the person was free to do so.
2. Paragraph 3 of Article 15 also applies to this article.

ARTICLE 17

Simplified Surrender

If the person sought consents to surrender to the Requesting State, the Requested State may surrender the person as expeditiously as possible and without further proceedings.

ARTICLE 18

Transit

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit may be made through the diplomatic channel or directly between the Department of Justice and Constitutional Development of the Republic of South Africa and the Federal Ministry of Justice of the Federal Republic of Nigeria and shall contain a description of the person being transported and a brief statement of the facts of the case. To the extent permitted by the law of the Contracting States, a person in transit may be detained in custody during the period of transit.
2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the other Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, the other Contracting State may require the request for transit as provided in paragraph 1. That Contracting State shall detain the person to be

transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 19

Expenses and Representation

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall advise, assist, represent, and appear in court on behalf of the Requesting State, and otherwise represent the interests of the Requesting State until the person whose extradition is sought is surrendered to a person nominated by the Requesting State.
2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person extradited.
3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under this Treaty.

ARTICLE 20

Consultation

The Federal Ministry of Justice of the Federal Republic of Nigeria and the Department of Justice and Constitutional Development in the Republic of South Africa may communicate with each other directly, through the diplomatic channel, or through the facilities of the International Criminal Police Organization (INTERPOL) in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

ARTICLE 21

Scope of Application

This Treaty shall apply to offences committed before, on, or after the date this Treaty enters into force.

ARTICLE 22

Amendment

This Treaty may be amended by agreement in writing between the Contracting States and the amendments shall enter into force in accordance with the procedures set forth in Article 23 of this Treaty.

ARTICLE 23

Ratification, Entry into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible.
2. This Treaty shall enter into force immediately upon the exchange of the instruments of ratification.
3. Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State and the termination shall be effective six (6) months after the date of the receipt of such notice. Such termination shall not prejudice any request for extradition made prior to the date on which the termination becomes effective.

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE
REBUPLIC OF SOUTH AFRICA (RATIFICATION AND
ENFORCEMENT) ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation

4. THE LONDON SCHEME FOR EXTRADITION WITHIN THE COMMONWEALTH

incorporating the amendments agreed at Kingstown in November 2002.

1. (1) The general provisions set out in this Scheme will govern the extradition of a person from the Commonwealth country, in which the person is found, to another Commonwealth country, in which the person is accused of an offence.
- (2) Extradition will be precluded by law, or be subject to refusal by the competent executive authority, only in the circumstances mentioned in this Scheme.
- (3) For the purpose of this Scheme a person liable to extradition as mentioned in paragraph (1) is described as a person sought and each of the following areas is described as a separate country:
 - (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates, and
 - (b) each country within the Commonwealth, which, though not sovereign and independent, is not a territory designated for the purposes of the preceding sub-paragraph.

Extradition Offences and Dual Criminality Rule

2. (1) A person sought will only be extradited for an extradition offence.
- (2) For the purpose of this Scheme, an extradition offence is an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty.
- (3) In determining whether an offence is an offence punishable under the laws of both the requesting and the requested country, it shall not matter whether:
 - (a) the laws of the requesting and requested countries place the acts or omissions constituting the offence

- within the same category of offence or denominate the offence by the same terminology;
- (b) under the laws of the requesting and requested countries the elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting country constitute an offence under the laws of the requested country.
- (4) An offence described in paragraph (2) is an extradition offence notwithstanding that the offence: (a) is of a purely fiscal character; or
- (b) was committed outside the territory of the requesting country
- where extradition for such offences is permitted under the law of the requested country.

Warrants, Other Than Provisional Warrants

3. (1) A person sought will only be extradited if a warrant for arrest has been issued in the country seeking extradition and either -
- (a) that warrant is endorsed by a competent judicial authority in the requested country (in which case, the endorsed warrant will be sufficient authority for arrest), or
 - (b) a further warrant for arrest is issued by the competent judicial authority in the requested country, other than a provisional warrant issued in accordance with clause 4.
- (2) The endorsement or issue of a warrant may be made conditional on the competent executive authority having previously issued an order to proceed.

Provisional Warrants

4. (1) Where a person sought is, or is suspected of being, in or on the way to any country but no warrant has been endorsed or issued in accordance with clause 3, the competent judicial authority in the destination country may issue a provisional warrant for arrest on such information and under such circumstances as would, in the authority's opinion, justify the

issue of a warrant if the extradition offence had been an offence committed within the destination country.

- (2) For the purposes of paragraph 1, information contained in an international notice issued by the International Criminal Police Organisation (INTERPOL) in respect of a person sought may be considered by the authority, either alone or with other information, in deciding whether a provisional warrant should be issued for the arrest of that person.
- (3) A report of the issue of a provisional warrant, with the information in justification or a certified copy thereof, will be sent to the competent executive authority.
- (4) The competent executive authority who receives the information under paragraph (3) may decide, on the basis of that information and any other information which may have become available, that the person should be discharged, and so order.

Committal Proceedings

5. (1) A person arrested under a warrant endorsed or issued in accordance with clause 3(1), or under a provisional warrant issued in accordance with clause 4, will be brought, as soon as practicable, before the competent judicial authority who will hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including power to remand and admit to bail, as if the person were charged with an offence committed in the requested country.
- (2) The competent judicial authority will receive any evidence which may be tendered to show that the extradition of the person sought is precluded by law.
- (3) Where a provisional warrant has been issued in accordance with clause 4, but within such reasonable time as the competent judicial authority may fix: (a) a warrant has not been endorsed or issued in accordance with clause 3(1), or

(b) where such endorsement or issue of a warrant has been made conditional on the issuance of an order to proceed, as mentioned in clause 3(2), no such order has been issued,

the competent judicial authority will order the person to be discharged.

- (4) Where a warrant has been endorsed or issued in accordance with 3(1) the competent judicial authority may commit the person to prison to await extradition if -
 - (a) such evidence is produced as establishes a prima facie case that the person committed the offence; and
 - (b) extradition is not precluded by law but, otherwise, will order the person to be discharged.
- (5) Where a person sought is committed to prison to await extradition as mentioned in paragraph (4), notice of the fact will be given as soon as possible to the competent executive authority of the country in which committal took place.

Optional Alternative Committal Proceedings

- 6. (1) Two or more countries may make arrangements under which clause 5(4) will be replaced by paragraphs 2-4 of this clause or by other provisions agreed by the countries involved.
- (2) Where a warrant has been endorsed or issued as mentioned in clause 3(1), the competent judicial authority may commit the person sought to prison to await extradition if -
 - (a) the contents of a record of the case received, whether or not admissible in evidence under the law of the requested country, and any other evidence admissible under the law of the requested country, are sufficient to warrant a trial of the charges for which extradition has been requested; and
 - (b) extradition is not precluded by law, but otherwise will order that the person be discharged.

- (3) The competent judicial authority will receive a record of the case prepared by an investigating authority in the requesting country if it is accompanied by -
 - (a) an affidavit of an officer of the investigating authority stating that the record of the case was prepared by or under the direction of that officer, and that the evidence has been preserved for use in court; and
 - (b) a certificate of the Attorney General of the requesting country that in his or her opinion the record of the case discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.
- (4) A record of the case will contain -
 - (a) particulars of the description, identity, nationality and, to the extent available, whereabouts of the person sought;
 - (b) particulars of each offence or conduct in respect of which extradition is requested, specifying the date and place of commission, the legal definition of the offence and the relevant provisions in the law of the requesting country, including a certified copy of any such definition in the written law of that country;
 - (c) the original or a certified copy of any document of process issued in the requesting country against the person sought for extradition;
 - (d) a recital of the evidence acquired to support the request for extradition; and
 - (e) a certified copy, reproduction or photograph of exhibits or documentary evidence.

Supplementary Information

7. (1) If it considers that the material provided in support of a request for extradition is insufficient, the competent authority in the requested country may seek such additional information as it considers necessary from the requesting country, to be provided within such reasonable period of time as it may specify.

- (2) Where a request under paragraph (1) is made after committal proceedings have commenced the competent judicial authority in the requested country may grant an adjournment of the proceedings for such period as that authority may consider reasonable for the material to be furnished, which aggregate period should not exceed 60 days.

Consent Order for Return

8. (1) A person sought may waive committal proceedings, and if satisfied that the person sought has voluntarily and with an understanding of its significance requested such waiver, the competent judicial authority may make an order by consent for the committal of the person sought to prison, or for admission to bail, to await extradition.
- (2) The competent executive authority may thereafter order extradition at any time, notwithstanding the provisions of clause 9.
- (3) The provisions of clause 20 shall apply in relation to a person sought extradited under this clause unless waived by the person.

Return or Discharge by Executive Authority

9. After the expiry of 15 days from the date of the committal of a person sought, or, if a writ of habeas corpus or other like process is issued, from the date of the final decision of the competent judicial authority on that application (whichever date is the later), the competent executive authority will order extradition unless it appears to that authority that, in accordance with the provisions set out in this Scheme, extradition is precluded by law or should be refused, in which case that authority will order the discharge of the person.

Discharge by Judicial Authority

10. (1) Where after the expiry of the period mentioned in paragraph
- (2) a person sought has not been extradited an application to the

competent judicial authority may be made by or on behalf of the person for a discharge and if -

- (a) reasonable notice of the application has been given to the competent executive authority, and
- (b) sufficient cause for the delay is not shown, the competent judicial authority will order the discharge of the person.

(2) The period referred to in paragraph (1) will be prescribed by law and will be one expiring either -

- (a) not later than two months from the person's committal to prison, or
- (b) not later than one month from the date of the order for extradition made in accordance with clause 9.

Habeas Corpus and Review

11. (1) It will be provided that an application may be made by or on behalf of a person sought for a writ of habeas corpus or other like process.

(2) It will be provided that an application may be made by or on behalf of the government of the requesting country for review of the decision of the competent judicial authority in committal proceedings.

Political Offence Exception

12. (1) (a) The extradition of a person sought will be precluded by law if the competent authority is satisfied that the offence is of a political character;

(b) Sub paragraph (a) shall not apply to:

- (i) offences established under any multilateral international convention to which the requesting and the requested countries are parties, the purpose of which is to prevent or repress a specific category of offences and which imposes on the parties an obligation

either to extradite or to prosecute the person sought;

- (ii) offences for which the political offence or offence of political character ground of refusal is not applicable under international law.

- (c) If the competent executive authority is empowered by law to certify that the offence of which a person sought is accused is an offence of a political character, and so certifies in a particular case, the certificate will be conclusive in the matter and binding upon the competent judicial authority for the purposes mentioned in this clause.

- (2) (a) A country may provide by law that certain acts shall not be held to be offences of a political character including:

- (i) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State or any related offence (i.e. aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit such an offence),
- (ii) an offence against the life or person of a Head of Government, or of a Minister of a Government, or any related offence as described above,
- (iii) murder, or any related offence as described above,
- (iv) any other offence that a country considers appropriate.

- (b) A country may restrict the application of any of the provisions made under sub paragraph (b) to a request from a country which has made similar provisions in its laws.

13. The extradition of a person sought also will be precluded by law if -

- (a) it appears to the competent authority that:
 - (i) the request for extradition although purporting to be made for an extradition offence was in fact made for the purpose of prosecuting or punishing the person on account of race, religion, sex, nationality or political opinions, or
 - (ii) that the person may be prejudiced at trial or punished, detained or restricted in personal liberty by reason of race, religion, sex, nationality or political opinions.
- (b) the competent authority is satisfied that by reason of
 - (i) the trivial nature of the case, or
 - (ii) the accusation against the person sought not having been made in good faith or in the interests of justice, or
 - (iii) the passage of time since the commission of the offence, or
 - (iv) any other sufficient cause, it would, having regard to all the circumstances be unjust or oppressive or too severe a punishment for the person to be extradited or, as the case may be, extradited before the expiry of a period specified by that authority.
- (c) The competent authority is satisfied that the person sought has been convicted (and is neither unlawfully at large nor at large in breach of a condition of a licence to be at large), or has been acquitted, whether within or outside the Commonwealth, of the offence for which extradition is sought.

Discretionary Basis for Refusal of Extradition

14. A request for extradition may be refused in the discretion of the competent authority of the requested country if -
 - (a) judgment in the requesting country has been rendered in circumstances where the accused was not present; and
 - (i) no counsel appeared for the accused; or
 - (ii) counsel instructed and acting on behalf of the accused was not permitted to participate in the proceedings;
 - (b) the offence for which extradition is requested has been committed outside the territory of either the requesting or requested country and the law of the requested country does not enable it to assert jurisdiction over such an offence committed outside its territory in comparable circumstances;
 - (c) the person sought has, under the law of either the requesting [or requested] country become immune from prosecution or punishment because of [any reason, including] lapse of time or amnesty;
 - (d) the offence is an offence only under military law or a law relating to military obligations.

Discretionary Grounds of Refusal

15. (1) Any country may adopt the provisions of this clause but, where they are adopted, any other country may in relation to the first country reserve its position as to whether it will give effect to the other clauses of the Scheme or will give effect to them subject to such exceptions and modifications as appear to it to be necessary or expedient or give effect to any arrangement made under clause 23(a).
- (2) A request for extradition may be refused if the competent authority of the requested country determines -
 - (a) that upon extradition, the person is likely to suffer the death penalty for the extradition offence and that

- offence is not punishable by death in the requested country; and
- (b) it would be, having regard to all the circumstances of the case and to the likelihood that the person would be immune from punishment if not extradited, unjust or oppressive or too severe a punishment for extradition to proceed.
 - (c) In determining under paragraph (a), whether a person would be likely to suffer the death penalty, the executive authority shall take into account any representations which the authorities of the requesting country may make with regard to the possibility that the death penalty, if imposed, will not be carried out.
- (3) (a) A request for extradition may be refused on the basis that the person sought is a national or permanent resident of the requested country.
- (b) For the purpose of sub paragraph (a), a person shall be treated as a national of a country that is -
 - (i) a Commonwealth country of which he or she is a citizen; or
 - (ii) a country or territory his or her connection with which determines national status.
 - (c) The assessment under paragraph (b) should be at the date of the request.

Alternative Measures in The Case of Refusal

- 16 (1) For the purpose of ensuring that a Commonwealth country cannot be used as a haven from justice, each country which reserves the right to refuse to extradite nationals or permanent residents in accordance with clause 15 paragraph (3), will take, subject to its constitution, such legislative action and other steps as may be necessary or expedient in the circumstances to facilitate the trial or punishment of a person whose extradition is refused on that ground.

- (2) The legislative action necessary to give effect to paragraph (1) may include –
- (a) providing that the case be submitted to the competent authorities of the requested country for prosecution;
 - (b) permitting:
 - (i) the temporary extradition of the person to stand trial in the requesting country on condition that, following trial and sentence, the person is returned to the requested country to serve his or her sentence; and
 - (ii) the transfer of convicted offenders; or
 - (c) enabling a request to be made to the relevant authorities in the requesting country for the provision to the requested country of such evidence and other information as would enable the authorities of the requested country to prosecute the person for the offence.

Competent Authority

- 17 (1) The competent authorities for the purpose of clauses 12, 13, 14 and 15 will include
- (a) any judicial authority which hears or is competent to hear an application described in clause 11, and
 - (b) the executive authority responsible for orders for extradition.
- (2) It will be sufficient compliance with sub paragraphs 12, 13, 14 and 15 if a country decides that the competent authority for those purposes is exclusively the judicial authority or the executive authority.

Postponement of Extradition and Temporary Transfer of Prisoners to Stand Trial

18. (1) Subject to the following provisions of this clause, where a person sought -

- (a) has been charged with an offence that may be tried by a court in the requested country or
- (b) is serving a sentence imposed by a court in the requested country,

then until discharge (by acquittal, the expiration or remission of sentence, or otherwise) extradition will either be precluded by law or be subject to refusal by the competent executive authority as the law of the requested country may provide.

- (2) Subject to the provisions of this Scheme, a prisoner serving such a sentence who is also a person sought may, at the discretion of the competent executive authority of the requested country, be extradited temporarily to the requesting country to enable proceedings to be brought against the prisoner in relation to the extradition offence on such conditions as are agreed between the respective countries.

Priority Where Two or More Requests Made

- 19. (1) Where the requested country receives two or more requests from different countries for the extradition of the same person, the competent executive authority will determine which request will proceed and may refuse the other requests.
- (2) In making a determination under paragraph (1), the authority will consider all the circumstances of the case and in particular -
 - (a) the relative seriousness of the offences,
 - (b) the relative dates on which the requests were made, and
 - (c) the citizenship or other national status and ordinary residence of the person sought.

Speciality Rule

- 20. (1) This clause relates to a person sought who has been extradited from one country to another, so long as the person has not had a reasonable opportunity of leaving the second mentioned country.

- (2) In the case of a person sought to whom this clause relates, detention or trial in the requesting country for any offence committed prior to extradition (other than the one for which the person was extradited or any lesser offence proved by the facts on which extradition was based), without the consent of the requested country, will be precluded by law.
- (3) When considering a request for consent under paragraph (2) the executive authority of the requested country may seek such particulars as it may require in order that it may be satisfied that the request is otherwise consistent with the principles of this Scheme
- (4) Consent under paragraph (2) shall not be unreasonably withheld but where, in the opinion of the requested country, it appears that, on the facts known to the requesting country at the time of the original request for extradition, application should have been made in respect of such offences at that time, that may constitute a sufficient basis for refusal of consent.
- (5) The requesting country shall not extradite a person sought who has been surrendered to that country pursuant to a request for extradition, to a third country for an offence committed prior to extradition, without the consent of the requested country.
- (6) In considering a request under paragraph (5) the requested country may seek the particulars referred to in paragraph (3) and shall not unreasonably withhold consent.
- (7) Nothing in this clause shall prevent a court in the requesting country from taking into account any other offence, whether an extradition offence or not under this Scheme, for the purpose of passing sentence on a person convicted of an offence for which he or she was surrendered, where the person consents.

(8)

Return of Escaped Prisoners

21. (1) In the case of a person who -
- (a) has been convicted of an extradition offence by a court in any country and is unlawfully at large before the expiry of the sentence for that offence, and
 - (b) is found in another country, the provisions set out in this Scheme, as applied for the purposes of this clause by paragraph (2), will govern extradition to the country in which the person was convicted.
- (2) For the purposes of this clause this Scheme shall be construed, subject to any necessary adaptations or modifications, as though the person unlawfully at large were accused of the offence for which there is a conviction and, in particular -
- (a) any reference to a person sought shall be construed as including a reference to such a person as is mentioned in paragraph (1); and
 - (b) the reference in clause 5(4) to evidence that establishes a prima facie case shall be construed as a reference to such evidence as establishes that the person has been convicted.
- (3) The references in this clause to a person unlawfully at large shall be construed as including reference to a person at large in breach of a condition of a licence to be at large.

Ancillary Provisions

22. Each country will take, subject to its constitution, any legislative and other steps which may be necessary or expedient in the circumstances to facilitate and effectuate -
- (a) the transit through its territory of a person sought who is being extradited under this Scheme;
 - (b) the delivery of property found in the possession of a person sought at the time of arrest which may be material evidence of the extradition offence; and
 - (c) the proof of warrants, certificates of conviction, depositions and other documents.

Alternative Arrangements and Modifications

23. Nothing in this Scheme shall prevent -
- (a) the making of arrangements between Commonwealth countries for further or alternative provision for extradition, or
 - (b) the application of the Scheme with modifications by one country in relation to another which has not brought the Scheme fully into effect.

5. **ECONOMIC COMMUNITY OF WEST AFRICAN STATES
CONVENTION ON EXTRADITION 1994**

PREAMBLE

THE GOVERNMENTS OF THE MEMBER STATES OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES,

CONSIDERING that speedy integration between Member States in every area of activity can best be achieved by seeking to create and sustain within the Community, such conditions as shall eliminate any threat to the security of their peoples;

CONVINCED that security can best be maintained if offenders are denied shelter from legal proceedings or penalties;

DESIROUS of working together to curb crime throughout the territory of the Community;

DETERMINED thereof to endow national courts of law with an effective instrument for the arrest, judgment and enforcement of penalties against offenders fleeing the territory of one Member State to seek shelter in the territory of another;

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

Definitions

For the purpose of this Convention, the following definitions shall apply: “Community” means the Economic Community of West African States, referred to under Article 2 of the Treaty;

“Executive Secretary” means the Executive Secretary of the Community, appointed under Article 18 paragraph 1 of the Treaty;

“Member State” or “Member States” means a Member State or Member States of the Community;

“Non-Member State” or “Non-Member States” means a State or States not a member of the Community which has acceded to this Convention;

“Offence” or “Offences” means the fact or facts which constitute a criminal offence or criminal offences under the laws of the Member States;

“Requested State” means a State to which a request for extradition under this Convention has been made;

“Requesting State” means a State which has made a request for extradition under this Convention;

“Sentence” means all penalties or measures incurred or pronounced as a result of a criminal offence and includes a sentence of imprisonment;

“Treaty” means the Revised Treaty of the Economic Community of West African States signed in Cotonou on 24 July 1993.

ARTICLE 2

Principles of Extradition

1. States undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons within the territory of the requested State who are wanted for prosecution for an offence or who are wanted by the legal authorities of the requesting State for the carrying out of a sentence.
2. In the case of a minor aged under 18 at the time of the request for extradition, the competent authorities of the requesting and requested States shall take into consideration the interests of the minor and, where they think that extradition is likely to impair social rehabilitation, shall endeavour to reach an agreement on the most appropriate measures.

ARTICLE 3

Conditions for Extradition

1. Extradition shall be granted under certain circumstances in respect of offences punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a minimum period of two years. Where there has been a conviction and a prison sentence has been imposed in the territory of the requesting State, extradition shall be granted only if a period of at least 6 months remains to be served.

2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting State and the requested State by deprivation of liberty but of which some do not meet the penalty requirements set out in paragraph 1 of this Article, the requested State shall have the right to grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

ARTICLE 4

Political Offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of race, tribe, religion, nationality, political opinion, sex or status.
3. Implementation of this Article shall not affect any prior or future obligations assumed by States under the provisions of the Geneva Convention of 12 August 1949 and its additional Protocols and other multilateral international conventions.

ARTICLE 5

Inhuman or Degrading Treatment or Punishment

Extradition shall not be granted if the person whose extradition is requested has been, or would be, subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting State or if that person has not received, or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and People's Rights.

ARTICLE 6

Humanitarian Consideration

The requested State may refuse to extradite a person if extradition would be incompatible with humanitarian considerations in view of age or health.

ARTICLE 7

Military Offences

Extradition for offences under military law which are not offences under ordinary criminal law shall not be granted under this Convention.

ARTICLE 8

Ad Hoc Court or Tribunal

Extradition may be refused if the person whose extradition is requested has been sentenced, or would be liable to be tried, in the requesting State by an extraordinary or Ad Hoc Court or Tribunal.

ARTICLE 9

Fiscal Offences

For offences in connection with taxes, duties and customs; extradition shall take place between the States in accordance with the provisions of this Convention if the offence under the law of the requested State, corresponds to an offence of the same type of tax, duty or custom regulation.

ARTICLE 10

Nationals

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

For this purpose, the files, information and exhibits relating to the offence shall be transmitted, without charge, through the diplomatic channel or by such other means as shall be agreed upon by the States concerned. The requesting State shall be informed of the result of its request.

ARTICLE 11

Place of Commission

1. The requested State may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.

2. When the offence for which extradition is requested has been committed outside the territory of the requesting State, extradition may only be refused if the law of the requested State does not allow prosecution for the same category of offence when committed outside the territory of the latter or does not allow extradition for the offence concerned.

ARTICLE 12

Pending Proceedings for The Same Offences

The requested State may refuse to extradite the person claimed if the competent authorities of such State are proceeding against that person in respect of the offence or offences for which extradition is requested.

ARTICLE 13

Double Jeopardy

1. Extradition shall not be granted if final judgment has been passed by the competent authorities of the requested State upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested State have decided either not to institute or to terminate proceedings in respect of the same offence or offences.
2. If new proceedings are instituted by the requesting State against the person in respect of whom the requested State has terminated proceedings for the offence for which extradition was granted, any period passed in remand or in custody in the requested State shall be taken into consideration when deciding the penalty involving deprivation of liberty in the requesting State.

ARTICLE 14

Judgment in Absentia

1. When a request is made for the extradition of a person for the purpose of carrying out a sentence imposed by a decision rendered in absentia, the requested State may refuse to extradite if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognized as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting state gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which

safeguards the rights of defence. This decision will authorize the requesting State either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.

2. When the requested State informs the person whose extradition has been requested of the judgment rendered against him in absentia the requesting State shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State.

ARTICLE 15

Lapse of Time

1. Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested State become immune by reason of lapse of time from prosecution or punishment, at the time of receipt of the request for extradition by the requested State.
2. When determining whether, according to the law of the requested State, the person claimed has become immune by reason of lapse of time from prosecution or punishment, the competent authorities of the said State shall take into consideration any acts of interruption and any events suspending time-limitation occurring in the requesting State in so far as acts or events of the same nature have an identical effect in the requested State.

ARTICLE 16

Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law.

ARTICLE 17

Capital Punishment

If the offence for which extradition is requested is punishable by death under the law of the requesting State, and if in respect of such offence the death penalty is not provided for by the law of the requested State, extradition may not be granted.

ARTICLE 18

The Request and Supporting Documents

1. The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. However, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more States.
2. The request shall be supported by:
 - (a) the original or an authenticated copy of the conviction and sentence immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting State.
 - (b) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
 - (c) an authenticated copy of the relevant law, indicating the sentence which may be or has been imposed for the offence, and as accurate a description as possible of the person claimed together with any other information which will help to establish his identity, nationality and whereabouts.

ARTICLE 19

Supplementary Information

If the information communicated by the requesting State is found to be insufficient to allow the requested State to make a decision in pursuance of this Convention, the latter State shall request the necessary supplementary information and may fix a reasonable time-limit for the receipt thereof.

ARTICLE 20

Rule of Speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to his surrender other than that for which

he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

- (a) When the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 18 and a legal record of any statements made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provision of this Convention;
 - (b) When that person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
2. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

ARTICLE 21

Re-Extradition to a Third State

Except as provided for in Article 20, paragraph 1(b), the requesting State shall not, without the consent of the requested State surrender to another State or to a third State a person surrendered to the requesting State and sought by the said other State or third State in respect of offences committed before his surrender. The requested State may request this production of the documents mentioned in Article 18.

ARTICLE 22

Provisional Arrest

1. In case of urgency the competent authorities of the requesting State may request the provisional arrest of the person sought. The competent authorities of the requested State shall decide the matter in accordance with its law pending the request for extradition.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 18 Paragraph 2(a), exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested, when and where such offence was committed, the penalty incurred or provided for, or the sentence pronounced. The request shall also, if possible, indicate the whereabouts of the person sought, and as far as possible provide a description of the person.
3. A request for provisional arrest shall be sent to the competent authorities of the requested State either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing or accepted by the requested State. The requesting State shall be informed without delay of the result of its request.
4. Provisional arrest may be terminated if, within a period of twenty (20) days after arrest, the requested State has not received the request for extradition and the documents mentioned in Article 18. The possibility of provisional release at any time is not excluded but the requested State shall take any measures which it considers necessary to prevent the escape of the person sought.
5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.
6. The time spent in detention by an individual solely for the purpose of extradition in the territory of the requested State or of a State of transit shall be taken into consideration when deciding the penalty involving deprivation of liberty or detention which he has to serve for the offence for which he was extradited.

ARTICLE 23

Conflicting Requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested State shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective

dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

ARTICLE 24

Surrender of the Person to Be Extradited

1. The requested State shall inform the requesting State by the means mentioned in Article 18 paragraph 1 of its decision with regard to the extradition.
2. Reasons shall be given for any complete or partial rejection.
3. If the request is agreed to, the requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been removed on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested State may refuse to extradite him for the same offence.
5. If circumstances beyond its control prevent a State from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree on a new date for surrender and the provisions of paragraph 4 of this Article shall apply.

ARTICLE 25

Postponed or Conditional Surrender

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against or, if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.
2. The requested State may, instead of postponing surrender, temporarily surrender the person claimed to the requesting State in accordance with conditions to be determined by mutual agreement between the States.

ARTICLE 26

Handing Over of Property

1. The requested State shall, in so far as its law permits and at the request of the requesting State, seize and hand over property:
 - (a) which may be required as evidence or
 - (b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
2. The property mentioned in paragraph 1 of this Article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
3. When the said property is liable to seizure or confiscation in the territory of the requested State, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
4. Any rights which the requested State or bona fide third parties may have acquired in the said property shall be preserved. Where these rights exist the property shall be returned without charge to the requested State as soon as possible after the trial.

ARTICLE 27

Transit

1. Transit through the territory of one of the States shall be granted on submission of a request by the means mentioned in Article 18 paragraph 1, provided that the offence concerned is not considered by the State requested to grant transit as an offence of a political or military character having regard to Articles 4 and 7 of this Convention.
2. Transit of a national of the country requested to grant transit may be refused.
3. Subject to the provisions of paragraph 4 of this Article, it shall be necessary to produce the documents mentioned in Article 18 paragraph 2.

4. If air transport is used, the following provisions shall apply:

- (a) when it is not intended to land, the requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 18 paragraph 2(a) exists.

In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 22 and the requesting State shall submit a formal request for transit;

- (b) when it is intended to land, the requesting State shall submit a formal request for transit.

5. A State may, however, at the time of signature or of the deposit of its instrument of ratification of this Convention, declare that it will only grant transit of persons on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied.

6. The transit of the extradited person shall not be carried out through any territory where there is a reason to believe that his life or his freedom may be threatened by reason of his race, tribe, religion, nationality, political opinion or sex.

ARTICLE 28

Procedure

1. Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested State.
2. States, whilst providing for a speedy extradition procedure, shall ensure that the person whose extradition has been requested has the right to be heard by a judicial authority and to be assisted by the lawyer of his own choice and shall submit to a judicial authority the control of his custody for the purpose of extradition as well as the conditions of his extradition.

ARTICLE 29

Language to Be Used

The documents to be produced shall be in the language of the requesting or requested States. The requested State may require a translation into one of the official languages of ECOWAS to be chosen by it.

ARTICLE 30

Expenses

1. Expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State.
2. Expenses incurred in conveying the person from the territory of the requested State shall be borne by the requesting State.
3. Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the requesting State.

ARTICLE 31

Reservations

1. Any State may, when signing this Convention or when depositing its instrument or ratification, make a reservation in respect of any provision or provisions of the Convention.
2. Any State which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Executive Secretary of ECOWAS.
3. A State which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another State save in so far as it has itself accepted the provision.

ARTICLE 32

Relations Between This Convention and Other Bilateral Agreements

1. This Convention shall supersede the provisions of any Treaties, Conventions or Agreements on extradition concluded between two or several States except as provided under paragraph 3, Article 4 of this Convention.

2. States may conclude between themselves bilateral or multilateral agreements with one another only on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

ARTICLE 33

Accession

1. After entry into force of this Convention, the Council of Ministers may invite, by unanimous decision, non-Member States of the Community to accede to this Convention.
2. When a non-Member State of the Community requests to be invited to accede to this Convention, it shall submit this request to the Executive Secretary, who shall immediately notify all other Member States.
3. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Executive Secretariat.

ARTICLE 34

Amendment and Review

1. Any State may submit proposals for the amendment or review of this Convention.
2. All proposals shall be submitted to the Executive Secretary, who shall forward them to Member States within thirty (30) days of receipt. Proposed amendments or reviews shall be considered by the Authority upon expiry of the thirty (30) days' notice period given to Member States.

ARTICLE 35

Denunciation

Any State may denounce this Convention in so far as it is concerned, by giving notice to the Executive Secretary of the Community. Denunciation shall take effect six months after the date when the Executive Secretary received such notification.

ARTICLE 36

Entry into Force and Deposit

1. This Convention shall enter into force upon ratification by at least nine (9) signatory States, in conformity with the constitutional provisions of each signatory State.
2. This Convention and all the instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies to all Member States, notify them of the dates of deposit of the instruments of ratification and register this Convention with the Organization of African Unity, the United Nations and any other organization as may be determined by the Council of Ministers of the Community.

IN WITNESS WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES HAVE SIGNED THIS CONVENTION.

DONE AT ABUJA, THIS 6TH DAY OF AUGUST 1994 IN A SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE LANGUAGES ALL TEXTS BEING EQUALLY AUTHENTIC.

H.E. Nicephore Dieutonne
Minister of State for African
President of the Republic of
BENIN

Hon. Kermendi YAMEOGO SOGLO
Integration and Solidarity for and
On behalf of the President of
BURKINA FASO

Hon. Joao Higino do Rosario SILVA
Minister of Tourism, Industry,
Tourism and Commerce, for and on
behalf of the Prime Minister of the
Republic of CAPE VERDE

Hon. Amara ESSY
Minister of Foreign Affairs
for and on behalf of the
President of the Republic of
COTE D'IVOIRE

H.E. Lt. Sana B. SABALLY
Vice Chairman of the Armed Forces
Provisional Ruling Council of the
GAMBIA

H.E. Flt. -G.T. Jerry John
RAWLINGS
President of the Republic of
GHANA

H.E. Mr. Lansana CONTE
Head of State, President of the
Republic of GUINEA

H.E. Prof. David SOW
Chairman of the Council of State,
Liberian National Transitional
Government (LNTG)
Republic of LIBERIA

Hon. Ahmed Ould ZEIN Minister,
Secretary-General of the
President, for and on behalf of the
Head of State of the Islamic
Republic of MAURITANIA

H.E. General Sani ABACHA Head
of State, Commander-In- Chief of
the Armed Forces of the Federal
Republic of NIGERIA

H.E. Captain Valentine
STRASSER Chairman, National
Provisional Ruling Council and
Head of the Republic of SIERRA
LEONE

H.E. General Joao Bernardo VIEIRA
President of the Council of State of
the Republic of GUINEA BISSAU

Hon. MOS. Sy Kadiatou
XPOMAKPOR
Minister of Foreign Affairs, of
Mali's Resident Abroad and of
African Integration, for and on behalf
of the President of the Republic of
MALI

H.E. Mr. Mahamane CURMANE
President of the Republic of NIGER

Hon. Masatte THIAM
Minister of African Economic
Integration, for and on behalf of
President of the Republic of
SENEGAL

H.E. Mr. Edem KODJIC E.M
Prime Minister of the Republic
of TOGO

**6. EXTRADITION TREATY BETWEEN THE PEOPLES' REPUBLIC
OF BENIN THE REPUBLIC OF GHANA, THE FEDERAL
REPUBLIC OF NIGERIA AND THE REPUBLIC OF TOGO 1984**

PREAMBLE

THE GOVERNEMENT OF THE PEOPLES' REPUBLIC OF BENIN

THE GOVERNEMENT OF THE REPUBLIC OF GHANA

THE GOVERNEMENT OF THE FEDERAL REPUBLIC OF NIGERIA

THE GOVERNEMENT OF THE REPUBLIC OF TOGO

HEREINAFTER referred to as the "Contracting Parties";

ANXIOUS to preserve peace and security among their States;

DESIROUS of maintaining and fostering the firm relations of friendship and fruitful co-operation which unite their peoples;

PROMPTED by their common desire to work in peace, security, solidarity and harmony for the economic, social and cultural development of their countries;

DESIROUS of strengthening further legal cooperation and

DESIROUS of fighting against crime in all its forms by facilitating the apprehension and trial of fugitive offenders from the territory of any of the Contracting Parties to the territory of each other;

HAVE agreed as follows:

ARTICLE 1

General Provisions

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

ARTICLE 2

Returnable Offences

- (1) Extradition shall be granted in respect of persons accused of crimes or offences punishable by the laws of the Contracting Parties by at least two (2) years imprisonment.
- (2) Extradition shall also be granted for participation in any of the aforementioned crimes or offences provided that such participation be punishable by the laws of the Contracting Parties.
- (3) Extradition shall also be granted in respect of persons who have been convicted by the requesting state for extradition offences whether they have served part of their sentences or not.

ARTICLE 3

Time Limit

Extradition shall be refused if the time limit for the action or sentence has expired under the legislation of the requesting or requested state at the time of receipt of the application from the requesting state.

ARTICLE 4

Political Offences

Extradition shall not be granted for crimes or offences of a political nature or if it is proved that the requisition for his surrender has been made with a view to trying or punishing him for a crime or offence of a political nature or if the request is to persecute or punish him on account of his race, religion or political opinion.

ARTICLE 5

Speciality Rule

The individual who shall have been surrendered may neither be tried, judged nor detained to serve a term for any offences committed before he is handed over other than the one for which he shall be extradited except in the following cases:

- (1) The individual, having had an opportunity to leave, did not leave the territory of the state to which he has been surrendered within thirty (30) days following his final release, or if he returned to that state after leaving it;

- (2) If the state which delivered him agrees, a request shall be made to this effect, accompanied by the documents stipulated in Article 7.

ARTICLE 6

Law Governing Extradition Proceedings

The Extradition of the fugitive criminals under the provisions of the Treaty shall be carried out in the requested state in conformity with the laws of the requested state.

ARTICLE 7

Extradition Procedure

- (1) The request for extradition shall be communicated through diplomatic channels. It shall be accompanied by the original or certified copy of a judgement of conviction or warrant of arrest or any other order having the same effect and issued in the form prescribed by the requesting state.
- (2) The legal description of the offences for which extradition is requested, the time and place of their commission as well as the relevant laws under which the offences fall shall be stated as precisely as possible, the description of the person claimed as well as any information which can help determine his identity.
- (3) In case of urgency, on the request of the competent authorities of the requesting state a provisional arrest shall be made pending the formal request for extradition and the document mentioned in paragraph 1 of this Article.
- (4) The request for provisional arrest shall be transmitted to the competent authorities of the requested state either directly by letter or telegram or by any other means in writing. At the same time such a request shall be confirmed through diplomatic channels.
- (5) It shall mention the existence of the documents listed in paragraph 1 of this Article and that it is intended to send a request for extradition. It shall state the offence for which extradition is requested, the time and place of its commission as well as a very precise description of the person claimed. The requesting authority shall be informed without delay of the result of its request.
- (6) Provisional arrest shall be terminated if within a period of forty (40) days after the arrest the authorities of the requested party have not received the documents mentioned in paragraph 1 of this Article. The termination of provisional arrest shall not preclude a new arrest if the request for extradition is received later.

- (7) If supplementary information is required to ensure that the conditions required under this Article have been fulfilled, the requested state shall, where the commission seems liable to be corrected, inform the requesting state through diplomatic channels. This information shall be provided within a period of forty (40) days. This period begins from the date of the receipt of the request for supplementary information. After this period the requested state shall provisionally release the offender. The release does not preclude his rearrest if the supplementary information is received later.

ARTICLE 8

Communication of Decision

The requested state shall communicate its decision on the extradition request to the requesting state through diplomatic channels.

ARTICLE 9

Multiple Requests

If extraditing is requested concurrently by more than one state, either for the same offence or for different offences the requested party shall make its decision having regard to all the circumstances and especially the relative seriousness of the case, the place of the commission of the offences, the relative dates of the requests and the possibility of subsequent extradition to another state.

ARTICLE 10

Transit Through Another State

Extradition involving transit through the territory of one of the Contracting Parties of an individual delivered to another party shall be granted on application by the requesting state. This application shall be supported by the relevant extradition documents.

ARTICLE 11

Consent for Return

- (1) If the offender, where the law of the requested country permits, consents or voluntarily and with understanding ask to be extradited, the competent judicial authority shall examine his case and decide

whether he should be detained or released on bail pending his extradition.

- (2) The requested state may subsequently order his extradition within fifteen (15) days starting from the date of his committal.
- (3) In that case the provisions of Article 5 shall be applicable to the offender unless waived by him.

ARTICLE 12

Property of Extradited Persons

- (1) When extradition is granted all the articles connected with the offence or which can serve as exhibits found on the person sought at the time of his arrest or which shall be discovered later shall, at the request of the requesting state be seized and returned to the authorities of the state.
- (2) The articles may still be returned even if the extradition does not take place because that person has escaped or is dead.
- (3) If, however, the said articles belong to a third party, they must be returned to the requested state as soon as possible and without any charges, after legal proceedings in the requesting state. The authorities of the requested state may keep the seized articles temporarily if they deem it necessary for legal proceedings.
- (4) The requested state may also transmit them while reserving the option of asking for them to be returned for the same reasons, if they undertake to send them back as soon as possible.

ARTICLE 13

Extradition Expenses

The requested party shall bear expenses incurred by reason of the extradition except cost of land, sea and air transport to and from the requesting state.

ARTICLE 14

Transfer of Convicted Prisoners for Execution of Sentences

- (1) Any national of one of the Contracting Parties, sentenced to a term of imprisonment may, at the request of his country and with written consent of the convicted person, be surrendered to the authorities of the State of which he is a national to serve his sentence. The transfer charges shall be borne by the requesting state. The release of such a person from prison before his term has ended may only be effected with the consent of the Contracting Party which convicted him.

- (2) Only the state which passed sentence has power to grant pardon or amnesty.

ARTICLE 15

Final Provisions

- (1) A Contracting Party may submit proposals for the amendments or revision of this treaty.
- (2) Any Contracting Party may withdraw from this Treaty
- (3) Notice of withdrawal shall be communicated through diplomatic channels at least six (6) months in advance to the depository state which shall enter into force provisionally upon the signature by Heads of State and Government.
- (4) This Treaty shall enter into force provisionally upon the signature of Heads of State and Government.
- (5) It shall be ratified by the Contracting Parties in accordance with their respective constitutional procedures.
- (6) The instruments of ratification shall be forwarded to the Government of the Republic of Togo which shall inform all signatory State when it receives each instrument.
- (7) The present Treaty shall enter into force definitively after the last instrument of ratification is deposited.

DONE at Lagos this 10th day of December, 1984

H. E. General Mathieu KEREKOU
President of the Republic of Benin.

H. E. Major-General Muhamadu
BUHARI
Head of the Federal Military
Government,
Commander-in-Chief of the
Armed Forces of the Federal
Republic of Nigeria

H. E. Flt. Lt. Jerry John
RAWLINGS
Head of State and Chairman of the
Provisional Defence Council of the
Republic of Ghana

H.E. General Gnassingbé
EYADÉMA
President of the Republic of Togo

**7. EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT
RELATIVE TO THE INHERITANCE OF INTERNATIONAL RIGHTS
AND OBLIGATIONS BY THE GOVERNMENT OF THE FEDERATION
OF NIGERIA. LAGOS, 1 OCTOBER, 1960**

United Nations Treaty Series Volume 384, 1961

*Treaties and international agreements registered from 3 January 1961 to 13
January 1961 No. 5520.*

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE FEDERATION OF NIGERIA RELATIVE TO
THE INHERITANCE OF INTERNATIONAL RIGHTS AND
OBLIGATIONS BY THE GOVERNMENT OF THE FEDERATION OF
NIGERIA. LAGOS, 1 OCTOBER 1960

Official text: English.

*Registered by the United Kingdom of Great Britain and Northern Ireland on
10 January 1961.*

I

Letter from the High Commissioner for the United Kingdom in the
Federation of Nigeria to the Prime Minister and Minister of Foreign
Affairs and Commonwealth Relations of the Federation of Nigeria

Lagos, 1st October 1960

Sir,

I have the honour to refer to the Nigeria Independence Act, 1960,
under which Nigeria has assumed independent status within the
Commonwealth of which Her Majesty the Queen is Head, and to state that it
is the understanding of the Government of the United Kingdom of Great
Britain and Northern Ireland that the Government of the Federation of
Nigeria agree to the following provisions:

- (i) all obligations and responsibilities of the Government of the United
Kingdom which arise from any valid international instrument shall
henceforth, in so far as such instrument may be held to have
application to Nigeria, be assumed by the Government of the Federation
of Nigeria;
- (ii) the rights and benefits heretofore enjoyed by the Government of the
United Kingdom in virtue of the application of any such international

instrument to Nigeria shall henceforth be enjoyed by the Government of the Federation of Nigeria.

I shall be grateful for your confirmation that the Government of the Federation of Nigeria are in agreement with the provisions aforesaid and that this note and your reply shall constitute an agreement between the two Governments.

I have the honour to be, Sir,

Your obedient Servant,

(Signed) HEAD

II

Letter from the Prime Minister and Minister of Foreign Affairs and Commonwealth Relations of the Federation of Nigeria to the High Commissioner for the United Kingdom in the Federation of Nigeria

1st October, 1960

My Lord,

I have the honour to acknowledge the receipt of your note of today's date which reads as follows:

[See letter I]

I have pleasure in confirming that the Government of the Federation of Nigeria are in agreement with the provisions set out in your note of today's date, and that your Excellency's note and this reply shall constitute an agreement between the two Governments.

I have the honour to be, My Lord,

Your obedient servant,

(Signed) Abubakar T. BALEWA

PRE-1960 INSTRUMENTS

1. EXTRADITION TREATY BETWEEN THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA 1931

His Majesty the King of Great Britain, Ireland and the British Dominions
beyond the Seas, Emperor of India;

And the President of the United States of America,

Desiring to make more adequate provision for the reciprocal extradition of
criminals,

Have resolved to conclude a Treaty for that purpose, and to that end have
appointed as their plenipotentiaries:

His Majesty the King of Great Britain, Ireland and the British Dominions
beyond the Seas, Emperor of India:

for Great Britain and Northern Ireland:

The Right Honourable Sir John Simon, G.C.S.I., M.P., His Principal
Secretary of State for Foreign Affairs;

And the President of the United States of America:

General Charles G. Dawes, Ambassador Extraordinary and Plenipotentiary of
the United States of America at the Court of St. James;

who, having communicated their full powers, found in good and due form,
have agreed as follows:

ARTICLE 1

The High Contracting Parties engage to deliver up to each other, under certain
circumstances and conditions stated in the present Treaty, those persons who,
being accused or convicted of any of the crimes or offences enumerated in
Article 3, committed within the jurisdiction of the one Party, shall be found
within the territory of the other Party.

ARTICLE 2

For the purposes of the present Treaty the territory of His Britannic Majesty shall be deemed to be Great Britain and Northern Ireland, the Channel Islands and the Isle of Man, and all parts of His Britannic Majesty's dominions overseas other than those enumerated in Article 14, together with the territories enumerated in Article 16 and any territories to which it may be extended under Article 17. It is understood that in respect of all territory of His Britannic Majesty as above defined other than Great Britain and Northern Ireland, the Channel Islands, and the Isle of Man, the present Treaty shall be applied so far as the laws permit. For the purposes of the present Treaty the territory of the United States shall be deemed to be all territory wherever situated belonging to the United States, including its dependencies and all other territories under its exclusive administration or control.

ARTICLE 3

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age.
6. Indecent assault if such crime or offence be indictable in the place where the accused or convicted person is apprehended.
7. Kidnapping or false imprisonment.
8. Child stealing, including abandoning, exposing or unlawfully detaining.
9. Abduction.
10. Procuration: that is to say the procuring or transporting of a woman or girl under age, even with her consent, for immoral purposes, or of a woman or girl over age, by fraud, threats, or compulsion, for such purposes with a view in either case to gratifying the passions of another person provided that such crime or offence is punishable by imprisonment [4] for at least one year or by more severe punishment.
11. Bigamy.
12. Maliciously wounding or inflicting grievous bodily harm.

13. Threats, by letter or otherwise, with intent to extort money or other things of value.
14. Perjury, or subornation of perjury.
15. Arson.
16. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.
18. Obtaining money, valuable security, or goods, by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
19. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
(b) Knowingly and without lawful authority making or having in possession any instrument, tool, or engine adapted and intended for the counterfeiting of coin.
20. Forgery, or uttering what is forged.
21. Crimes or offences against bankruptcy law.
22. Bribery, defined to be the offering, giving or receiving of bribes.
23. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
24. Crimes or offences or attempted crimes or offences in connection with the traffic in dangerous drugs.
25. Malicious injury to property, if such crime or offence be indictable.
26. (a) Piracy by the law of nations.
(b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.
27. Dealing in slaves.

Extradition is also to be granted for participation in any of the aforesaid crimes or offences, provided that such participation be punishable by the laws of both High Contracting Parties.

ARTICLE 4

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the territories of the

High Contracting Party applied to, for the crime or offence for which his extradition is demanded.

If the person claimed should be under examination or under punishment in the territories of the High Contracting Party applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE 5

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the High Contracting Party applying or applied to.

ARTICLE 6

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE 7

A person surrendered can in no case be kept in custody or be brought to trial in the territories of the High Contracting Party to whom the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

ARTICLE 8

The extradition of fugitive criminals under the provisions of this Treaty shall be carried out in the United States and in the territory of His Britannic Majesty respectively, in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed.

ARTICLE 9

The extradition shall take place only if the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of such High Contracting Party, or to prove that the prisoner is the identical person convicted by the courts of the High Contracting Party who makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the High Contracting Party applied to.

ARTICLE 10

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the Power whose claim is earliest in date, unless such claim is waived.

ARTICLE 11

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the High Contracting Party applied to, or the proper tribunal of such High Contracting Party, shall direct, the fugitive shall be set at liberty.

ARTICLE 12

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the High Contracting Party granting the extradition.

ARTICLE 13

All expenses connected with the extradition shall be borne by the High Contracting Party making the application.

ARTICLE 14

His Britannic Majesty may accede to the present Treaty on behalf of any of his Dominions hereafter named--that is to say, the Dominion of Canada, the Commonwealth of Australia (including for this purpose Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland--and India. Such accession shall be effected by

a notice to that effect given by the appropriate diplomatic representative of His Majesty at Washington which shall specify the authority to which the requisition for the surrender of a fugitive criminal who has taken refuge in the Dominion concerned, or India, as the case may be, shall be addressed. From the date when such notice comes into effect the territory of the Dominion concerned or of India shall be deemed to be territory of His Britannic Majesty for the purposes of the present Treaty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of the above-mentioned Dominions or India, on behalf of which His Britannic Majesty has acceded, shall be made by the appropriate diplomatic or consular officer of the United States of America.

Either High Contracting Party may terminate this Treaty separately in respect of any of the above-mentioned Dominions or India. Such termination shall be effected by a notice given in accordance with the provisions of Article 18.

Any notice given under the first paragraph of this Article in respect of one of His Britannic Majesty's Dominions may include any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, and which is being administered by the Government of the Dominion concerned; such territory shall, if so included, be deemed to be territory of His Britannic Majesty for the purposes of the present Treaty. Any notice given under the third paragraph of this Article shall be applicable to such mandated territory.

ARTICLE 15

The requisition for the surrender of a fugitive criminal who has taken refuge in any territory of His Britannic Majesty other than Great Britain and Northern Ireland, the Channel Islands, or the Isle of Man, or the Dominions or India mentioned in Article 14, shall be made to the Governor, or chief authority, of such territory by the appropriate consular officer of the United States of America.

Such requisition shall be dealt with by the competent authorities of such territory: provided, nevertheless, that if an order for the committal of the fugitive criminal to prison to await surrender shall be made, the said Governor or chief authority may, instead of issuing a warrant for the surrender of such fugitive, refer the matter to His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 16

This Treaty shall apply in the same manner as if they were Possessions of His Britannic Majesty to the following British Protectorates, that is to say, the Bechuanaland Protectorate, Gambia Protectorate, Kenya Protectorate, Nigeria Protectorate, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate, Solomon Islands Protectorate, Somaliland Protectorate, Swaziland, Uganda Protectorate and Zanzibar, and to the following territories in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, that is to say, Cameroons under British mandate, Togoland under British mandate, and the Tanganyika Territory.

ARTICLE 17

If after the signature of the present Treaty it is considered advisable to extend its provisions to any British Protectorates other than those mentioned in the preceding Article or to any British-protected State, or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, other than those mandated territories mentioned in Articles 14 and 16, the stipulations of Articles 14 and 15 shall be deemed to apply to such Protectorates or States or mandated territories from the date and in the manner prescribed in the notes to be exchanged for the purpose of effecting such extension.

ARTICLE 18

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

In the absence of an express provision to that effect, a notice given under the first paragraph of this Article shall not affect the operation of the Treaty as between the United States of America and any territory in respect of which notice of accession has been given under Article 14.

The present Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

On the coming into force of the present treaty the provisions of Article 10 of the treaty of the 9th August, 1842, of the Convention of the 12th July, 1889, of the supplementary Convention of the 13th December, 1900, and of the supplementary Convention of the 12th April, 1905, relative to extradition, shall cease to have effect, save that in the case of each of the Dominions and India, mentioned in Article 14, those provisions shall remain in force until such Dominion or India shall have acceded to the present treaty in accordance with Article 14 or until replaced by other treaty arrangements.

In faith whereof the above-named plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate at London this twenty-second day of December, 1931.

JOHN SIMON
CHARLES G. DAWES

2. TREATY BETWEEN THE UNITED KINGDOM AND LITHUANIA FOR THE EXTRADITION OF FUGITIVE CRIMINALS 1927

Signed at Kaunas (Kovno) May 18, 1926

[Ratifications exchanged at Kaunas (Kovno), March 29, 1927.]

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and the President of the Republic of Lithuania, having determined, by common consent, to conclude a treaty for the extradition of criminals, have accordingly named as, their plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India:

Sir John Charles Tudor Vaughan, K.C.M.G., M.V.O., his Envoy Extraordinary and Minister Plenipotentiary to the Republic of Lithuania;

And the President of the Republic of Lithuania:

Dr. Leonas Bistras, Prime Minister and Minister for Foreign Affairs;

Who, after having exhibited to each other their respective full powers, and found them in good and due form, have agreed upon the following articles

ARTICLE 1.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 2, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

ARTICLE 2.

Extradition shall be reciprocally granted for the following crimes or offences

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.

3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 14 years of age.
6. Indecent assault.
7. Kidnapping and false imprisonment.
8. Child stealing, including abandoning, exposing or unlawfully detaining.
9. Abduction.
10. Procuration.
11. Bigamy.
12. Maliciously wounding or inflicting grievous bodily harm.
13. Assault occasioning actual bodily harm.
14. Threats, by letter or otherwise, with intent to extort money or other things of value.
15. Perjury, or subornation of perjury.
16. Arson.
17. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
18. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.
19. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or feloniously obtained.
20. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
(b) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.
21. Forgery, or uttering what is forged.
22. Crimes against bankruptcy law.
23. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
24. Malicious injury to property, if such offence be indictable.
25. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition crimes or offences.
26. Dealing in slaves in such manner as to constitute a crime or offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes or offences, providing such participation be punishable by the laws of both Contracting Parties. Extradition may also be granted at the discretion of the State applied to in respect of any other crime or offence for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE 3.

Each Party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Party.

ARTICLE 4.

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the State applied to, for the crime or offence for which his extradition is demanded.

If the person claimed should be under examination or under punishment in the State applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE 5.

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction! thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

ARTICLE 6.

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE 7.

A person surrendered can in no case be kept in custody or be brought to trial in the State to which the surrender has been made for any other crime or offence, or on account of any other matters than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the State by which he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

ARTICLE 8.

The requisition for extradition shall be made through the diplomatic agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime or offence had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE 9.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE 10.

A criminal fugitive may be apprehended under a warrant issued by any police magistrate; justice of the peace, or other competent authority in either State, on such information or complaint and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime or offence had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the magistrate, justice of the peace, or other competent authority, exercises jurisdiction. He shall, in accordance with this article, be discharged if within the term of thirty days a requisition for extradition shall not have been made by the diplomatic agent of the State claiming his extradition in accordance with the stipulations of this treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this treaty, and committed on the high seas on board any vessel of either State which may come into a port of the other.

ARTICLE 11.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the courts of the State which makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE 12.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:

1. A warrant, or copy thereof, must purport to be signed by a judge, magistrate, or officer of the other State, or purport to be certified under the hand of a judge, magistrate or officer of the other State to be a true copy thereof, as the case may require.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a judge, magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating the fact of a conviction must purport to be certified by a judge, magistrate, or officer of the other State.

In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other minister of the other State, or by any other mode of authentication for the time being permitted by the law of the State to which the application for extradition is made.

ARTICLE 13.

If the individual claimed by one of the High Contracting Parties in pursuance of the present treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the State whose claim is earliest in date, unless such claim is waived.

ARTICLE 14.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE 15.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the State granting the extradition.

ARTICLE 16.

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present treaty.

ARTICLE 17.

The stipulations of the present treaty shall be applicable, so far as the laws permit, to all His Britannic Majesty's Dominions, except to the self-governing Dominions hereinafter named-that is to say, the Dominion of Canada, the Commonwealth of Australia (including for this purpose Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland and India, provided always that the said stipulations shall be applicable to any of the above-named Dominions or India in respect of which notice to that effect shall have been given on behalf of the Government of such Dominion or India by His Britannic Majesty's Representative at Kaunas (Kovno), and provided also that it shall be competent for either of the Contracting Parties to terminate separately the application of this treaty to any of the above-named Dominions or India by a notice to that effect not exceeding one year and not less than six months.

ARTICLE 18.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of His Britannic Majesty's self-governing Dominions, Colonies, or Possessions to which this treaty applies shall be made to the Governor-General, Governor, or chief authority, of such self-governing Dominion, Colony, or Possession by the appropriate consular officer of the Republic of Lithuania.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such self-governing Dominion, Colony, or Possession will allow, to the provisions of this treaty, by the competent authorities of such self-governing Dominion, Colony, or Possession, provided nevertheless that, if an order for the committal of the fugitive criminal to prison to await surrender shall be made, the said Governor-General, Governor, or chief authority, may, instead of issuing a warrant for the surrender of such fugitive, refer the matter to His Britannic Majesty's Government.

Requisitions for the surrender of a fugitive criminal emanating from any self-governing Dominion, Colony, or Possession of His Britannic Majesty shall be governed, as far as possible, by the rules laid down in the preceding articles of the present treaty.

ARTICLE 19.

It is understood that the stipulations of the two preceding articles apply in the same manner as if they were Possessions of His Britannic Majesty, to the following British Protectorates, that is to say, the Bechuanaland Protectorate, Gambia Protectorate, Kenya Protectorate, Nigeria Protectorate, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate, Solomon Islands Protectorate, Somaliland Protectorate, Swaziland, Uganda Protectorate and Zanzibar, and to the following territories in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, that is to say, British Cameroons, British Togoland, the Tanganyika Territory, and Palestine.

It is also understood that if, after the signature of the present treaty, it is considered advisable to extend its provisions to any British protectorates other than those mentioned above, or to any British-protected State, or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty other than these mentioned above, including the territories in respect of which mandates are being exercised on

behalf of His Britannic Majesty by the Government of the Commonwealth of Australia, the Government of the Dominion of New Zealand and the Government of the Union of South Africa, the stipulations of the two preceding articles shall be deemed to apply to such protectorates or States or mandated territories from the date and in the manner prescribed in the notes to be exchanged for the purpose of effecting such extension.

It is further understood that the provisions of the present treaty which apply to British subjects shall be deemed also to apply to natives of any British protectorate or protected State or mandated territory to which the stipulations of the two preceding articles apply or shall hereafter apply.

ARTICLE 20.

The present treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

It shall be ratified, and the ratifications shall be exchanged at Kaunas (Kovno) as soon as possible.

In witness whereof the respective plenipotentiaries have signed the treaty and have affixed thereto their respective seals.

Done at Kaunas (Kovno) the 18th day of May in the year 1926.

(L.S.) J. C. VAUGHAN.

(L.S.) DR. L. BISTRAS.

3. EXTRADITION TREATY BETWEEN THE UNITED KINGDOM AND ALBANIA, 1926

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; and His Excellency the President of the Albanian Republic, having determined, by common consent, to conclude a treaty for the extradition of criminals, have accordingly named as their plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India:

William Edmund O'Reilly, Esq, His Majesty's Envoy Extraordinary and Minister Plenipotentiary to the Albanian Republic;

and His Excellency the President of the Albanian Republic: Monsieur Hussein Vrioni, Minister for Foreign Affairs and Minister of Justice ad interim;

Who, after having exhibited to each other their respective full powers, and found them in good and due form, have agreed upon the following Articles:

ARTICLE 1

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 2, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

ARTICLE 2

Extradition shall be reciprocally granted for the following crimes or offences:

- (1) Murder (including assassination, parricide, infanticide, poisoning),
or attempt or conspiracy to murder.
- (2) Manslaughter
- (3) Administering drugs or using instruments with intent to procure
the miscarriage of women.
- (4) Rape.

- (5) Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 14 years of age.
- (6) Indecent assault.
- (7) Kidnapping and false imprisonment.
- (8) Child stealing, including abandoning, exposing or unlawfully detaining.
- (9) Abduction.
- (10) Procuration.
- (11) Bigamy.
- (12) Maliciously wounding or inflicting grievous bodily harm.
- (13) Assault occasioning actual bodily harm.
- (14) Threats by letter or otherwise, with intent to extort money or other things of value.
- (15) Perjury, or subornation of perjury.
- (16) Arson.
- (17) Burglary or housebreaking, robbery with violence, larceny or embezzlement.
- (18) Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.
- (19) Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or feloniously obtained.
- (20) (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

(b) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.
- (21) Forgery, or uttering what is forged.
- (22) Crimes against bankruptcy law.

- (23) A malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
- (24) Malicious injury to property, if such offence be indictable.
- (25) Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition crimes or offences.
- (26) Dealing in slaves in such manner as to constitute a crime or offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes or offences, providing such participation be punishable by the laws of both High Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime or offence for which according to the law of both the High Contracting Parties for the time being in force, the grant can be made.

ARTICLE 3

Each Party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other Party.

ARTICLE 4

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the State applied to, for the crime or offence for which his extradition is demanded.

If the person claimed should be under examination or under punishment in the State applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE 5

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

ARTICLE 6

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE 7

A person surrendered can in no case be kept in custody or be brought to trial in the State to which the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the State by which he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

ARTICLE 8

The requisition for extradition shall be made through the diplomatic agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime or offence has been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE 9

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE 10

A criminal fugitive may be apprehended under a warrant issued by any police magistrate, justice of the peace, or other competent authority in either State, on such information or complaint and such evidence, or after such proceedings, as would, in the opinion of the authority issuing warrant, justify the issue of a warrant if the crime or offence had been committed or the person convicted in that part of the dominions of the two Contracting

Parties in which the magistrate, justice of the peace, or other competent authority, exercises jurisdiction. He shall, in accordance with this Article, be discharged if within the term of thirty days a requisition for extradition shall not have been made by the diplomatic agent of the State claiming his extradition in accordance with the stipulations of this treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this treaty, and committed on the high seas on board any vessel of either State which may come into a port of the other.

ARTICLE 11

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the courts of the State which makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE 12

In the examinations which they have to make in accordance with the foregoing stipulations the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:

(1) A warrant, or copy thereof, must purport to be signed by a judge, magistrate, or officer of the other State, or purport to be certified under the hand of a judge, magistrate or officer of the other State to be a true copy thereof, as the case may require.

(2) Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a judge, magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.

(3) A certificate of, or judicial document stating the fact of a conviction must purport to be certified by a judge, magistrate, or officer of the other State.

In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other minister of the other State, or by any other mode of authentication for the time being permitted by the law of the State to which the application for extradition is made.

ARTICLE 13

If the individual claimed by one of the High Contracting Parties in pursuance of the present treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the State whose claim is earliest in date, unless such claim is waived.

ARTICLE 14

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE 15

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the State granting the extradition.

ARTICLE 16

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present treaty.

ARTICLE 17

The stipulations of the present Treaty shall be applicable, so far as the laws permit, to all His Britannic Majesty's Dominions, except to the self-governing Dominions hereinafter named - that is to say, the Dominion of Canada, the Commonwealth of Australia (including for this purpose Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland - and India, provided always that the said stipulations shall be applicable to any of the abovenamed dominions or India in respect of which notice to that effect shall have been given on behalf of the Government of such dominion or India by His Britannic Majesty's Representative at Durazzo, and provided also that it shall be competent for either of the High Contracting Parties to terminate separately the application of this treaty to any of the abovenamed dominions or India by a notice to that effect not exceeding one year and not less than six months.

ARTICLE 18

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of His Britannic Majesty's self-governing dominions, colonies, or possessions to which this Treaty applies, shall be made to the Governor-General, Governor, or chief authority, of such self-governing dominion, colony, or possession by the appropriate consular officer of Albania.

Such requisition may be dealt with, subject always, as nearly as may be, and so far as the law of such self-governing dominion, colony, or possession will allow, to the provisions of this Treaty, by the competent authorities of such self-governing dominion, colony or possession, provided, nevertheless, that if an order for the committal of the fugitive criminal to prison to await surrender shall be made, the said Governor-General, Governor, or chief authority may instead of issuing a warrant for the surrender of such fugitive refer the matter to His Britannic Majesty's Government.

Requisitions for the surrender of a fugitive criminal emanating from any self-governing dominion, colony, or possession of His Britannic Majesty shall be governed, as far as possible, by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE 19

It is understood that the stipulations of the two preceding Articles apply in the same manner as if they were possessions of His Britannic Majesty, to the following British protectorates, that is to say, the Bechuanaland Protectorate, Gambia Protectorate, Kenya Protectorate, Nigeria Protectorate, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate, Solomon Islands Protectorate, Somaliland Protectorate, Swaziland, Uganda Protectorate and Zanzibar, and to the following territories in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, that is to say, British Cameroons, British Togoland, the Tanganyika Territory and Palestine.

It is also understood that if, after the signature of the present Treaty, it is considered advisable to extend its provisions to any British protectorates other than those mentioned above, or to any British-protected State, or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty other than those mentioned above including the territories in respect of which mandates are being exercised on behalf of His Britannic Majesty by the Government of the Commonwealth of Australia, the Government of the Dominion of New Zealand and the Government of the Union of South Africa, the stipulations of the two preceding Articles shall be deemed to apply to such protectorates or States or mandated territories from the date and in the manner prescribed in the notes to be exchanged for the purpose of effecting such extension.

It is further understood that the provisions of the present treaty which apply to British subjects shall be deemed also to apply to natives of any British protectorate or protected State or mandated territory to which the stipulations of the two preceding Articles apply or shall hereafter apply.

ARTICLE 20

The present treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

It shall be ratified, and the ratifications shall be exchanged at Tirana as soon as possible.

IN WITNESS WHEREOF the respective plenipotentiaries have signed the Treaty and have affixed thereto their respective seals.

DONE at Tirana in duplicate in the English and Albanian texts, of which the former is considered authoritative, this twenty-second day of July, in the year One thousand nine hundred and twenty-six.

[signed:]

W O'REILLY

[signed:]

H VRIONI

4. TREATY BETWEEN THE UNITED KINGDOM AND FINLAND FOR THE EXTRADITION OF CRIMINALS 1925

His Majesty the King of the United Kingdom Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; and the President of the Republic of Finland, having determined, by common consent, to conclude a treaty for the extradition of criminals, have accordingly named as their plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India:

The Right Honourable James Ramsay MacDonald, M.P., His Majesty's Prime Minister and Principal Secretary of State for Foreign Affairs;

And the President of the Republic of Finland:

M. Ossian Donner, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Finland at London;

who, after having exhibited to each other their respective full powers, and found them in good and due form, have agreed upon the following articles:

ARTICLE 1.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 2, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

ARTICLE 2.

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women
4. Rape.
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge. of a girl under 15 years of age.

6. Kidnapping and false imprisonment.
7. Child stealing, including abandoning, exposing or unlawfully detaining.
8. Abduction.
9. Procuration.
10. Bigamy.
11. Maliciously wounding or inflicting grievous bodily harm.
12. Assault occasioning actual bodily harm.
13. Threats, by letter or otherwise, with intent to extort money or other things of value.
14. Perjury, or subornation of perjury.
15. Arson.
16. Burglary or housebreaking, robbery with violence, larceny or embezzlement:
17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion, if such crimes or offences, according to the laws of the High Contracting Parties, are extradition crimes or offences.
18. Obtaining money, valuable security, or goods by false pretences, receiving any money, valuable security, or other property, knowing the same to have been stolen or feloniously obtained, if such crimes or offences, according to the laws of the High Contracting Parties, are extradition crimes or offences.
19. Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
20. Forgery, or uttering what is forged.
21. Crimes against bankruptcy law, which, according to the laws of the High Contracting Parties, are extradition crimes.
22. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
23. Malicious injury to property, if such offence be indictable.
24. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition crimes or offences.
25. Dealing in slaves in such manner as to constitute a crime or offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes or offences, provided such participation be punishable by the laws of both Contracting Parties. Extradition may also be granted at the discretion of

the State applied to in respect of any other crime or offence for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE 3.

In no case nor on any consideration whatever shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalisations.

ARTICLE 4.

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the State applied to, for the crime or offence for which his extradition is demanded. If the person claimed should be under examination or under punishment in the State applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE 5.

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to

ARTICLE 6.

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE 7.

A person surrendered can in no case be kept in custody or be brought to trial in the State to which the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have, taken place, until he has

ARTICLE 8.

The requisition for extradition shall be made through the diplomatic agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime or offence had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent court of the State that makes the requisition for extradition, provided that

A sentence passed in *contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE 9.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE 10.

A criminal fugitive may be apprehended under a warrant issued by any police magistrate, justice of the peace, or other competent authority in either State, on such information of complaint and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime or offence had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the magistrate, justice of the peace, or other competent authority, exercises jurisdiction. He shall, in accordance with this article, be discharged, if within the term of thirty days a requisition for extradition shall not have been made by the diplomatic agent of the State claiming his extradition in accordance with the stipulations of this treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this treaty, and committed on the high seas on board any vessel of either State which may come into a port of the other.

ARTICLE 11.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of the same State, or to prove, that the prisoner is the identical person convicted by the courts of the State which makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which

extradition could, at the time of such conviction, have been granted by the State applied to ; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE 12.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall adroit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:

1. A warrant, or copy thereof, must purport to be signed by a judge, magistrate, or officer of the other State, or purport to be certified under the hand of a judge, magistrate or officer of the other State to be a true copy thereof, as the case may require.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a judge, magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating the fact of a conviction must purport to be certified by a judge, magistrate, or officer of the other State.

In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State, or by any other mode of authentication for the time being permitted by the law of the State to which the application for extradition is made.

ARTICLE 13

If the individual claimed by one of the High Contracting Parties in pursuance of the present treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the State whose claim is earliest in date, unless such claim is waived.

ARTICLE 14.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time

as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE 15.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the State granting the extradition.

ARTICLE 16.

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present treaty.

ARTICLE 17.

The stipulations of the present treaty shall be applicable, so far as the laws permit, to all His Britannic Majesty's dominions, except to the self-governing Dominions hereinafter named—that is to say, the Dominion of Canada, the Commonwealth of Australia (including for this purpose Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, the Trish Free State, and Newfoundland and India, provided always that the said stipulations shall be applicable to any of the above-named Dominions or India in respect of which notice to that effect shall have been given on behalf of the Government of such Dominion or India by His Britannic Majesty's Representative at Helsingfors, and provided also that it shall be competent for either of the Contracting Parties to terminate separately the application of this treaty to any of the above-named Dominions or India by a notice to that effect not exceeding one year and not less than six months.

ARTICLE 18.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of His Britannic Majesty's self-governing Dominions, Colonies, or Possessions to which this treaty applies shall be made to the Governor-General, Governor, or chief authority, of such self-governing Dominion, Colony, or Possession by the chief consular officer of Finland ill such self-governing Dominion, Colony, or Possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such self-governing Dominion, Colony, or Possession will

Allow, to the provisions of this treaty, by the said Governor-General, Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to His Britannic Majesty's Government.

Requisitions for the surrender of a fugitive criminal emanating from any self-governing Dominion, Colony, or Possession of His Britannic Majesty shall be governed, as far as possible, by the rules laid down in the preceding articles of the present treaty.

ARTICLE 19.

It is understood that the stipulations of the two preceding articles apply in the same manner as if they were Possessions of His Britannic Majesty, to the following British Protectorates, that is to say, the Bechuanaland Protectorate, Gambia Protectorate, Kenya Protectorate, Nigeria Protectorate, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate, Solomon Islands Protectorate, Somaliland Protectorate, Swaziland, Uganda Protectorate and Zanzibar.

It is also understood that if, after the signature of the present treaty, it is considered advisable to extend its provisions, to any British protectorates other than those mentioned above, or to any British-protected State, or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty the stipulations of the two preceding articles shall be deemed, to apply to such protectorates or States or mandated territories from the date prescribed in the notes to be exchanged for the purpose of effecting such extension.

It is further understood that the provisions of the present treaty which apply to British subjects shall be deemed also to apply to natives of any British protectorate or, protected State or mandated territory to which the stipulations of the two preceding articles apply, or shall hereafter apply.

ARTICLE 20.

The present treaty, shall come into force ten days after its publication, In conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

It shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective plenipotentiaries have signed the treaty and have affixed thereto their respective seals.

Done at London the 30th day of May, in the year 1924.

(L.S.) J. P. AMSAY MACDONALD.

(L.S.) OSSIAN DONNER

**5. TREATY BETWEEN THE UNITED KINGDOM AND THE
LATVIAN REPUBLIC FOR THE EXTRADITION OF FUGITIVE
CRIMINALS 1924**

[Ratifications exchanged at Riga, July 7, 1925.]

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; and the President of the Latvian Republic, having determined, by common consent, to conclude a treaty for the extradition of criminals have accordingly named as their plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India:

John Charles Tudor Vaughan, Esquire, C.M.G., M.V.O., His Envoy Extraordinary and Minister Plenipotentiary at Riga:

And the President of the Latvian Republic:

M. Germain Albat, Minister Plenipotentiary, Secretary-General of the Latvian Foreign Office:

Who, after having exhibited to each other their respective full powers, and found them in good and due form, have agreed upon the following articles:

ARTICLE 1.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 2, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

ARTICLE 2.

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.

4. Rape.
5. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 14 years of age.
6. Indecent assault.
7. Kidnapping and false imprisonment.
8. Child stealing, including abandoning, exposing or unlawfully detaining.
9. Abduction.
10. Procuration.
11. Bigamy.
12. Maliciously wounding or inflicting grievous bodily harm.
13. Assault occasioning actual bodily harm.
14. Threats, by letter or otherwise, with intent to extort money or other things of value.
15. Perjury, or subornation of perjury.
16. Arson.
17. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
18. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.
19. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or feloniously obtained.
20. (a.) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
(b.) Knowingly making without lawful authority an instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.
21. Forgery, or uttering what is forged.
22. Crimes against bankruptcy law.
23. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
24. Malicious injury to property, if such offence be indictable.
25. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition crimes or offences.
26. Dealing in slaves in such manner as to constitute a crime or offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes or offences, provided such participation be punishable by the laws of

both Contracting Parties. Extradition may also be granted at the discretion of the State applied to in respect of any other crime or offence for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE 3.

In no case nor on any consideration whatever shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalisation.

ARTICLE 4.

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the State applied to, for the crime or offence for which his extradition is demanded. If the person claimed should be under examination or under punishment in the State applied to for any other crime or offence, his extradition shall be deferred-until- the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE 5.

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

ARTICLE 6.

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

ARTICLE 7.

A person surrendered can in no case be kept in custody or be brought to trial in the State to which the surrender has been made for any other crime or offence, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the State by which he has been surrendered. This stipulation does not apply to crimes or offences committed after the extradition.

ARTICLE 8.

The requisition for extradition shall be made through the diplomatic agents of the High Contracting Parties respectively. The requisition for the

extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime or offence had been committed there. If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent court of the State that makes the requisition for extradition. A sentence passed in *contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE 9.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE 10.

A criminal fugitive may be apprehended under a warrant issued by any police magistrate, justice of the peace, or other competent authority in either State, on such information or complaint and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime or offence had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the magistrate, justice of the peace, or other competent authority, exercises jurisdiction. He shall, in accordance with this article, be discharged if within the term of thirty days a requisition for extradition shall not have been made by the diplomatic agent of the State claiming his extradition in accordance with the stipulations of this treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this treaty, and committed on the high seas on board any vessel of either State which may come into a port of the other.

ARTICLE 11.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the courts of the State which makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the

expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE 12.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrant and sentences issued therein, or copies thereof, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows

1. A warrant, or copy thereof, must purport to be signed by a judge, magistrate, or officer of the other State, or purport to be certified under the hand of a judge, magistrate or officer of the other State to be a true copy thereof, as the case may require.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a judge, magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating the fact of a conviction must purport to be certified by a judge, magistrate, or officer of the other State.

In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of justice, or some other minister of the other State, or by any other mode of authentication for the time being permitted by the law of the State to which the application for extradition is made.

ARTICLE 13.

If the individual claimed by one of the High Contracting Parties in pursuance of the present treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the State whose claim is earliest in date, unless such claim is waived.

ARTICLE 14.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE 15.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the State granting the extradition.

ARTICLE 16.

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present treaty.

ARTICLE 17.

The stipulations of the present treaty shall be applicable, so far as the laws permit, to all His Britannic Majesty's Dominions, except to the self-governing Dominions hereinafter named-that is to say, the Dominion of Canada, the Commonwealth of Australia (including for this purpose Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland-and India, provided always that the said stipulations shall be applicable to any of the above named Dominions or India in respect of which notice to that effect shall have been given on behalf of the Government of such Dominion or India by His Britannic Majesty's representative at Riga, and provided also that it shall be competent for either of the Contracting Parties to terminate separately the application of this treaty to any of the above-named Dominion's or India by a notice to that effect not exceeding one year and not less than six months.

ARTICLE 18.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of His Britannic Majesty's self-governing Dominions, Colonies, or Possessions to which this treaty applies shall be made to the Governor-General, Governor, or chief authority, of such self-governing Dominion, Colony, or Possession by the chief consular officer of the Latvian Republic in such self-governing Dominion, Colony, or Possession. Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such self-governing Dominion, Colony, or Possession will allow, to the provisions of this treaty, by the said Governor-General, Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to His Britannic Majesty's Government. Requisitions for

the surrender of a fugitive criminal emanating from any self-governing Dominion, Colony, or Possession of His Britannic Majesty shall be governed, as far as possible, by the rules laid down in the preceding articles of the present treaty.

ARTICLE 19.

It is understood that the stipulations if the two preceding articles apply in the same manner as if they were Possessions of His Britannic Majesty, to the following British Protectorates, that is to say, the Bechuanaland Protectorate, Gambia Protectorate, Kenya Protectorate, Nigeria Protectorate, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate. Solomon Islands Protectorate, Somaliland Protectorate, Swaziland, Uganda Protectorate and Zanzibar. It is also understood that if, after the signature of the present treaty, it is considered advisable to extend its provisions to any British protectorates other than those mentioned above, or to any British-protected State, or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, the stipulations of the two preceding articles shall be deemed to apply to such protectorates or States or mandated territories from the date prescribed in the notes to be exchanged for the purpose of effecting such extension. It is further understood that the provisions of the present treaty which apply to British subjects shall be deemed also to apply to natives of any British protectorate or protected State or mandated territory to which the stipulations of the two preceding articles apply or shall hereafter apply.

ARTICLE 20.

The present treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months. It shall be ratified, and the ratifications shall be exchanged at Riga as soon as possible. In witness whereof the respective plenipotentiaries have signed the treaty and have affixed thereto their respective seals.

Done at Riga, the 16th day of July, in the year 1924.

(L.S.) J. C. T. VAUGHAN.

(L.S.) G. ALBAT.

6. EXTRADITION TREATY BETWEEN THE UNITED KINGDOM AND THE NETHERLANDS RELATING TO THE EXTRADITION OF FUGITIVE CRIMINALS BETWEEN CERTAIN BRITISH PROTECTORATES AND THE NETHERLANDS 1914

Signed at The Hague, August 17, 1914.

[Ratifications exchanged at The Hague, November 20, 1914.]

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and Her Majesty the Queen of the Netherlands, considering it advisable to regulate by a Treaty the extradition of fugitive criminals between certain British Protectorates and the territories of Her said Majesty, have appointed as their Plenipotentiaries for this purpose:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India:

H. G. Chilton, Esquire, His Chargé d’Affaires ad interim at The Hague;

Her Majesty the Queen of the Netherlands:

The Jonkheer J. London, Her Majesty’s Minister for Foreign Affairs;

Who, being duly authorised thereto, have agreed to and concluded the following Articles:

ARTICLE 1.

The provisions of the Extradition Treaty between Great Britain -and the Netherlands signed on the 26th September, 1898, shall apply to extradition between the territories of Her Majesty the Queen of the Netherlands and the under-mentioned British Protectorates, equally as if these Protectorates were foreign possessions of His Britannic Majesty.

The said Protectorates are:

Bechuanaland Protectorate; East Africa Protectorate; Protectorate of the Gambia; Protectorate of Nigeria; Gilbert and Ellice Islands Protectorate; Northern Rhodesia; The Northern Territories of the Gold Coast; Nyasaland; Sierra Leone Protectorate; Solomon Islands Protectorate; Somaliland Protectorate; Southern Rhodesia; Swaziland; Uganda Protectorate; Zanzibar.

ARTICLE 2.

For the purposes of the application of the Treaty of the 26th September, 1898, the natives of the above-mentioned Protectorates shall be regarded as British subjects.

ARTICLE 3.

Requisitions for extradition under the present Treaty shall, saving the exception to be mentioned below, be made in accordance with the provisions of Article 18 of the Treaty of the 26th September, 1898, as if the said Protectorates were foreign possessions of His Britannic Majesty.

In deviation from Article of the said Treaty, the period of provisional arrest shall be three months.

ARTICLE 4.

The present Treaty shall be ratified and the acts of ratifications shall be exchanged as soon as possible. The Treaty shall come into operation three months after the acts of ratification shall have been exchanged. It shall remain in force as long as the Extradition Treaty between Great Britain and the Netherlands signed on the 26th September, 1898, remains in force. It shall lapse with the termination of that Treaty.

In witness whereof the respective Plenipotentiaries have signed this Treaty and have affixed thereto the seal of their arms.

Done in duplicate at The Hague, the 17th day of August, 1914.

(L.S.) H. G. CHILTON.

(L.S.) J. LOUDON.

7. AGREEMENT BETWEEN THE UNITED KINGDOM AND PARAGUAY RELATING TO EXTRADITION BETWEEN CERTAIN BRITISH PROTECTORATES AND PARAGUAY 1913

The Governments of His Britannic Majesty and the Republic of Paraguay, considering that the Treaty of Extradition concluded at this city by their respective plenipotentiaries on 12th September, 1908, made no mention of His Majesty's Protectorates in determining the jurisdiction within which the said Treaty shall take effect, have agreed to add an article to it, giving full powers to Francis Alfred Oliver, Esquire, His Britannic Majesty's Chargé d'Affaires ad interim at Asuncion, and to his Excellency Senior Don Manuel Gondray Minister for Foreign Affairs of the Republic of Paraguay, for the purpose.

The appointed Plenipotentiaries, after having found their credentials in due form and in accordance with their instructions, have agreed as follows:

ARTICLE 1.

The Protectorates of His Britannic Majesty, mentioned in the list attached, shall be declared to be comprehended in the enumeration of territories determined by article 18 of the said Treaty. If, after the signature of this Agreement; it should be considered advisable to apply its provisions to British Protectorates other than those mentioned in the list annexed to this Treaty, then, after agreement arrived at between the respective Governments, its conditions shall apply also to these other Protectorates.

In witness whereof the said Plenipotentiaries have signed in duplicate the preceding supplemental article, which shall be considered as an integral part of the Treaty referred to, and shall take effect as soon as the approval and publication of it by both Governments has been notified.

Annex.

List of British. Protectorates.

Bechuanaland Protectorate. East Africa Protectorate. Gambia Protectorate. Northern Rhodesia. Northern Nigeria. Northern Territories of the Gold Coast. Nyasaland. Sierra Leone Protectorate. Somaliland Protectorate. Southern Nigeria Protectorate. Southern Rhodesia. Swaziland. Uganda Protectorate. Zanzibar.

Done at Asuncion, this sixteenth day of July, one thousand nine hundred and thirteen.

8. TREATY BETWEEN THE UNITED KINGDOM AND GERMANY RELATING TO EXTRADITION BETWEEN CERTAIN BRITISH PROTECTORATES AND GERMANY 1912

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty the German Emperor, King of Prussia, in the name of the German Empire, considering it advisable to regulate by a Treaty the extradition of fugitive criminals between certain British Protectorates and Germany, have appointed as Their Plenipotentiaries for this purpose:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, His Ambassador Extraordinary and Plenipotentiary, Member of His Privy Council, the Right Honourable Sir William Edward Goschen

His Majesty the German Emperor, King of Prussia, His Secretary of State of the Foreign Office, Actual Privy Councillor, Herr von Kiderlen-Waechter.

The Plenipotentiaries, after having communicated to each other their respective Full Powers, which were found to be in good and due form, have agreed to and concluded the following Articles:

ARTICLE 1.

The provisions of the Extradition Treaty between Great Britain and Germany signed on the 14th May, 1872, shall apply to extradition between Germany and those British Protectorates mentioned in the list hereto attached, equally as if those Protectorates were foreign possessions of His Britannic Majesty.

If, after the signature of this; Treaty, it should be considered advisable to (apply its provisions to British Protectorates other than those mentioned in the list annexed to this Treaty, then, after: agreement arrived at between the respective Governments, its conditions shall apply also to these other Protectorates.

ARTICLE 2.

In Place of Article III of the Treaty of the 14th May, 1872, the following provision is inserted in respect-of extradition between the British Protectorates and Germany, namely, that neither of the two High Contracting

Parties are obliged to surrender its own subjects or the natives of its respective Protectorates.

ARTICLE 3.

The requisitions for extradition from Germany shall be made through the British Embassy in Berlin. The requisitions for extradition from one of the British Protectorates shall be made to the Governor or Chief authority of that Protectorate, by the Chief Consular Officer of the German Empire appointed to that Protectorate, or, if there be no such Consular Officer, through the Imperial German Embassy in London.

ARTICLE 4.

The present Treaty shall be ratified and the ratifications shall be exchanged as soon as possible.

The Treaty shall come into operation two months after the exchange of ratifications, and shall remain in force as long as the Extradition Treaty between Great Britain and the German Empire of the 14th May, 1872, remains in force, and shall lapse with the termination of that Treaty.

In witness whereof the respective Plenipotentiaries have signed this Treaty and have affixed thereto the seal of their arms.

Done in duplicate at Berlin the 17th of August, 1911.

(L.S.) W. E. GOSCHEN.

(L.S.) KIDERLEN.

Annex.

List of British Protectorates, Bechuanaland Protectorate, East Africa Protectorate, Cambia Protectorate, North-Eastern Rhodesia, North-Western Rhodesia, Northern Nigeria, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate, Somaliland Protectorate, Southern Nigeria Protectorate, Southern Rhodesia, Swaziland, Uganda Protectorate, The State of North Borneo, and Zanzibar.

9. TREATY BETWEEN THE UNITED KINGDOM AND GREECE FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1912

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty the King of the Hellenes, having determined, by common consent, to conclude a Treaty for the extradition of criminals, have accordingly named as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, Sir Francis Edmund Hugh Elliot, a Knight Grand Cross of the Royal Victorian Order, Knight Commander of the Most Distinguished Order of St, Michael and St, George, Grand Cross of the Royal Hellenic Order of the Redeemer, His Majesty's Envoy Extraordinary and Minister Plenipotentiary at Athens;

And His Majesty the King of the Hellenes, His Excellency M, Demetrius Kalergi, Officer of the Royal Hellenic Order of the Redeemer, His Majesty's Minister for Foreign Affairs;

Who, after having exhibited to each other their respective full powers and found them in good and due form, have agreed upon the following Articles:

ARTICLE 1

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 2, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE 2

Extraditions shall be granted for the following crimes or offences when provided for by the laws of the requisitioning State and of the State applied to: -

1. Murder (including parricide, infanticide, poisoning) or attempt or conspiracy to murder manslaughter.
2. Kidnapping and false imprisonment.
3. Abandoning or exposing children below the age of 7 years.
4. Abortion.

5. Abduction of persons under age.
6. Bigamy.
7. Malicious wounding or inflicting grievous bodily harm with premeditation.
when such acts cause death (without the intention of killing) or disease or incapacity for personal labour lasting for more than three months or serious mutilation or the loss or disablement of a member or organ or other permanent infirmity.
8. Threats by letter or otherwise with intent to extort.
9. Perjury.
10. Arson.
11. Burglary, housebreaking, larceny, embezzlement, fraudulent misappropriation of property, obtaining property by false pretences.
12. Fraud and embezzlement by public officials; bribery of public officials.
13. Receiving any chattel, money, valuable security, or other property.
knowing the same to have been embezzled, stolen, or feloniously obtained.
14. Counterfeiting or altering money, or knowingly bringing into circulation counterfeited or altered money.
15. Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.
16. Forgery by writing, or uttering what is forged.
17. Fraudulent bankruptcy.
18. Malicious injury to any house or building calculated to cause danger to life or property.
19. Rape.

Participation in the aforesaid crimes is also included, provided that such participation is punishable by the laws of the demanding State and of the State applied to.

ARTICLE 3

No Greek subject shall be surrendered by the Government of His Majesty the King of the Hellenes to the Government of His Britannic Majesty, and no British subject shall be surrendered by his Government to the Government of His Majesty the King of the Hellenes.

ARTICLE 4

Extradition shall not take place if the person claimed on the part of His Britannic Majesty's Government, or of the Government of His Majesty the King of the Hellenes, has already been tried, discharged, or punished,

or is awaiting trial in the territory of the United Kingdom or in Greece respectively for the crime or offence for which his extradition is demanded. If the person claimed on the part of the Government of His Majesty the King of the Hellenes, or of His Britannic Majesty's Government, should be awaiting trial or undergoing sentence for any other crime or offence in the territory of Greece or in the United Kingdom, respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of sentence.

ARTICLE 5

Extradition shall not be granted if exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

Neither shall it be granted in the case of persons convicted by default, or otherwise, unless the sentence inflicted be at least one year's imprisonment.

ARTICLE 6

The person claimed shall not be surrendered if the crime in respect of which extradition is applied for be deemed by the party to whom application is made to be a political offence, or connected with such an offence, or if the person claimed proves that the application for extradition has in fact been made with a view to try or to punish him for an offence of this character.

ARTICLE 7

A person whose surrender has been granted shall in no case be detained or tried in the State to which the surrender has been made for any other crime, or on account of any other matters than those for which the extradition shall have taken place.

This stipulation does not apply to crimes committed after the extradition.

The person who has been claimed, and whose extradition shall have been granted, shall not be tried or punished for any political offence committed prior to his extradition, nor for any matter connected with such an offence, nor for any crimes or offences not provided for in the present Treaty.

ARTICLE 8

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent judicial authority setting forth clearly the nature of the crime or offence with which the person claimed is charged. The said warrant shall also be accompanied by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by a copy of the judgement passed on the convicted person by the competent Court of the State that makes the requisition for extradition,

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

In the event of any doubt arising as to whether the crime or offence, in respect of which the prosecution has been instituted, comes within the stipulations of the present Treaty, the Government applied to shall be at liberty to require all such further information as it may consider necessary or of assistance in order to form an opinion, after which it shall decide what action shall be taken on the demand for extradition.

The requisitioning Government, in furnishing such further information to the Government applied to, shall, at the same time, place at the disposal of the latter all such documents as may be necessary or useful in enabling it to form an opinion.

ARTICLE 9

In cases of urgency provisional arrest may be effected upon notice being given, by post or telegraph, through the diplomatic channel that one of the documents enumerated in Article 8 has been issued, provided, however, that such notice shall always be given to the Ministry for Foreign Affairs of the State applied to.

Provisional arrest shall be effected in the manner and in accordance with the rules laid down by the laws of the State applied to, It shall not be maintained if, within a period of one month from the date on which it has been effected,

the State applied to has not been furnished with one of the documents specified in Article 8 of the present Treaty.

ARTICLE 10

All papers and documents issued by the authorities of the Contracting States which may be produced in virtue of Articles 8 and 13 of the present Treaty must be accompanied by an authenticated translation in the French language.

ARTICLE 11

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or if extradition is claimed in respect of an offence of which the fugitive has been already convicted, to prove that the prisoner is the person convicted, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to.

ARTICLE 12

Extradition shall be granted in accordance with the rules laid down by the law of the State applied to.

ARTICLE 13

Warrants, depositions, and affirmations, issued or taken in the dominions of one of the High Contracting Parties, and copies of such documents as well as certificates or judicial documents stating the fact of a conviction shall be admitted as valid evidence in the proceedings taken in the dominions of the other party, if they bear the signature or are accompanied by the certificate of a Judge, Magistrate, or officer of the State in which they have been issued or taken, provided that such warrants, depositions, affirmations, copies, certificates, or judicial documents are authenticated, either by the oath of some witness, or by being sealed with the seal of the Minister of Justice, or some other Minister of State.

ARTICLE 14

If the accused or sentenced person be not a subject of one of the Contracting Parties, the Government to whom application for extradition is made shall be at liberty to take such action in respect of the application, as it may think fit,

and to surrender the person claimed to be tried in the State in which the crime or offence has been committed.

Nevertheless, the Government of His Majesty the King of the Hellenes reserves to itself the option of surrendering the person claimed to the State to which he belongs, instead of surrendering him to the State in which the crime or offence has been committed.

ARTICLE 15

If a fugitive criminal who has been arrested has not been surrendered and conveyed away within three months after his arrest, or within three months after the decision of the Court upon the return to a writ of habeas corpus in the United Kingdom, he shall be set at liberty.

ARTICLE 16

When extradition is granted all articles connected with the crime or offence, or which may serve as proofs of the crime, which are found in the possession of the person claimed at the time of his arrest, or which may be afterwards discovered, shall, if the competent authority of the State applied to so direct, be seized and restored to the requisitioning State.

Such restoration shall be carried out, even if extradition be not carried out owing to the escape or death of the person claimed.

The rights, however, which third persons, not involved in the prosecution, may have acquired over the said articles are reserved, and the latter shall, should the case arise, be restored to them, free of charge, at the termination of the proceedings.

ARTICLE 17

All expenses arising out of an application for extradition, also the costs of the arrest, maintenance, and transport of the person whose extradition shall have been granted, as well as of the dispatch and forwarding of the articles which, by the provisions of Article 16, are to be returned or restored, shall be borne by the requisitioning State and by the State applied to within the limits of their respective territories.

The cost of transport or other expenses outside the territory of the State applied to shall be borne by the demanding State.

ARTICLE 18

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty. The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the chief consular officer of Greece in such Colony or possession. Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority. He shall, however, be at liberty either to grant the surrender or to refer the matter to his Government. His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Greece who may take refuge within such Colonies and foreign possessions, on the basis of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE 19

The present Treaty shall come into operation ten days after its publication in conformity with the laws of the respective countries.

Crimes committed prior to the coming into force of the Treaty shall not form the subject of an application for extradition except in cases in which the persons claimed shall have taken refuge in the territory of the State applied to after the exchange of ratifications.

Each of the Contracting Parties shall be at liberty at any time to denounce the present Treaty upon giving six months' notice to the other Party of its intention to do so.

It shall be ratified, and the ratifications shall be exchanged at Athens as soon as possible.

DONE in duplicate at Athens the twenty-fourth (eleventh) day of September, one thousand nine hundred and ten.

(L.S) Francis E. H. Elliot

(L.S) D. Kalergi

10. TREATY BETWEEN THE UNITED KINGDOM AND SIAM (now Kingdom of Thailand) RESPECTING THE EXTRADITION OF FUGITIVE CRIMINALS 1911

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty the King of Siam, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should under certain circumstances be reciprocally delivered up; the said High Contracting Parties have named as their plenipotentiaries to conclude a Treaty for this purpose, that is to say:-

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India: Arthur Peel, Esq., his Envoy Extraordinary and Minister Plenipotentiary at the Court of Bangkok, &c.

And His Majesty the King of Siam: His Royal Highness Prince Devawongse Varoprakar, his Minister for Foreign Affairs, &c.

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

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ARTICLE I

The High Contracting Parties engage to deliver up to each other persons over whom they respectively exercise jurisdiction who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II

The crimes or offences for which the extradition is to be granted are the following: -

1. Murder, or attempt, or conspiracy to murder.

2. Manslaughter.
3. Assault occasioning actual bodily harm. Malicious wounding or inflicting grievous bodily harm.
4. Counterfeiting or altering money, or uttering counterfeit or altered money.
5. Knowingly making any instrument, tool, or engine adapted or intended for counterfeiting coin.
6. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited, or altered.
7. Embezzlement or larceny.
8. Malicious injury to property, by explosives or otherwise, if the offence be indictable.
9. Obtaining money, goods, or valuable securities by false pretences.
10. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
11. Crimes against bankruptcy law.
12. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force.
13. Perjury, or subornation of perjury.
14. Rape.
15. Carnal knowledge, or any attempt to have carnal knowledge of a girl under the age of puberty, according to the laws of the respective countries.
16. Indecent assault.
17. Procuring miscarriage, administering drugs, or using instruments with intent to procure the miscarriage of a woman.
18. Abduction.
19. Child stealing.
20. Abandoning children, exposing or unlawfully detaining them.
21. Kidnapping and false imprisonment.
22. Burglary or housebreaking.
23. Arson.
24. Robbery with violence.
25. Any malicious act done with intent to endanger the safety of any person in a railway train.
26. Threats by letter or otherwise, with intent to extort.
27. Piracy by law of nations.
28. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
29. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.

30. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

31. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both of the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

Either Government may, at its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Siam, has already been tried and discharged or punished, or is still under trial in the territory of Siam or in the United Kingdom respectively for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of Siam, should be under examination for any crime in the territory of Siam or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is deemed by the Party on whom the demand is made to be one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VI

A person surrendered can in no case be detained or tried in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VII

The requisition for extradition shall be made through the diplomatic agents of the High Contracting Parties respectively.

The requisition for the extradition of the accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition for extradition relates to a person already convicted, it must be accompanied by a copy of the judgment passed on the convicted person by the competent court of the State that makes the requisition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE VIII

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. The prisoner is then to be brought before a competent magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE IX

When either of the Contracting Parties considers the case urgent it may apply for the provisional arrest of the criminal and the safe keeping of any objects relating to the offence.

Such request will be granted, provided the existence of a sentence or warrant of arrest is proved, and the nature of the offence of which the fugitive is accused is clearly stated.

The warrant of arrest to which this Article refers should be issued by the competent authorities of the country applying for extradition. The accused shall on arrest be sent as speedily as possible before a competent magistrate.

ARTICLE X

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows: -

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

ARTICLE XI

The extradition shall not take place unless the evidence be found sufficient according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime has been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XII

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIII

If sufficient evidence for the extradition is not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper tribunal thereof shall direct, the fugitive shall be set at liberty.

ARTICLE XIV

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XV

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered and his conveyance till placed on board the ship; they reciprocally agree to bear such expenses themselves.

ARTICLE XVI

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any such Colony or foreign possession may be made to the Governor or chief authority of such Colony or possession by any person authorized to act in such Colony or possession as a consular officer of Siam.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the laws of such Colonies or foreign possessions will allow, to the provisions of this Treaty, by the said Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to His Britannic Majesty's Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Siam who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the

laws of such Colonies or foreign possessions will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by the rules laid down in the preceding articles of the present Treaty.

ARTICLE XVII

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at London, as soon as possible.

IN WITNESS WHEREOF the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

DONE in duplicate at Bangkok, the fourth day of March, 1911, in the 129th Year of "Ratanakosindr."

Arthur Peel

Devawongse Varoprakar

11. TREATY BETWEEN THE UNITED KINGDOM AND PANAMA FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1907

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas,

Emperor of India, and the President of the Republic of Panamá, having determined, by common consent, to conclude a Treaty for the extradition of criminals, have accordingly named as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India,
Claude Coventry Mallet, Esquire, companion of His Most Distinguished Order of Saint Michael and Saint George, and His Consul for the Republic of Panamá, and

The President of the Republic of Panamá,
His Excellency Ricardo Arias, Secretary of State for the Department of Government and Foreign Affairs;

Who, after having exhibited to each other their respective full powers and found them in good and due form, have agreed upon the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder. or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.

5. Carnal knowledge or any attempt to have unlawful carnal knowledge of a girl under the age of 16 years. so far as such acts are punishable by the law of the State upon which the demand is made.
6. Indecent assault.
7. Kidnapping and false imprisonment. child stealing.
8. Abandoning. exposing. or detaining children.
9. Abduction.
10. Bigamy.
11. Maliciously wounding or inflicting grievous bodily harm.
12. Assault occasioning actual bodily harm.
13. Threats. by letter or otherwise. with intent to extort money or other things of value.
14. Perjury or subornation of perjury.
15. Arson. or attempt to commit arson.
16. Burglary or housebreaking. robbery with violence. larceny. or embezzlement.
17. Fraud by a bailee. banker. agent. factor. trustee. director. member. or public officer of any Company.
18. Obtaining money. valuable security. or goods by false pretences; receiving any money. valuable security. or other property. knowing the same to have been stolen or unlawfully obtained.
19. (a) Counterfeiting or altering money. or bringing into circulation counterfeited or altered money.
(b) Knowingly making without lawful authority any instrument. tool. or engine adapted and intended for the counterfeiting of the coin of the realm.
20. Forgery. or knowingly uttering what is forged.
21. Crimes against bankruptcy law.
22. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
23. Malicious injury to property. if such offence be indictable.
24. Piracy and other crimes or offences committed at sea against persons or things which. according to the laws of the High Contracting Parties. are extradition offences.
25. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

Extradition shall also be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

Neither Party is obliged to surrender its own subjects or citizens to the other Party.

ARTICLE IV

Extradition shall not take place if the person claimed on the part of His Britannic Majesty's Government, or of the Government of Panama, has already been tried and discharged or punished or is awaiting trial in the territory of the United Kingdom or in the Republic of Panama respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of His Britannic Majesty's Government or of the Government of Panama should be awaiting trial or undergoing sentence for any other crime in the territory of the United Kingdom, or in the Republic of Panama respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of sentence, or otherwise.

ARTICLE V

Extradition shall not be granted if exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to. Neither shall it be granted if, according to the law of either country, the maximum punishment for the offence charged is imprisonment for less than one year.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try to punish him for an offence of a political character.

ARTICLE VII

A person surrendered shall in no case be kept in prison, or be brought to trial in the State to which the surrender has been made for any other crime or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents or Consuls-General of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by a copy of the judgment passed on the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

A criminal fugitive may be apprehended under a warrant issued by any competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the said authority exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a competent Magistrate.

He shall, in accordance with this Article, be discharged, as well in the Republic of Panama as in the United Kingdom, if within the term of sixty days a requisition for extradition shall not have been made by the Diplomatic Agent or Consul-General of his country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty and

committed in the high seas on board any vessel of either country which may come into port of the other.

ARTICLE XI

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or if extradition is claimed in respect of an offence of which the fugitive has been already convicted, to prove that the prisoner is the person convicted, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to.

ARTICLE XII

The extradition of fugitives under the provisions of this Treaty shall be carried out in His Britannic Majesty's Dominions and in the Republic of Panama, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering State.

ARTICLE XIII

In the examination which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn disposition or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating, the fact of a conviction, provided the same are authenticated as follows:

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State but any other mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

ARTICLE XIV

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.

ARTICLE XV

If sufficient evidence for the extradition be not produced within ninety days from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XVI

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVII

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVIII

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty so far as the laws in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the chief Consular officer of the Republic of Panama in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions of the surrender

of criminals from the Republic of Panama who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony and foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by rules laid down in the preceding Articles of the present Treaty.

ARTICLE XIX

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than six months.

It shall be ratified, and the ratifications shall be exchanged as Panama as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and affixed thereto their respective seals.

Done in duplicate in the Spanish and English languages at Panamá the 25th day of August, 1906.

C. Mallet
Ricardo Arias

12. TREATY BETWEEN THE UNITED KINGDOM AND PERU FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1907

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and his Excellency the President of the Republic of Peru, having determined by common consent to conclude a Treaty for the extradition of criminals, have accordingly named as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, William Nelthorpe Beauclerk, His Majesty's Minister Resident in Peru; And his Excellency the President of the Republic of Peru, José Pardo, his Minister for Foreign Relations;

Who after having exhibited to each other their respective full powers and found them in good and due form, have agreed upon the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other, in accordance with the stipulations of the present Treaty, any persons who, being accused or convicted in one of the two countries of one or more of the offences enumerated in the following Article are found in the territory of the other.

ARTICLE II

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including parricide, infanticide, poisoning) or attempt or conspiracy to murder. The Peruvian Government may, however, in its absolute discretion, refuse to deliver up any person charged with a crime punishable with death.
2. Manslaughter.
3. Procuring or attempting to procure abortion.
4. Rape, abduction and indecent assault.
5. Unlawfully detaining or kidnapping children, abandoning or exposing them.
6. Bigamy
7. Wounding or inflicting grievous bodily harm.
8. Assault occasioning actual bodily harm.

9. Threats, by letter or otherwise, with intent to extort money or other things of value.
10. Perjury or subordination of perjury.
11. Arson and other malicious injury to property if such injuries are indictable.
12. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
13. Fraud by a bailee, banker, agent, factor, trustee, director, member or public officer of any company punishable with imprisonment for not less than one year.
14. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security or other property, knowing the same to have been stolen or unlawfully obtained.
15. Counterfeiting or altering money or bringing into circulation counterfeited or altered money.
16. Making or having possession of instruments adapted and intended for the counterfeiting of the coin of the realm or for the forgery of documents. Forgery and uttering what is forged.
17. Offences against bankruptcy law.
18. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
19. Piracy by the law of nations.
20. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.
21. Extradition is also to be granted for other crimes or offences against persons or things which, according to the laws of the High Contracting Parties, are Extradition offences and are punishable by not less than one year's imprisonment.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties. Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

Each of the High Contracting Parties reserves the right to grant or refuse the surrender of its own subjects or citizens.

ARTICLE IV

The surrender shall not take place when the person claimed by the Government of either of the two nations has already been tried and sentenced by the authorities of the other for the crime for which his extradition is demanded.

If the person claimed should be awaiting trial in the territory of one of the two nations, or be undergoing sentence in it on account of any other crime than that for which his extradition is claimed, his surrender shall be deferred until after he has been discharged, whether by acquittal or on the expiration of his sentence, or by pardon or otherwise.

ARTICLE V

The extradition shall not take place if subsequently to the commission of the crime or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered may in no case be kept in prison or be brought to trial in the State to which the surrender has been made for any other crime, or on account of any other matters than those for which the extradition shall have taken place, until he has had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively; in default of these by the Consular Officers, and in the absence of both of these, directly, from Government to Government.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

Also, in case of extradition being demanded by Great Britain for a crime which is an offence against some statute, a copy of the said statute shall be sent; and if for a crime at common law only, an extract from some text-book generally recognized as authoritative may be sent, as indicating the punishment applicable to the offence giving rise to the requisition.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

When either of the Contracting Governments considers the case urgent it may apply for the provisional arrest of the criminal and the safe keeping of any objects relating to the offence.

Such request will be granted, provided the existence of a sentence or warrant of arrest is proved and the nature of the offence of which the fugitive is accused is clearly stated.

The warrant of arrest to which this Article refers should be issued by the competent judicial authorities of the Country applying for extradition. In the United Kingdom the accused shall on arrest be sent as speedily as possible before a Police Magistrate. The prisoner shall be discharged if the State applying does not complete the requisition within the term of ninety days counting from the date of the arrest of the prisoner.

ARTICLE XI

The extradition shall take place only if the evidence be found sufficient according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove by the documents presented which shall contain a description of the person claimed and any particulars which shall serve to identify him, that the prisoner is the identical person convicted by the Courts of the State which makes the requisition and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII

In the examinations which they may have to make in accordance with the foregoing stipulations, the Authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:

1. A warrant must purport to be signed by a Judge, Magistrate or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate or Officer of the other State to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate or Officer of the other State.
4. In every case such warrant, deposition, affirmation, copy, certificate or judicial document must be authenticated either by oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of the other State: but any other mode of authentication for the time being permitted by the law of the Country where the examination is taken may be substituted for the foregoing.

ARTICLE XIII

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective

territories, his extradition shall be granted to the State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within ninety days from the date of the apprehension of the fugitive, or within such further time as the State applied to or the proper Tribunal thereof shall direct, the fugitive shall be set at liberty.

ARTICLE XV

When extradition is conceded the papers and other articles connected with the offence or its authors, or which were in their possession at the time of their arrest, shall be delivered to the State to which extradition is granted.

This State shall be bound to return them after the termination of the trial, if any persons shall satisfy the authorities of the State granting extradition that they have a right to them.

ARTICLE XVI

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII

The stipulations of the present Treaty shall be applicable to the colonies and foreign possessions of His Britannic Majesty, so far as the laws in such colonies and foreign possessions allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such colonies or foreign possessions shall be made to the Governor or chief authority of such colony or possession by the Chief Consular officer of the Republic of Peru in such Colony or possession.

The Governor or chief authority may dispose of the requisition, in accordance with the laws of the territory in which he exercises authority, and shall be at liberty to grant the surrender or to refer the matter to his Government.

Requisitions for the surrender of a fugitive criminal emanating from any colony or foreign possession of His Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting

Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

It shall be ratified after receiving the approval of the Congress of the Republic of Peru and the ratifications shall be exchanged at Lima as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same and affixed thereto their respective seals.

DONE at Lima, this 26th day of January in the year 1904.

William Nelthorpe Beauclerk

José Pardo

**13. TREATY BETWEEN THE UNITED KINGDOM AND
NICARAGUA
FOR THE MUTUAL EXTRADITION OF FUGITIVE CRIMINALS
1906**

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; and His Excellency the President of the Republic of Nicaragua; Having determined, by common consent, to conclude a Treaty for the extradition of criminals, have accordingly named as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India,

Herbert William Broadley Harrison, Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, His Majesty's Chargé d'Affaires in the Republic of Nicaragua; and

His Excellency the President of Nicaragua,
Doctor Adolfo Altamirano, Minister of Foreign Affairs;
Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles: -

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one Party, shall be found within the territory of the other Party, under circumstances and conditions stated in the present Treaty.

ARTICLE II

Extradition shall be reciprocally granted for the following crimes and offences: -

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.

5. Carnal knowledge, or any attempt to have carnal knowledge of a girl under the age of puberty, according to the laws of the respective countries.
6. Indecent assault.
7. Kidnapping and false imprisonment.
8. Abandoning, exposing, or detaining children.
9. Abduction.
10. Bigamy.
11. Maliciously wounding or inflicting grievous bodily harm.
12. Assault occasioning actual bodily harm.
13. Threats, by letter or otherwise, with intent to extort money or other things of value.
14. Perjury, or subornation of perjury.
15. Arson.
16. Burglary or housebreaking, robbery with violence, larceny, or embezzlement.
17. Fraud by a bailer, banker, agent, factor, trustee, director, member, or public officer of any Company.
18. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
19. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
(b) Knowingly making without lawful authority any instrument, tool, or engine adapted or intended for the counterfeiting of the coin of the realm.
20. Forgery, or uttering what is forged.
21. Crimes against bankruptcy law.
22. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
23. Malicious injury to property, if such offence be indictable.
24. Piracy and other crimes or offences committed at sea against persons or things, which, according to the laws of the High Contracting Parties, are extradition offences.
25. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition shall also be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and, in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted. Extradition shall not be granted if, according to the laws of either country, the maximum punishment for the offence charged is imprisonment for less than one year.

ARTICLE III

No Nicaraguan shall be delivered up by the Government of Nicaragua to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Nicaragua.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Nicaragua, has already been tried and discharged or punished, or is still under trial in the territory of Nicaragua or in the United Kingdom respectively for the crime for which his extradition is demanded. If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of Nicaragua, should be under examination for any crime in the territory of Nicaragua or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made for any other crime, or on account of any other matters than those for which the extradition shall have taken place. This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents, or duly recognized Consuls-General of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by a sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive. The prisoner is then to be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X

The extradition shall not take place before the expiration of fifteen days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime has been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

ARTICLE XI

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE XII

If sufficient evidence for extradition be not produced, within two months from the date of the apprehension of the fugitive he shall be set at liberty.

ARTICLE XIII

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend, not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XIV

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

ARTICLE XV

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the Chief Consular officer of Nicaragua in such Colony or possession.

Such requisitions may be disposed of (subject always, as nearly as may be, to the provisions of this Treaty by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Nicaraguan criminals who may take refuge within such Colonies and foreign possessions on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of His Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVI

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

It shall be ratified, and the ratifications shall be exchanged in London within the period of six months from the date of signature.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same and affixed thereto their respective seals.

DONE in duplicate at Managua, the 19th day of April, 1905.

Herbert Harrison

Adolfo Altamiran

**14. TREATY BETWEEN THE UNITED KINGDOM AND CUBA
FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS
1904**

Signed at Havana, October 3, 1904.

[Ratifications exchanged at Havana, January 10, 1905.]

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Excellency the President of the Republic of Cuba, having determined, by common consent, to conclude a Treaty for the extradition of criminals, have accordingly named as their Plenipotentiaries : His Majesty the King of the United Kingdom of Great Britain and Ireland, Lionel E. G. Carden, Esq., Minister Resident of Great Britain in Cuba, and His Excellency the President of the Republic of Cuba, Carlos E. Ortiz y Coffigny, Secretary of State and Justice; who, after having exhibited to each other their respective full powers and found them in good order and due form, have agreed upon the following Articles:-

ARTICLE I.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II.

Extradition shall be reciprocally granted for time following crimes or offences: -

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.

5. Carnal knowledge or any attempt to have carnal know ledge of a girl under the age of puberty according to the laws of the respective countries.
6. Indecent assault.
7. Kidnapping and false imprisonment, child-stealing.
8. Abduction.
9. Bigamy.
10. Maliciously wounding or inflicting grievous bodily harm.
11. Assault occasioning actual bodily harm.
12. Threats, by letter or otherwise, with intent to extort money or other things of value.
13. Perjury or subornation of perjury.
14. Arson.
15. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.
16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any Company.
17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
18. (a.) Counterfeiting or altering money or bringing into circulation counterfeited or altered money.
(b.) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm. (c.) Forgery, or littering what is forged.
19. Crimes against bankruptcy law.
20. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
21. Malicious injury to property, if such offence be indictable.

22. Piracy and other crimes or offences committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.
23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

Extradition shall also be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III.

Neither party is obliged to surrender its own subjects or citizens to the other party.

ARTICLE IV.

Extradition shall not take place if the person claimed on the part of His Majesty's Government, or of the Government of Cuba, has already been tried and discharged or punished, or is awaiting trial in the territory of the United Kingdom or in the Republic of Cuba respectively, for the crime for which his extradition is demanded. If the person claimed on the part of His Majesty's Government, or of the Government of Cuba, should be awaiting trial or undergoing sentence for any other crime in the territory of the United Kingdom or in the Republic of Cuba respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of sentence, or otherwise.

ARTICLE V.

Extradition shall not be granted if exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to. - Neither shall it be granted if, according to the law of either country, the maximum punishment for the offence charged is imprisonment for less than one year.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered shall in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had all opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively. The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there. If the requisition relates to a person already convicted, it must be accompanied by a copy of the Judgment passed on the convicted person by the competent Court of the State that makes the requisition for extradition.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

A criminal fugitive may be apprehended under a warrant issued by any competent authority in either country, on such information or complaint, and such evidence, or after such proceedings, as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant, if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the said authority exercises jurisdiction;

provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate. In the Republic of Cuba, the Government will decide by Administrative procedure on everything connected with extradition until a special procedure on the subject be established by law.

ARTICLE XI.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or if extradition is claimed in respect of an offence of which the fugitive has been already convicted, to prove that the prisoner is the person convicted, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to.

ARTICLE XII.

In the examination which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating, the fact of a conviction, provided the same are authenticated as follows: -

1. A warrant must purport to be signed by it Judge, Magistrate, or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of it Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by it Judge, Magistrate, or officer of the other State.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by the law of the

country where the extradition is taken may be substituted for the foregoing.

ARTICLE XIII.

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.

ARTICLE XIV.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of His Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow, The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or Chief authority of such Colony or possession by the Chief Consular Officer of the Republic of Cuba in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far, as the law of such Colony or foreign possession will allow, to the

provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government. His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Cuban criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possessions will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of His Britannic Majesty shall be governed by rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication, in conformity- with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High. Contracting Parties by a notice not exceeding one year, and not less than six months.

It shall be ratified, after receiving the approval of the Senate of the Republic of Cuba, and the ratifications shall be exchanged at Havana as soon as possible. In witness whereof the respective Plenipotentiaries have signed the same, and affixed thereto their respective seals.

Done in duplicate at Havana the third day of October, nineteen hundred and four.

CARDEN

(L.S.) LIONEL E. G

Y COFFIGNY

(L.S.) CARLOS E. ORTIZ

15. TREATY BETWEEN GREAT BRITAIN AND BELGIUM, FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1902

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India and His Majesty the King of the Belgians, having mutually resolved to conclude a new Treaty for the extradition of criminals, the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India, Constantine Phipps, Esquire, Companion of the Most Honourable Order of the Bath, his Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians; and His Majesty the King of the Belgians, the Baron de Favereau, Knight of his Order of Leopold, Member of the Senate, his Minister of Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I

It is agreed that His Britannic Majesty and His Majesty the King of the Belgians shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, under the circumstances and conditions stated in the present Treaty, any persons who, being accused or convicted, as principals or accessories, of any of the crimes hereinafter specified, committed within the territories of the requiring Party, shall be found within the territories of the other Party:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt, or conspiracy to murder, in cases jointly provided for by the laws of the two countries;
2. Administering drugs or using instruments with intent to procure the miscarriage of women;
3. Manslaughter;
4. Bigamy;
5. (a) Counterfeiting or altering money, or uttering counterfeit or altered money;

- (b) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm;
- 6. Abandoning children, exposing or unlawfully detaining them;
- 7. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered;
- 8. Any malicious act done with intent to endanger persons in a railway train;
- 9. Embezzlement or larceny;
- 10. Receiving any chattel, money, valuable security, or other property, knowing the same to have been embezzled, stolen, or feloniously obtained;
- 11. Obtaining money, goods, or valuable securities by false pretences;
- 12. Crimes by bankrupts against bankruptcy law;
- 13. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force;
- 14. Rape;
- 15. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age, so far as such acts are punishable by the law of the State upon which the demand is made;
- 16. Indecent assault. Indecent assault without violence upon children of either sex under 13 years of age;
- 17. Abduction;
- 18. Child Stealing;
- 19. Kidnapping and false imprisonment;
- 20. Burglary or housebreaking;
- 21. Arson;
- 22. Robbery with violence (including intimidation);
- 23. Threats by letter or otherwise, with intent to extort;
- 24. Piracy by law of nations;
- 25. Sinking or destroying a vessel at sea, or attempting or conspiring to do so;
- 26. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm;
- 27. Revolt or conspiracy to revolt, by two or more persons, on board a ship on the high seas against the authority of the master;
- 28. Perjury and subornation of perjury;
- 29. Malicious injury to property, if the offence be indictable;
- 30. Assault occasioning actual bodily harm. Malicious wounding or inflicting grievous bodily harm;

31. Offences in connection with the Slave Trade punishable by the laws of both States.

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed, and in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

In no case can the surrender be made unless the crime shall be punishable according to the laws in force in both countries with regard to extradition.

In no case, nor on any consideration whatever, shall the High Contracting Parties be bound to surrender their own subjects, whether by birth or naturalization.

ARTICLE II

In the dominions of His Britannic Majesty, other than the Colonies or foreign possessions of His Majesty, the manner of proceeding shall be as follows:

1. In the case of a person accused -

The requisition for the surrender shall be made to His Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of His Majesty the King of the Belgians, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Belgium, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Secretary of State shall transmit such documents to His Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended, he shall be brought before a competent Magistrate. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of His Majesty the King of the Belgians.

2. In the case of a person convicted -

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Magistrate shall be such as would, accordingly to the law of England, prove that the prisoner was convicted of the crime charged.

After the Magistrate shall have committed the accused or convicted person to a prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of habeas corpus; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant.

ARTICLE III

In the dominions of His Majesty the King of the Belgians, other than the Colonies or foreign possessions of His said Majesty, the manner of proceeding shall be as follows:

1. In the case of a person accused -

The requisition for the surrender shall be made to the Minister for Foreign Affairs of His Majesty the King of the Belgians by the Minister or other Diplomatic Agent of His Britannic Majesty, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Great Britain, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any other particulars which may serve to identify him.

The Minister for Foreign Affairs shall transmit the warrant of arrest, with the documents thereto annexed, to the Minister of Justice, who shall forward the same to the proper judicial authority, in order that the warrant of arrest may be put in course of execution by the Chamber of the Council (Chambre du Conseil) of the Court of First Instance of the place of residence of the accused, or of the place where he may be found.

The foreigner may claim to be provisionally set at liberty in any case in which a Belgian enjoys that right, and under the same conditions.

The application shall be submitted to the Chamber of the Council (Chambre du Conseil).

The Government will take the opinion of the Chamber of Indictments or Investigation (Chambre des Mises en Accusation) of the Court of Appeal within those jurisdictions the foreigner shall have been arrested.

The hearing of the case shall be public, unless the foreigner should demand that it should be with closed doors.

The public authorities and the foreigner shall be heard. The latter may obtain the assistance of counsel.

Within a fortnight from the receipt of the documents they shall be returned, with a reasoned opinion, to the Minister of Justice, who shall decide and may order that the accused be delivered to the person duly authorized on the part of the Government of His Britannic Majesty.

2. In the case of a person convicted -

The course of proceeding shall be the same as in the case of a person accused, except that the conviction or sentence of condemnation issued in original, or in an authenticated copy, to be transmitted by the Minister or other Diplomatic Agent in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced shall be such as would according to the Belgian laws, prove that the prisoner was convicted of the crime charged.

ARTICLE IV

A fugitive criminal may, however, be apprehended under a warrant signed by any Police Magistrate, Justice of the Peace, or other competent authority, in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed, or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that, in the United Kingdom, the accused shall in such case be sent as speedily as possible before a competent Magistrate. He shall be discharged, as well in the United Kingdom as in Belgium, if within fourteen days a requisition shall not have been made for his surrender by the Diplomatic Agent of the requiring State in the manner directed by Articles II and III of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE V

If within two months, counting from the date of arrest, sufficient evidence for the extradition shall not have been presented, the person arrested shall be set at liberty. He shall likewise be set at liberty if, within two months of the day on which he was placed at the disposal of the Diplomatic Agent, he shall not have been sent off to the reclaiming country.

ARTICLE VI

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored, or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

ARTICLE VII

No accused or convicted person shall be surrendered if the offence in respect of which his surrender is demanded shall be deemed by the party upon which it is made to be a political offence, or to be an act connected with ("*connexe à*") such an offence, or if he prove to the satisfaction of the Magistrate, or of the Court before which he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.

ARTICLE VIII

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken:

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath or solemn affirmation of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE IX

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from the prosecution or punishment has been acquired by lapse of time according to the laws of the country where the accused shall have taken refuge.

ARTICLE X

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several

other Powers, on account of other crimes committed upon their respective territories, his surrender shall be granted to that State whose demand is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE XI

If the individual claimed should be under peace process, or condemned by the Courts of the country where he has taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall, nevertheless, take place, the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XII

Every article found in possession of the individual claimed at the time of his arrest shall, if the competent authority so decides, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property or articles are, nevertheless, reserved.

ARTICLE XIII

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.

ARTICLE XIV

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of the two High Contracting Parties.

The requisitions for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign possession of either Party shall be made to the

Governor or chief authority of such Colony or possession by the chief Consular officer of the other in such Colony or possession; or, if the fugitive has escaped from a Colony or foreign possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such Colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

His Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Belgian criminals who may there take refuge, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XV

The present Treaty shall come into operation ten days after its publication, in conformity with the laws of the respective countries.

From the day when the present Treaty shall come into force, the Treaty of Extradition between the two countries of the 20th May, 1876; the Declaration between the British and Belgian Governments, dated the 23rd July, 1877, extending the Treaty of the 20th May, 1876, to certain additional crimes; the further Declaration of the 21st April, 1887, amending Article I of the Treaty of the 20th May, 1876; and the Convention of the 27th August, 1896, further amending the Treaty of the 20th May, 1876, shall all cease to have effect; but the present Treaty shall apply to all crimes within the Treaty, whether committed before or after the day when it comes into force.

Either Party may at any time terminate the Treaty on giving to the other six months' notice of its intention.

ARTICLE XVI

The present Treaty shall be ratified, and the ratifications shall be exchanged at Brussels as soon as may be within six weeks from the date of signature.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

DONE at Brussels, the 29th day of October, in the year of our Lord 1901.

CONSTANTINE PHIPPS

BARON de FAVEREAU

SUPPLIMENT

**Convention between the United Kingdom and Belgium Supplementing
Articles XIV of the Treaty of Extradition of October 29, 1901.**

Signed at London, March 5, 1907.

[Ratifications exchanged at London, April 17, 1907]

“In the relations of each of the High Contracting Parties with the extra-European Colonies and foreign Possessions of the other, the periods fixed by Articles IV, paragraph 1, and V of the Treaty of the 29th October, 1901, shall be extended as follows: -

1. A fugitive criminal arrested under the terms of Article IV shall be discharged in the dominions of His Britannic Majesty if, within the period of two months from the date of his arrest, a request for his extradition shall not have been made by the Government of the requesting State.
The fugitive criminal may be discharged in the dominions of His Majesty the King of the Belgians if within the same period a request for his extradition has not been made by the Government of the requisitioning State; he shall be released if within seven days following the expiration of this period the warrant issued by the competent authority shall not have been communicated to the fugitive criminal.
2. The person arrested shall be set at liberty within the three months, counting from the date of arrest, sufficient evidence in support of the demand for extradition shall not have been produced.”

16. TREATY BETWEEN UNITED KINGDOM AND THE REPUBLIC OF SAN MARINO FOR THE MUTUAL EXTRADITION OF FUGITIVE CRIMINALS 1900

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the Most Serene Republic of San Marino, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, his Excellency Philip Henry Wodehouse, Baron Currie of Hawley, a Member of Her Most Honourable Privy Council, Knight Grand Cross of Her Most Honourable Order of the Bath, Her Ambassador Extraordinary and Plenipotentiary to His Majesty the King of Italy;

And the Most Serene Republic of San Marino, His Excellency Cavaliere Paolo Onorato Vigliani, Patrician of San Marino, Grand Cross and Grand Cordon of the Order of St. Maurice and St. Lazarus, and of the Crown of Italy, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, &c., Minister of State, ex-President of the Court of Cassation, Senator of the Kingdom of Italy;

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles: -

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party under the circumstances and conditions stated in the present Treaty.

ARTICLE II

The crimes or offences for which the extradition is to be granted are the following:

1. Murder, or attempt, or conspiracy to murder, and manslaughter;

2. Assault occasioning actual bodily harm. Malicious wounding or inflicting grievous bodily harm;
3. Counterfeiting or altering money or uttering counterfeit or altered money;
4. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin;
5. Forgery, counterfeiting, or altering or uttering what is forged, counterfeited, or altered;
6. Embezzlement or larceny;
7. Malicious injury to property if the offence be indictable;
8. Obtaining money, goods, or valuable securities by false pretences;
9. Receiving money, valuable security, or other property knowing the same to have been stolen, embezzled, or unlawfully obtained;
10. Crimes against Bankruptcy Law;
11. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company;
12. Perjury, or subornation of perjury;
13. Rape;
14. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age, so far as such acts are punishable by the law of the State upon which the demand is made;
15. Indecent assault. Indecent assault, even with consent, upon children of either sex under 13 years of age;
16. Administering drugs or using instruments with intent to procure the miscarriage of a woman;
17. Abduction;
18. Child stealing;
19. Abandoning children, exposing or unlawfully detaining them;
20. Kidnapping and false imprisonment;
21. Burglary or housebreaking;
22. Arson;
23. Robbery with violence;
24. Any malicious act done with intent to endanger the safety of any person in a railway train;
25. Threats by letter or otherwise, with intent to extort;
26. Piracy by law of nations;
27. Sinking or destroying a vessel at sea, or attempting or conspiring to do so;
28. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm;

29. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master;
30. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Government of San Marino, has already been tried and discharged or punished, or is actually upon his trial, within the territory of the other of the two High Contracting Parties, for the crime for which his extradition is demanded.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Government of San Marino, should be under examination, or be undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made in the following manner: Application on behalf of Her Britannic Majesty's Government for the surrender of a fugitive criminal in San Marino shall be made by Her Majesty's Consul for the Republic of San Marino.

Application on behalf of the Republic of San Marino for the surrender of a fugitive criminal in the United Kingdom shall be made either direct by the Captains-Regent or by the Consul of the Republic accredited to the British Government in London.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in San Marino, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows: -

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Republic of San Marino.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the Republic of San Marino, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Republic of San Marino.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal and legalization of the Republic of San Marino; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

ARTICLE XI

If the fugitive has been arrested in the Republic of San Marino, his surrender shall be granted if, upon examination by a competent authority, it appears that

the documents furnished by the British Government contain sufficient prima facie evidence to justify the extradition.

The authorities of the Republic shall admit as valid evidence records drawn up by the British authorities of the depositions of witnesses, or copies thereof, and records of conviction or other judicial documents, or copies thereof: Provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.

ARTICLE XII

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions, the fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XIII

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

The expenses of arresting, maintaining, and transporting the person whose extradition is applied for, as well as those of handing over and transporting the property and articles, which, by the preceding Article, must be restored or given up, shall be borne by the two States within the limits of their respective territories.

The expenses of transport or other necessary expenses by sea, or through the territories of a third State, shall be borne by the demanding State.

ARTICLE XVII

Either of the High Contracting Parties who may wish to have recourse for purposes of extradition to transit through the territory of a third Power shall be bound to arrange the condition of transit with such third Power.

ARTICLE XVIII

When in a criminal case of a non-political character either of the High Contracting Parties should think it necessary to take the evidence of witnesses residing in the dominions of the other, or to obtain any other legal evidence, a "Commission Rogatoire" to that effect shall be sent through the channel indicated in Article VIII, and effect shall be given thereto conformably to the laws in force in the place where the evidence is to be taken.

ARTICLE XIX

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by any person authorized to act in such Colony or possession as a Consular officer of the Republic of San Marino.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who,

however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possession for the surrender of criminals from San Marino who may take refuge within such Colonies and foreign possessions, on the basis, nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XX

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at Rome as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty in duplicate, in English and Italian, and have affixed thereto the seal of their arms.

DONE at Florence, the 16th day of October, 1899.

Baron Currie

Paolo Onorato Vigliani

17. TREATY BETWEEN GREAT BRITAIN AND CHILE FOR THE MUTUAL EXTRADITION OF FUGITIVE CRIMINALS 1897

Her Majesty the Queen of the United Kingdom and Great Britain and Ireland, and his Excellency the President of the Republic of Chile, having determined, by common consent, to conclude a Treaty for the extradition of criminals have accordingly named as their Plenipotentiaries:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John G. Kennedy, Esq., Minister Resident of Great Britain in Chile, and his Excellency the President of the Republic of Chile, Senor don Carlos Morla Vicuna, Minister of Foreign Affairs; who, after having exhibited to each other their respective Full Powers, and found them in good and due form, have agreed upon the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Carnal knowledge or any attempt to have carnal knowledge of a girl under 14 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.
6. Indecent assault.
7. Kidnapping and false imprisonment, child stealing.
8. Abduction.
9. Bigamy.
10. Maliciously wounding or inflicting grievous bodily harm.
11. Assault occasioning actual bodily harm.
12. Threats, by letter or otherwise, with intent to extort money or other things of value.

13. Perjury, or subornation of perjury.
14. Arson.
15. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.
16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any Company, punishable with imprisonment for not less than one year by any law for the time being in force.
17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
18. (a) Counterfeiting or altering money or bring into circulation counterfeited or altered money.
(b) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.
(c) Forgery, or uttering what is forged.
19. Crimes against bankruptcy law.
20. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
21. Malicious injury to property, if such offence be indictable.
22. Piracy and other crimes or offence committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.
23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

Each party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other party.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Chile has already been tried and discharged or punished, or is still under trial in the territory of the Republic of Chile or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of Chile, should be under examination for any other crime in the territory of the Republic of Chile or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

It shall likewise not take place when, according to the law of either country, the maximum punishment for the offence is imprisonment for less than one year.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

A criminal fugitive may be apprehended under a warrant issued by any Police Magistrate, Justice of Peace, or other competent authority in either country, on such information or complaint, and such evidence or after such proceedings, as would in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of Peace, or other competent authority, exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article be discharged as well in the Republic of Chile as in the United Kingdom, if within the term of ninety days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed in the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of

the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or, affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.
4. In every case such warrant, deposition, affirmation copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

ARTICLE XIII

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time at the state applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII

The stipulation of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the Chief Consular Officer of the Republic of Chile in such Colony or possession.

Such requisition may be disposed of, subject always as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Chilean criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possessions will allow of the provisions of the present Treaty.

ARTICLE XVIII

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than six months.

It shall be ratified, after receiving the approval of the Congress of the Republic of Chile, and the ratifications shall be exchanged at Santiago as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and affixed thereto their respective seals.

DONE at Santiago, the twenty-sixth day of January in the year 1897.

John G. Kennedy

Carlos Morla Vicuna

18. TREATY BETWEEN GREAT BRITAIN AND THE ARGENTINE REPUBLIC FOR THE MUTUAL EXTRADITION OF FUGITIVE CRIMINALS 1894

Her Majesty the Queen of the United Kingdom and Great Britain and Ireland, and his Excellency the President of the Republic of Chile, having determined, by common consent, to conclude a Treaty for the extradition of criminals have accordingly named as their Plenipotentiaries:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John G. Kennedy, Esq. Minister Resident of Great Britain in Chile, and his Excellency the President of the Republic of Chile, Senor don Carlos Morla Vicuna, Minister of Foreign Affairs; who, after having exhibited to each other their respective Full Powers, and found them in good and due form, have agreed upon the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Carnal knowledge or any attempt to have carnal knowledge of a girl under 14 years of age, if the evidence produced justifies committal for those crimes according to the laws of both the Contracting Parties.
6. Indecent assault.
7. Kidnapping and false imprisonment, child stealing.
8. Abduction.
9. Bigamy.
10. Maliciously wounding or inflicting grievous bodily harm.
11. Assault occasioning actual bodily harm.

12. Threats, by letter or otherwise, with intent to extort money or other things of value.
13. Perjury, or subornation of perjury.
14. Arson.
15. Burglary or house-breaking, robbery with violence, larceny, or embezzlement.
16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any Company, punishable with imprisonment for not less than one year by any law for the time being in force.
17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
 - (a) Counterfeiting or altering money or bring into circulation counterfeited or altered money.
 - (b) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of the coin of the realm.
 - (c) Forgery, or uttering what is forged.
18. Crimes against bankruptcy law.
19. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
20. Malicious injury to property, if such offence be indictable.
21. Piracy and other crimes or offence committed at sea against persons or things which, according to the laws of the High Contracting Parties, are extradition offences, and are punishable by more than one year's imprisonment.
22. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

Each party reserves the right to refuse or grant the surrender of its own subjects or citizens to the other party.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Chile has already been tried and discharged or punished, or is still under trial in the territory of the Republic of Chile or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of Chile, should be under examination for any other crime in the territory of the Republic of Chile or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applying or applied to.

It shall likewise not take place when, according to the law of either country, the maximum punishment for the offence is imprisonment for less than one year.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

A criminal fugitive may be apprehended under a warrant issued by any Police Magistrate, Justice of Peace, or other competent authority in either country, on such information or complaint, and such evidence or after such proceedings, as would in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of Peace, or other competent authority, exercises jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article be discharged as well in the Republic of Chile as in the United Kingdom, if within the term of ninety days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty. The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed in the

high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of a conviction, provided the same are authenticated as follows:

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or, affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.
4. In every case such warrant, deposition, affirmation copy, certificate, or judicial document must be authenticated, either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any mode of authentication for the time being permitted by the law of the country where the examination is taken may be substituted for the foregoing.

ARTICLE XIII

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers

on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to the State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time at the state applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII

The stipulation of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal, who has taken refuge in any of such Colonies or foreign possessions, shall be made to the Governor or chief authority of such Colony or possession by the chief Consular officer of the Republic of Chile in such Colony or possession.

Such requisition may be disposed of, subject always as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Chilean criminals who may take refuge within such Colonies and foreign possessions, on the basis, so far as the law of such Colony or foreign possessions will allow of the provisions of the present Treaty.

ARTICLE XVIII

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year, and not less than six months.

It shall be ratified, after receiving the approval of the Congress of the Republic of Chile, and the ratifications shall be exchanged at Santiago as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and affixed thereto their respective seals.

DONE at Santiago, the twenty-sixth day of January in the year 1897.

John G. Kennedy

Carlos Morla Vicun

19. TREATY BETWEEN GREAT BRITAIN AND LIBERIA FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1894

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Empress of India, and his Excellency the President of Liberia, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should under certain circumstances be reciprocally delivered up; the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:-

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Empress of India, the Right Honourable Archibald Philip, Earl of Rosebery, Knight of the Most Noble Order of the Garter, Her Majesty's Principal Secretary of State for Foreign Affairs; and

His Excellency the President of Liberia, Henty Hayman, Esq., Consul-General of the Republic of Liberia in London;

Who, having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

The High Contracting Parties engage to deliver up to each other persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other, under the circumstances and conditions stated in the present Treaty.

ARTICLE II.

The crimes or offences for which the extradition is to be granted are the following: -

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Assault occasioning actual bodily harm.
4. Malicious wounding or inflicting grievous bodily harm.
5. Counterfeiting or altering money, or uttering counterfeit or altered money.

6. Knowingly making any instrument, tool, or engine adapted or intended for counterfeiting coin.
7. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited, or altered.
8. Embezzlement or larceny.
9. Malicious injury to property if the offence be indictable.
10. Obtaining money, goods, or valuable securities by false pretences.
11. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
12. Crimes against bankruptcy law.
13. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any Company, made criminal by any law for the time being in force.
14. Perjury, or subornation of perjury.
15. Rape.
16. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.
17. Indecent assault.
18. Administering drugs, or using instruments with intent to procure the miscarriage of a woman.
19. Abduction.
20. Child stealing.
21. Abandoning children, exposing or unlawfully detaining them.
22. Kidnapping and false imprisonment.
23. Burglary or housebreaking.
24. Arson.
25. Robbery with violence.
26. Any malicious act done with intent to endanger the safety of any person in a railway train.
27. Threats by letter or otherwise, with intent to extort.
28. Piracy by law of nations.
29. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
30. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.
31. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
31. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both States.

Extradition may also be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III.

Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Liberian Government, has already been tried and discharged or punished, or is still under trial in the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Liberian Government, should be under examination for any crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.

ARTICLE V.

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI.

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII.

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII.

The requisition for extradition shall be made in the following manner:-

Application on behalf of Her Britannic Majesty's Government for the surrender of a fugitive criminal in Liberia shall be made by Her Majesty's Consul at Monrovia.

Application on behalf of the Liberian Government for the surrender of a fugitive criminal in the United Kingdom shall be made by the Diplomatic Representative of Liberia in London, or in the absence of such Representative, by the Consul-General for Liberia in London.

The requisition for the extradition of the accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition for extradition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX.

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X.

If the fugitive has been arrested in the British dominions he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the Liberia, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows: -

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of Liberia.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of Liberia, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of Liberia.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of Liberia; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

ARTICLE XI.

If the fugitive has been arrested in Liberia his surrender shall be granted if, upon examination by a competent authority, it appears that the documents furnished by the British Government contain sufficient *prima facie* evidence to justify the extradition.

The Authorities of Liberia shall admit as valid evidence records drawn up by the British authorities of the depositions of witnesses, or copies thereof, and records of conviction or other judicial documents, or copies thereof, provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.

ARTICLE XII.

The extradition shall not take place unless the evidence be found sufficient according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime has been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the courts of the State which makes the requisition, and that the crime of

which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. The fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XIII.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV.

If sufficient evidence for the extradition is not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI.

All expenses connected with extradition shall be borne by the demanding State

ARTICLE XVII.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any such Colony or foreign possession may be made to the Governor or chief authority of such Colony or possession by any person authorized to act in such Colony or possession as a Consular officer of Liberia, or if there is no such Consular officer in the Colony, by the Diplomatic Representative of Liberia in London, or in his absence by the Liberian Consul-General.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the laws of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Liberia who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the laws of such Colonies or foreign possessions will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at London, as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the 16th day of December, 1892.

(L.S.) ROSEBERRY

(L.S.) H. HAYMAN

Ratifications exchanged at London, January 31, 1894.

20. TREATY BETWEEN GREAT BRITAIN AND PORTUGAL FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1894

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and of the Algarves, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, (that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Sir George Glynn Petre, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary at the Court of His Most Faithful Majesty, &c.; and

His Most Faithful Majesty the King of Portugal and of the Algarves, Dom Antonio Ayres de Gouvêa, Bishop of Bethsaida, His Majesty's Minister and Secretary of State for Foreign Affairs, &c.;

Who, having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and conclude the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II

The crimes or offences for which the extradition is to be granted are the following: -

1. Murder (including assassination, infanticide, and poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Maliciously wounding or inflicting grievous bodily harm.

4. Assault occasioning actual bodily harm.
5. Counterfeiting or altering money, either metallic or of any other kind representing the first named, or uttering counterfeit or altered money of any of those kinds.
6. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.
7. Forgery, counterfeiting or altering, or uttering what is forged or counterfeited or altered.
8. Embezzlement or larceny.
9. Malicious injury to property, if the offence be indictable.
10. Obtaining money, goods, or valuable securities by false pretences.
11. Receiving money, valuable security, or other property, knowing the same to have been stolen, embezzled, or unlawfully obtained.
12. Crimes against Bankruptcy Law.
13. Fraud by a bailee, banker, agent, factor, trustee, or director or member, or public officer, of any company, made criminal by any law for the time being in force.
14. Perjury, or subornation of perjury.
15. Rape.
16. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age.
17. Indecent assault.
18. Administering drugs or using instruments with intent to procure the miscarriage of a woman.
19. Abduction.
20. Bigamy.
21. Child-stealing.
22. Abandoning children, exposing or unlawfully detaining them.
23. Kidnapping and false imprisonment.
24. Burglary or house-breaking.
25. Arson.
26. Robbery with violence.
27. Any malicious act done with intent to endanger the safety of any person in a railway train.
28. Threats, by letter or otherwise, with intent to extort.
29. Piracy by law of nations.
30. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

31. Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm.
32. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
33. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

The Portuguese Government will not deliver up any person either guilty or accused of any crime punishable with death.

ARTICLE III

The Portuguese Government will not grant the extradition of any Portuguese subject, and Her Britannic Majesty's Government will not grant the extradition of any British subject; but in the case of a naturalized subject, this Article shall only be applicable if the naturalization was obtained previous to the commission of the crime giving rise to the application for extradition.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Portuguese Government, has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Portuguese Government, should be under examination, or is undergoing sentence under a conviction for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal, or on expiration of his sentence, or otherwise.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or had an opportunity of returning, to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as according to the laws of the place where the accused is found would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnations passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but circumstances may cause a person so sentenced *in contumaciam* to be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in the dominions of Portugal, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows: -

1. A warrant must purport to be signed by a Portuguese Judge, Magistrate, or officer.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Portuguese Judge, Magistrate, or officer to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Portuguese Judge, Magistrate, or officer.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or of some other Portuguese Minister; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken may be substituted for the foregoing.

ARTICLE XI

If the fugitive has been arrested in the dominions of Portugal, his surrender shall be granted if, upon examination by a competent authority, it appears that the documents furnished by the British Government contain sufficient *prima facie* evidence to justify the extradition.

The Portuguese authorities shall admit as valid evidence records drawn up by the British authorities of the depositions of witnesses, or copies thereof, and records of conviction, or other judicial documents, or copies thereof: Provided that the said documents be signed or authenticated by an authority whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.

ARTICLE XII

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction have been granted by the State applied to. In Her Britannic Majesty's dominions, the fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender.

ARTICLE XIII

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of both of the High Contracting Parties, so far as the laws for the time being in force in such Colonies and foreign Possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions may be made to the Governor or chief authority of such Colony or Possession by the chief Consular authority of the other State in such Colony or Possession.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

The High Contracting Parties shall, however, be at liberty to make special arrangements in their respective Colonies and foreign Possessions for the surrender of criminals who may take refuge therein, on the basis, as nearly as may be, and so far as the law of such Colony or foreign Possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign Possession of either of the High Contracting Parties shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII

The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at Lisbon as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done in duplicate at Lisbon, the 17th day of October, in the year of Our Lord 1892.

George G. Petre
A. Ayres De Gouvéa

PROTOCOL ATTACHED TO THE TREATY
(Extradition between British and Portuguese India)

The stipulations of the present Treaty do not apply to extradition between British and Portuguese India, which is reserved for ulterior negotiation,

Done in duplicate at Lisbon, the 30th day of November, in the year of Our Lord 1892,

George G. Petre
A, Ayres De Gouvéa

21. TREATY BETWEEN GREAT BRITAIN AND ROUMANIA FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1894

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the King of Roumania, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice should, under certain circumstances, be reciprocally delivered up; the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, the Honourable Charles Hardinge, Her Britannic Majesty's Chargé d'Affaires at Bucharest, etc., etc.; and

His Majesty the King of Roumania, M. Alexandre N. Lahovari, Grand Cross of His Order of the Crown of Roumania, etc., etc., etc., His Minister Secretary of State for Foreign Affairs;

Who, after having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and concluded the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II

The crimes or offences for which the extradition is to be granted are the following:

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Assault occasioning actual bodily harm. Maliciously wounding or inflicting grievous bodily harm.
4. Counterfeiting or altering money, or uttering counterfeit or altered money.
5. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.

6. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.
7. Embezzlement or larceny.
8. Malicious injury to property, by explosives or otherwise, if the offence be indictable.
9. Obtaining money, goods, or valuable securities by false pretences.
10. Receiving money, valuable security, or other property knowing the same to have been stolen, embezzled, or unlawfully obtained.
11. Crimes against bankruptcy law.
12. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any Company, made criminal by any law for the time being in force.
13. Perjury, or subornation of perjury.
14. Rape.
15. Carnal knowledge or any attempt to have carnal knowledge, of a girl under 14 years of age.
16. Indecent assault.
17. Procuring miscarriage, administering drugs or using instruments with intent to procure the miscarriage of a woman.
18. Abduction.
19. Child stealing.
20. Abandoning children, exposing or unlawfully detaining them.
21. Kidnapping and false imprisonment.
22. Burglary or housebreaking.
23. Arson.
24. Robbery with violence.
25. Any malicious act done with intent to endanger the safety of any person in a railway train.
26. Threats by letter or otherwise, with intent to extort.
27. Piracy by law of nations.
28. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
29. Assaults on board a ship on the high seas, with intent to destroy life, or do grievous bodily harm.
30. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
31. Dealing in slaves.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III

Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime for which his extradition is demanded.

If the person claimed should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal or on expiration of his sentence, or otherwise.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of the accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in Roumania, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows:

1. A warrant must purport to be signed by a Judge, Magistrate, or Judicial Officer of Police of Roumania.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or Judicial Officer of Police of Roumania, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or Judicial Officer of Police of Roumania.

4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or of Foreign Affairs of Roumania; but any other mode of authentication for the time being permitted by the law in that part of the British dominions where the examination is taken, may be substituted for the foregoing.

ARTICLE XI

On the part of the Roumanian Government, the extradition shall take place as follows in Roumania:

The Minister, or other Diplomatic Agent of Her Britannic Majesty in Roumania, shall send to the Minister for Foreign Affairs, in support of each demand for extradition, an authentic and duly legalized copy either of a certificate of condemnation, or of a warrant of arrest against an incriminated or accused person, showing clearly the nature of the crime or offence on account of which proceedings are being taken against the fugitive. The judicial document so produced shall be accompanied by a description and other particulars serving to establish the identity of the person whose extradition is claimed.

In case the documents produced by the British Government to establish the identity, and the particulars gathered by the Roumanian police authorities for the same purpose, should be deemed to be insufficient, notice thereof shall forthwith be given to the Minister or other Diplomatic Agent of Her Britannic Majesty in Roumania, and the individual whose extradition is desired, if he has been arrested, shall remain in detention until the British Government has produced new elements of proof to establish his identity, or to clear up any other difficulties arising in the examination.

ARTICLE XII

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions, the fugitive criminal shall not be surrendered

until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

ARTICLE XIII

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by any person authorized to act in such Colony or possession as a Consular officer of Roumania. Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of criminals from Roumania who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at Bucharest as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

DONE in duplicate at Bucharest, the twenty-first (ninth) day of March, in the year of our Lord one thousand eight hundred and ninety-three.

Charles Hardinge

Alexandre N. Lahovari

PROTOCOL

At the moment of proceeding to the signature of the Treaty of Extradition concluded this day, the undersigned Plenipotentiaries of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and of His Majesty the King of Roumania, have agreed upon the following declaration:

The Roumanian Government may in its absolute discretion refuse to deliver up any person charged with a crime punishable with death

This Protocol shall have the same force and the same duration as the Treaty of Extradition signed today.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same and have affixed thereto the seal of their arms.

DONE in duplicate at Bucharest, the 21st/9th March 1893.

Charles Hardinge

Alexandre N. Lahovari

22. TREATY BETWEEN GREAT BRITAIN AND MONACO FOR THE EXTRADITION OF CRIMINALS, 1892

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Serene Highness the Prince of Monaco, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; the said High Contracting Parties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Edwin Henry Egerton, Esq. Companion of the Most Honourable Order of the Bath, Her Majesty's Minister Plenipotentiary at Paris;

And His Serene Highness the Prince of Monaco, Louis Fernand de Bonnefoy, Baron du Charmel, Envoy Extraordinary and Minister Plenipotentiary of Monaco in France;

Who, having communicated to each other their respective Full Powers, found in good and due form, have agreed upon and concluded the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime or offence committed in the territory of the one Party, shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II

The crimes or offences for which the extradition is to be granted are the following:

1. Murder, or attempt, or conspiracy to murder.
2. Manslaughter.
3. Assault occasioning actual bodily harm. Malicious wounding or inflicting grievous bodily harm.
4. Counterfeiting or altering money, or uttering counterfeit or altered money.

5. Knowingly making any instrument, tool, or engine adapted and intended for counterfeiting coin.
6. Forgery, counterfeiting, or altering or uttering what is forged, or counterfeited, or altered.
7. Embezzlement or larceny.
8. Malicious injury to property if the offence be indictable.
9. Obtaining money, goods, or valuable securities by false pretences.
10. Receiving money, valuable security, or other property knowing the same to have been stolen, embezzled, or unlawfully obtained.
11. Crimes against bankruptcy law.
12. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any Company.
13. Perjury, or subornation of perjury.
14. Rape.
15. Carnal knowledge, or any attempt to have carnal knowledge, of a girl under 16 years of age, so far as such acts are punishable by the law of the State upon which the demand is made.
16. Indecent assault. Indecent assault without violence upon children of either sex under 13 years of age.
17. Administering drugs or using instruments with intent to procure the miscarriage of a woman.
18. Abduction.
19. Child stealing.
20. Abandoning children, exposing or unlawfully detaining them.
21. Kidnapping and false imprisonment.
22. Burglary or housebreaking.
23. Arson.
24. Robbery with violence.
25. Any malicious act done with intent to endanger the safety of any person in a railway train.
26. Threats by letter or otherwise, with intent to extort.
27. Piracy by law of nations.
28. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
29. Assaults on board a ship on the high seas, with intent to destroy life, or to do grievous bodily harm.
30. Revolt or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

31. Dealing in slaves in such a manner as to constitute a criminal offence against the laws of both States.

Extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

Extradition may also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the British Government, or the person claimed on the part of the Government of Monaco, has already been tried and discharged or punished, or is still under trial, within the territories of the two High Contracting Parties respectively, for the crime which his extradition is demanded.

If the person claimed on the part of the British Government, or if the person claimed on the part of the Government of Monaco, should be under examination, or is undergoing sentence under a conviction, for any other crime within the territories of the two High Contracting Parties respectively, his extradition shall be deferred until after he has been discharged, whether by acquittal on expiration of his sentence, or otherwise.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place, until he has been restored or had an opportunity of returning to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made in the following manner: Applications on behalf of Her Britannic Majesty's Government for the surrender of a fugitive criminal in Monaco shall be made by Her Majesty's Consul in the Principality.

Application on behalf of the Principality of Monaco for the surrender of a fugitive criminal in the United Kingdom shall be made by the Consul-General of Monaco in London.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

If the fugitive has been arrested in the British dominions, he shall forthwith be brought before a competent Magistrate, who is to examine him and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the British dominions.

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the British dominions shall admit as valid evidence the sworn depositions or the affirmations of witnesses taken in Monaco, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating the fact of, a conviction, provided the same are authenticated as follows: -

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the Principality of Monaco.
2. Depositions or affirmations, or the copies thereof, must purport to be certified under the hand of a Judge, Magistrate, or officer of the Principality of Monaco, to be the original depositions or affirmations, or to be the true copies thereof, as the case may require.
3. A certificate of or judicial document stating the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the Principality of Monaco.
4. In every case such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal and legalization of the Governor-General of the Principality of Monaco; but any other mode of authentication for the time being permitted by law in that part of the British dominions where the examination is taken, may be substituted for the foregoing.

ARTICLE XI

If the fugitive has been arrested in the Principality of Monaco, his surrender shall be granted if, upon examination by a competent authority, it appears that the documents furnished by the British Government contain sufficient *prima facie* evidence to justify the extradition.

The authorities of the Principality shall admit as valid evidence records drawn up by the British authorities of the depositions of witnesses, or copies thereof, and records of conviction or other judicial documents or copies thereof: Provided that the said documents be signed or authenticated by an authority

whose competence shall be certified by the seal of a Minister of State of Her Britannic Majesty.

ARTICLE XII

The extradition shall not take place unless the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to. In Her Britannic Majesty's dominions, the fugitive criminal shall not be surrendered until the expiration of 15 days from the date of his being committed to prison to await his surrender.

ARTICLE XIII

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered, at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII

Either of the High Contracting Parties who may wish to have recourse for purposes of extradition to transit through the territory of a third Power, shall be bound to arrange the condition of transit with such third Power.

ARTICLE XVIII

When in a criminal case of a non-political character either of the High Contracting Parties should think it necessary to take the evidence of witnesses residing in the dominions of the other, or to obtain any other legal evidence, a Commission Rogatoire to that effect shall be sent through the channel indicated in Article VIII, and effect shall be given thereto comfortably to the laws in force in the place where the evidence is to be taken.

ARTICLE XIX

All documents which shall be reciprocally communicated in execution of the present Treaty, shall be accompanied by a French or English translation (certified to be correct by the Consul who transmits the document in accordance with Article VIII), when they are not drawn up in the language of the country upon which the demand is made.

The expense of such translations shall be borne by the demanding State.

ARTICLE XX

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions may be made to the Governor or chief authority of such Colony or possession by any person authorized to act in such Colony or possessions as a Consular officer of the Principality of Monaco.

Such requisitions may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign possession will allow, to the provisions of this Treaty, by the said Governor or chief authority who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possession for the surrender of criminals from Monaco who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, and so far as the law of

such Colony or foreign possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XXI

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties at any time on giving to the other six months' notice of its intention to do so.

The Treaty shall be ratified, and the ratifications shall be exchanged at Paris as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

DONE at Paris, the 17th day of December, 1891.

Edwin H. Egerton

Le Baron de Charmel

23. TREATY BETWEEN GREAT BRITAIN AND COLUMBIA FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1888

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Excellency the President of the Republic of Colombia, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have named as their Plenipotentiaries to conclude a Treaty, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, William John Dickson, Esq., her Minister Resident to the Republic of Colombia; and

His Excellency the President of the Republic of Colombia, Vicente Restrepo, Minister for Foreign Affairs of the said Republic;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one party, shall be found within the territory of the other party.

ARTICLE II

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder;
2. Manslaughter;
3. Administering drugs or using instruments with intent to procure the miscarriage of women;
4. Rape;
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age, if the evidence produced

justifies committal for those crimes according to the laws of both the Contracting Parties;

6. Indecent assault;

7. Kidnapping and false imprisonment, child-stealing;

8. Abduction;

9. Bigamy;

10. Malicious wounding or inflicting grievous bodily harm;

11. Assault occasioning actual bodily harm;

12. Threats, by letter or otherwise, with intent to extort money or other things of value;

13. Perjury or subornation of perjury;

14. Arson;

15. Burglary or housebreaking, robbery with violence, larceny, or embezzlement;

16. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any Company, made criminal by any law for the time being in force.

17. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.

18. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.

(b) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited, or altered.

(c) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin, or forgery of any paper money of the respective countries.

19. Crimes against bankruptcy law.

20. Any malicious act done with intent to endanger the safety of any person travelling or being upon a railway.

21. Malicious injury to property, if such offence be indictable.

22. Crimes committed at sea -

(a) Piracy by the law of nations.

(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

(c) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

(d) Assault on board a ship on the high seas with intent to, destroy life or to do grievous bodily harm.

23. Dealing in slaves in such manner as to constitute a criminal offence against the laws of both States.

The extradition is also to be granted for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both Contracting Parties.

Extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the laws of both the Contracting Parties for the time being in force, the grant can be made.

ARTICLE III

Either Government may, in its absolute discretion, refuse to deliver up its own subjects to the other Government.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of Her Majesty's Government, or the person claimed on the part of the Government of Colombia, has already been tried and discharged, or punished, or is still under trial in the territory of Colombia or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of Her Majesty's Government, or on the part of the Government of Colombia, should be under examination for any other crime in the territory of Colombia or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison, or be brought to trial, in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the State by which he has been surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A sentence passed *in contumaciam* is not to be deemed a conviction, but a person so sentenced may be dealt with as an accused person.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

ARTICLE X

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed, or the person convicted, in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that in the United Kingdom the

accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in Colombia as in the United Kingdom, if within the term of 30 days a requisition for extradition shall not have been made by the Diplomatic Agent of his country, in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and that the crime of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the State applied to; and no criminal shall be surrendered until after the expiration of 15 days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, and certificates of, or judicial documents stating, the fact of a conviction, provided the same are authenticated as follows:

1. A warrant must purport to be signed by a Judge, Magistrate, or officer of the other State.
2. Depositions or affirmations, or the copies thereof, must purport to be certified, under the hand of a Judge, Magistrate, or officer of the other State, to be the original depositions or affirmations, or to be true copies thereof, as the case may require.
3. A certificate of, or judicial document stating, the fact of a conviction must purport to be certified by a Judge, Magistrate, or officer of the other State.

4. In every case, such warrant, deposition, affirmation, copy, certificate, or judicial document must be authenticated either by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of the other State; but any other mode of authentication for the time being permitted by law where the examination is taken may be substituted for the foregoing.

ARTICLE XIII

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the State applied to, or the proper Tribunal thereof, shall direct, the fugitive shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

All expenses connected with extradition shall be borne by the demanding State.

ARTICLE XVII

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of Her Britannic Majesty, so far as the laws for the time being in force in such Colonies and foreign Possessions respectively will allow.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions shall be made to the Governor or chief authority of such Colony or Possession by the chief Consular officer of the Republic of Colombia in such, Colony or Possession.

Such requisition may be disposed of, subject always, as nearly as may be, and so far as the law of such Colony or foreign Possession will allow, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Colombian criminals who may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, and so far as the law of such Colony or foreign Possession will allow, of the provisions of the present Treaty.

Requisitions for the surrender of a fugitive criminal emanating from any Colony or foreign Possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVIII

The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

The Treaty, after receiving the approval of the Congress of Columbia, shall be ratified, and the ratifications shall be exchanged at Bogota as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto their respective seals.

DONE at Bogota, this 27th day of October, in the year of Our Lord 1888.

W. J. Dickson

Vincente Restrepo

24. TREATY BETWEEN GREAT BRITAIN AND GUATEMALA FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1886

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Excellency the President of the Republic of Guatemala, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes or offences hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have named as their Plenipotentiaries to conclude a Treaty (that is to say):

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, James Plaister Harriss-Gastrell, Esquire, Her Britannic Majesty's Minister Resident and Consul-General to the Republic of Guatemala;

And His Excellency the President of the Republic of Guatemala, His Excellency Senor Don Manuel J. Dardon, Secretary of State for Foreign Affairs of the Republic of Guatemala;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other, under the circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article II, committed in the territory of the one Party, shall be found within the territory of the other Party.

ARTICLE II

The extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.

4. Rape.
5. Aggravated or indecent assault; carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 years and under the age of 12 years; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under 12 years of age.
6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.
7. Abduction of minors.
8. Bigamy.
9. Wounding, or inflicting grievous bodily harm.
10. Assaulting a Magistrate, or peace or public officer.
11. Threats, by letter or otherwise, with intent to extort money or other things of value.
12. Perjury or subornation of perjury.
13. Arson.
14. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
15. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any Company, made criminal by any law for the time being in force.
16. Obtaining money, valuable security or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
17. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
(b) Forgery, or counterfeiting or altering, or uttering what is forged, counterfeited, or altered.
(c) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm or national coin.
18. Crimes against Bankruptcy Law.
19. Any malicious act done with intent to endanger persons in a railway train.
20. Malicious injury to property, if such offence be indictable.
21. Crimes committed at sea.
(a) Piracy, by the law of nations.
(b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
(c) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

- (d) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

22. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III

No Guatemalan shall be delivered up by the Government of Guatemala to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Guatemala.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of Guatemala, has already been tried and discharged or punished, or is still under trial in the territory of Guatemala or in the United Kingdom respectively for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or on the part of the Government of Guatemala, should be under examination for any other crime in the territory of Guatemala or in the United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if subsequently to the commission of the crime, or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is of a political character, or if he prove that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison or be brought to trial in the State to which the surrender has been made, for any other crime, or on account of any other matters, than those for which the extradition shall have taken place. This stipulation does not apply to crimes committed after the extradition.

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded solely on sentence passed *in contumaciam*, but persons convicted for contumacy shall be deemed to be accused persons.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent Magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority

exercised jurisdiction; provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall, in accordance with this Article, be discharged, as well in Guatemala as in the United Kingdom, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of his country in accordance with the stipulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE XI

The extradition shall take place only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the same State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition, and no criminal shall be surrendered until after the expiration of fifteen days from the date of his committal to prison to await the warrant for his surrender.

ARTICLE XII

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents purport to be signed or certified by a Judge or Magistrate or Officer of such State, and are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE XIII

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date; unless any other arrangement should have been made between the different Governments to determine the preference, either on account of the gravity of the crime or offence, or for any other reason.

ARTICLE XIV

If sufficient evidence for the extradition be not produced within the three months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XV

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, if the competent authority of the State applied to for the extradition has ordered the delivery of such articles, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XVI

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered and his conveyance till placed on board ship; they reciprocally agree to bear such expenses themselves.

ARTICLE XVII

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or chief authority of such Colony or possession by the Chief Consular Officer of the Republic of Guatemala in such Colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Guatemalan criminals who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding articles of the present Treaty.

ARTICLE XVIII

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty, after receiving the approval of the Congress of Guatemala, shall be ratified, and the ratification shall be exchanged at London as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

DONE at Guatemala, the fourth day of July, in the year of our Lord one thousand eight hundred and eighty-five.

James P. Harriss-Gastrell

Manuel J. Dardon

**25. TREATY BETWEEN GREAT BRITAIN AND THE REPUBLIC
OF THE URUGUAY, FOR THE MUTUAL SURRENDER OF
FUGITIVE CRIMINALS 1885**

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Excellency the President of the Oriental Republic of the Uruguay, having judged it expedient, with a view to the better administration of justice and the prevention of crime, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, have resolved to conclude the present Treaty, and have appointed as their Plenipotentiaries, namely:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable Edmund John Monson, a Companion of the Most Honourable Order of the Bath, Her Majesty's Minister Resident and Consul-General to the Oriental Republic of the Uruguay; and

His Excellency the President of the Oriental Republic of the Uruguay, Dr. Don Manuel Herrera y Obes, his Minister Secretary of State for the Department of Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other reciprocally, under the circumstances and conditions stated in the present Treaty, all persons, excepting their own subjects or citizens, who, being accused or convicted of any of the crimes enumerated in Article II committed in the territory of the one party, shall be found within the territory of the other party.

ARTICLE II

The extradition shall be reciprocally granted for the following crimes and offences:

1. Murder (including assassination, parricide, infanticide, poisoning, or attempt to murder).
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the

miscarriage of women.

4. Rape.
5. Aggravated or indecent assault. Carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl under the age of 10 years and under the age of 12 years; indecent assault upon any female or any attempt to have carnal knowledge of a girl under 12 years of age.
6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.
7. Abduction of minors.
8. Bigamy.
9. Wounding, or inflicting grievous bodily harm, when such acts cause permanent disease or incapacity for personal labour, or the absolute loss or privation of a member or organ.
10. Arson.
11. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
12. Fraud by banker, agent, factor, trustee, director, member, or public officer of any Company, made criminal by any law for the time being in force.
13. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property knowing the same to have been feloniously stolen or unlawfully obtained, the quantity or value of which shall be greater in amount than 200/ sterling.
14. (a) Counterfeiting or altering money, or bringing to circulation counterfeited or altered money;
(b) Forgery, or counterfeiting, or altering or knowingly uttering what is forged, counterfeited, or altered;
(c) Knowingly making without lawful authority any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.
15. Crimes against the Bankruptcy Law.
16. Any malicious act done with intent to endanger persons in a railway train.
17. Malicious injury to property if such offence be indictable, and punishable with one year's imprisonment or more.
18. Crimes committed at sea:
 - (a) Piracy by the law of nations
 - (b) Sinking or destroying a vessel at sea, or attempting or conspiring to do so
 - (c) Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master

(d) Assault on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.

19. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III

The provisions of the present Treaty shall not be applicable to offences committed before the date of its conclusion.

ARTICLE IV

A person surrendered shall not be detained or tried for any crime or offence committed in the other country before the extradition other than the crime or offence for which his surrender has been granted.

ARTICLE V

No person shall be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves to the satisfaction of the competent authority of the State in which he is that the requisition for his surrender has in fact been made with a view to try to punish him for an offence of a political character.

ARTICLE VI

In the Oriental Republic of the Uruguay the proceedings for the demand and obtaining extradition shall be as follows:

The Diplomatic Representatives or Consul-General of Great Britain shall address to the Minister Secretary of State in the Department of Foreign Relations, with the demand for extradition, an authentic and legalized copy of the sentence or mandate of arrest issued by competent authority, or other documents of the same legal force, against the accused person, setting forth clearly the crime or offence on account of which proceedings are being taken against the fugitive. These judicial documents shall be accompanied, if possible, by a description of the person claimed, and by any other information which may serve to identify such person.

These documents shall be communicated by the Minister of Foreign Relations to the Superior Tribunal of Justice, which, in its turn, shall transmit them to the Stipendiary Magistrate (Juez Letrado del Crimen). This functionary shall have power, authority, and jurisdiction, in virtue of the claim preferred, to issue the formal order of arrest of the person so claimed, in order that he may be brought before him, and that, in his presence, and after hearing his defence, the proofs of his criminality may be taken into consideration; and if the result of this audience be that the said proofs are sufficient to sustain the charge, he shall be obliged to issue the formal order of delivery, giving notice thereof, by the medium of the Superior Tribunal of Justice, to the Minister of Foreign Relations, who shall dictate the necessary measures for placing the fugitive at the disposal of the British Agents charged to receive him.

In case the documents furnished by Her Britannic Majesty's Government for the identification of the person claimed, or the information obtained for the same end by the authorities of the Oriental Republic of the Uruguay, be held to be insufficient, notice shall immediately be given of the fact to the Diplomatic Representative or Consular Agent of Great Britain, the person under arrest remaining in custody until the British Government shall have furnished new proofs to establish the identity of such person, or evidence to clear up other difficulties relating to the examination of, and decision upon, the matter.

The arrest above referred to of the person proceeded against for any of the crime or offences specified in this Treaty shall not be prolonged more than three months. At the expiration of that period, if the Government making the claim shall not have fulfilled the conditions above stated, the prisoner shall not be liable to be rearrested on the same charge.

ARTICLE VII

In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding, in order to demand and obtain extradition, shall be as follows:

- (a) In the case of a person accused - The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Diplomatic Representative or Consul-General of the Oriental Republic of the Uruguay. The said demand shall be accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly

authorized to take cognizance of the acts charged against the accused in that Republic and duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive. On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime has been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issued the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a Report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal, to be surrendered to such person as may be duly authorized to receive him on the part of the Oriental Republic of the Uruguay.

- (b) In the case of a person convicted - The course of proceeding shall be the same as above indicated, except that the warrant to be transmitted by the Diplomatic Representative or Consul-General of the Oriental Republic of Uruguay in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

- (c) Persons convicted by judgement in default or *arrêt de contumace* shall be, in the matter of extradition, considered as persons accused, and, as such, be surrendered.
- (d) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE VIII

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge Magistrate, or officer of the country where they were issued or taken, provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE IX

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime has been committed or the person convicted in that part of the dominions of the two Contracting Parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: Provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police

Magistrate in London. He shall in accordance with this Article be discharged, as well as in the United Kingdom as in the Oriental Republic of the Uruguay, if within the term of 30 days a requisition for extradition shall not have been made by the Diplomatic or Consular Agency of his country in accordance with the stimulations of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes or offences specified in this Treaty, and committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE X

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign Possessions shall be made to the Governor or chief authority of such Colony or Possession by the Chief Consular Officer of the Oriental Republic of the Uruguay in such Colony or Possession.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority who, however, shall be at liberty either to grant the surrender or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Uruguayan criminals who may take refuge within such Colonies and foreign Possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XI

The claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution or punishment, has been acquired by lapse of time, according to the laws of that country.

ARTICLE XII

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several

other Powers, on account of other crimes or offence committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

ARTICLE XIII

If the individual claimed should be under prosecution, or have been condemned for a crime of offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been discharged in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, the extradition shall nevertheless take place.

ARTICLE XIV

Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decides, be delivered up with his person at the time when the extradition takes place. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime or offence, and shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape of death of the individual claimed.

The rights of third parties with regard to the said property or articles are nevertheless reserved.

ARTICLE XV

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance as far as the frontier; they reciprocally agree to bear such expenses themselves.

ARTICLE XVI

The present Treaty shall be ratified, and the ratifications shall be exchanged at Monte Video as soon as possible.

It shall come into operation 10 days after its publication, in conformity with the laws of the respective countries, and each of the Contracting Parties may at any time terminate the Treaty on giving to the other six months' notice of its intention to do so.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

DONE at Monte Video, the 26th day of March, in the year of Our Lord 1884.

Edmond Monson

Manuel Herrera y Obes

26. TREATY BETWEEN GREAT BRITAIN AND LUXEMBURG, FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1881

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, having judged it expedient, with a view to the better administration of justice and to the prevention of crime within the territories of Her Britannic Majesty and the Grand Duchy of Luxemburg, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up, their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable William Stuart, a Companion of the Most Honourable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Netherlands, as Grand Duke of Luxemburg;

And His Majesty the King of the Netherlands, Grand Duke of Luxemburg, Baron Felix de Blochausen, Grand Cross of the Order of the Crown of Oak, Chevalier of the second class of the Order of the Golden Lion of the House of Nassau, &c., his Minister of State, President of the Government of the Grand Duchy of Luxemburg;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles: -

ARTICLE I

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, so far as concerns the Grand Duchy of Luxemburg, engages to deliver up under the like circumstances and conditions all persons, excepting subjects of the Grand Duchy, who, having been charged with or convicted by the Tribunals of one of the two High Contracting Parties of any of the crimes or offences enumerated in Article II committed in the territory of the one party, shall be found within the territory of the other.

ARTICLE II

The crimes for which the extradition is to be granted are the following: -

1. Murder (including assassination, parricide, infanticide, poisoning, or attempt to murder).
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Aggravated or indecent assault. Carnal knowledge of a girl under the age of 10 years; carnal knowledge of a girl above the age of 10 years and under the age of 12 years; indecent assault upon any female, or any attempt to have carnal knowledge of a girl under 12 years of age.
6. Kidnapping and false imprisonment, child-stealing, abandoning, exposing, or unlawfully detaining children.
7. Abduction of minors.
8. Bigamy.
9. Wounding, or inflicting grievous bodily harm.
10. Assaulting a Magistrate or peace or public officer.
11. Threats by letter or otherwise with intent to extort money or other things of value.
12. Perjury, or subornation of perjury.
13. Arson.
14. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
15. Fraud by a bailee, banker, agent, factor, trustee; Director, member, or public officer of any Company, made criminal by any Law for the time being in force.
16. Obtaining money, valuable security, or goods by false pretences; receiving any money, valuable security, or other property, knowing the same to have been unlawfully obtained.
17. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money;
(b) Forgery, or counterfeiting or altering or uttering what is forged, counterfeited, or altered;
(c) Knowingly making, without lawful authority, any instrument, tool, or engine adapted and intended for the counterfeiting of coin of the realm.
18. Crimes against Bankruptcy Law.

19. Any malicious act done with intent to endanger persons in a railway train.
20. Malicious injury to property, if such offence be indictable.

The extradition is also to take place for participation in any of the aforesaid crimes, as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

ARTICLE III

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Government of the Grand Duchy of Luxemburg, has already been tried and discharged or punished, or is still under trial, in the Grand Duchy or in the United Kingdom, respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Government of the Grand Duchy of Luxemburg should be under examination for any other crime in the Grand Duchy or in the United Kingdom, respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE IV

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE V

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.

ARTICLE VI

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have

taken place, until he has been restored or has had the opportunity of returning to the country from whence he was surrendered.

The period of one month shall be considered as the limit of the period during which the prisoner may, with the view of securing the benefits of this Article, return to the country from whence he was surrendered.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VII

The requisition for extradition must always be made by the way of diplomacy, and to wit, in the Grand Duchy of Luxemburg by the British Minister in Luxemburg, and in the United Kingdom to the Secretary of State for Foreign Affairs by the Foreign Minister in Great Britain, who, for the purposes of this Treaty, is recognized by Her Majesty as a Diplomatic Representative of the Grand Duchy of Luxemburg.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be founded on sentences passed *in contumaciam*.

ARTICLE VIII

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent magistrate, who is to examine him and to conduct the preliminary investigation of the case, according to the laws of the country in which he is found.

ARTICLE IX

The extradition shall not take place before the expiration of fifteen days from the date of the fugitive criminal's committal to prison to await his surrender, and then only if the evidence produced in due time to be found sufficient according to the laws of the state applied to.

ARTICLE X

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall be discharged, as well in the United Kingdom as in the Grand Duchy of Luxemburg, if, within fourteen days, a requisition shall not have been made for his surrender by the Diplomatic Agent of his country.

ARTICLE XI

If, in any criminal matter, pending in any Court or Tribunal of one of the two countries, it is thought desirable to take the evidence of any witness in the other, such evidence may be taken by the judicial authorities in accordance with the laws in force on this subject in the country where the witness may be.

ARTICLE XII

All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place; and the said delivery shall extend not merely to the stolen articles, but to everything that may serve as a proof of the crime.

ARTICLE XIII

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship, as well as for the reimbursement of the expenses incurred in taking the evidence of any

witness in consequence of Article XI, and in giving up and returning seized articles. They reciprocally agree to bear such expenses themselves.

ARTICLE XIV

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or to the supreme authority of such Colony or possession through the Luxemburg Consul, or, in case there should be no Luxemburg Consul, through the Consular Agent of another State charged for the occasion with Luxemburg interests in the Colony or possession in question, and recognized by such Governor or supreme authority as such. The Governor or supreme authority above mentioned shall decide with regard to such requisitions as nearly as possible in accordance with the provisions of the present Treaty. He will, however, be at liberty either to consent to the extradition or report the case to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of such individuals as shall have committed in the Grand Duchy of Luxemburg any of the crimes herein aforementioned, who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XV

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for six months after notice has been given for its termination.

The Treaty shall be ratified, and the ratifications shall be exchanged at Brussels as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

DONE at Luxemburg, the 24th day of November, in the year of Our Lord 1880.

W. Stuart
F. de Blochausen

SUPPLIMENTS

**Convention between the His Majesty in Respect of the United Kingdom
and the Grand Duchess of Luxemburg, Amending the Treaty of 24th
November, 1880**

*Signed at Luxemburg 29th May, 1939.
[Ratifications exchanged at Brussels, 3rd August, 1949]*

“From the date of the coming into force of the present Convention, Article 2 of the Extradition Treaty signed at Luxemburg on 24th November, 1880 shall be amended by the addition of the following clause:-

Extradition may also be granted at the discretion of the High Contracting Party applied to in respect of any other crime or offence for which, according to the laws for the time being in force in the territories from which and to which extradition is desired, the grant may be made.

The foregoing amendment shall apply to extradition proceedings between Luxemburg on the one hand and, on the other hand, the following territories, that is to say, the United Kingdom of Great Britain and Northern Ireland (including the Channel Island and the Isle of Man), Newfoundland British Colonies, British Protectorate and British-protected States to which the Extradition Treaty of 24th November, 1880, applies, and all mandated territories to which the said Treaty extends and in respect of which the mandate is exercised by His Majesty’s Government in the United Kingdom of Great Britain and Northern Ireland.”

27. TREATY BETWEEN GREAT BRITAIN AND THE REPUBLIC OF ECUADOR, FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1880

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Excellency the President of the Republic of Equador, having judged its expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should under certain circumstances be reciprocally delivered up, Her Britannic Majesty and the President of Ecuador have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Frederic Douglas Hamilton, Esquire, Her Minister Resident at Equador;

And his Excellency the President of Ecuador, General Cornelio E. Vernaza, Minister of Foreign Affairs and of the Interior;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles: -

ARTICLE I

It is agreed that Her Britannic Majesty's Government and that of Ecuador shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally any persons who, being accused or convicted of any of the crimes hereinafter specified, committed within the jurisdiction of the requiring Party, shall be found within the territories of the other Party:

- (1) Murder, or attempt or conspiracy to murder.
- (2) Manslaughter.
- (3) Counterfeiting or altering money, or uttering counterfeit or altered money.
- (4) Forgery, counterfeiting, or altering, or uttering what is forged or counterfeiting or altered.
- (5) Embezzlement or larceny.
- (6) Obtaining money or goods by false pretences.
- (7) Crimes against bankruptcy law.

- (8) Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company made criminal by any law for the time being in force.
- (9) Rape.
- (10) Abduction.
- (11) Child Stealing.
- (12) Burglary or housebreaking.
- (13) Arson.
- (14) Robbery with violence.
- (15) Threats by letter or otherwise with intent to extort.
- (16) Piracy by law of nations.
- (17) Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
- (18) Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
- (19) Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the captain or master.

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and, in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

ARTICLE II

In the dominions of Her Britannic Majesty, other than the foreign or colonial possessions of Her Majesty, the manner of proceeding shall be as follows: -

1. In the case of a person accused:

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by some person recognized by the Secretary of State as a Diplomatic Representative of the Republic of Ecuador, accompanied by a warrant or other equivalent judicial document for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in Ecuador, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and a description of the person claimed, and any particulars which may serve to identify him. The said Secretary

of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the Police Magistrate who issued it, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, accordingly to the law of England, the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a Report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of Ecuador.

2. In the case of a person convicted:

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the recognized Diplomatic Representative, in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of

habeas corpus. If he should so apply, his surrender must be deferred until after the decision of the Court upon the return of the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the Court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order. A like proceeding shall be observed towards criminals in prison in Ecuador.

ARTICLE III

In the Republic of Ecuador the manner of proceeding shall be as follows: -

1. In the case of a person accused:

The requisition for the surrender shall be made to the Minister for Foreign Affairs of Ecuador by the Minister or other Diplomatic Agent of Her Britannic Majesty, accompanied by a warrant for the arrest of the accused, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against him in Great Britain, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and a description of the person claimed, and any other particulars which may serve to identify him.

The said documents shall be transmitted to the Minister Secretary of State for the Interior Department, who shall then, by order under his hand, and seal, signify to some Police Magistrate that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Ministry Secretary of State, and on the production of such evidence as would justify the issue of the warrant, if the crime had been committed in Ecuador, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant he shall be brought before the Police Magistrate who issued it, or some other authority of the same class. If the evidence to be then produced shall be such as to justify, accordingly to the law of Ecuador, the committal for trial of the prisoner if the crime of which he is accused has been committed in Ecuador, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for

his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of Her Majesty.

2. In the case of a person convicted:

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place and date of his conviction. The evidence to be produced before the Magistrate charged with the investigation of the case shall be such as would, accordingly to the laws of Ecuador, prove that the prisoner was convicted of the crime charged.

ARTICLE IV

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London, and that he shall be discharged, if within 30 days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country, in the manner directed by Articles II and III of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas, on board any vessel of either country which may come into any port of the other.

ARTICLE V

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal, or within two months after the decision of the Court, upon the return to a writ of habeas

corpus in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE VI

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored, or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

ARTICLE VII

In any case where an individual convicted or accused in Ecuador of any of the crimes described in the present Treaty, and who shall have taken refuge in the United Kingdom, shall have obtained naturalization there, such naturalization shall not prevent the search for, arrest and surrender of such individual to the Ecuadorian authorities, in conformity with the said Treaty.

In like manner the surrender shall take place on the part Ecuador in any case where an individual accused or convicted in England of any of the same crimes who shall have taken refuge in Ecuador shall have obtained naturalization there.

ARTICLE VIII

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the party upon whom it is made to be one of a political character, or if he proves to the satisfaction of the Police Magistrate, or of the Court before which he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character.

ARTICLE IX

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken.

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being

sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE X

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge.

ARTICLE XI

If the individual claimed by one of the two Contracting Parties, in pursuance of the present Treaty, should be also claimed by one or several other Powers, on account of other crimes committed upon their territory, his surrender shall, in preference, be granted in compliance with that demand which is earliest in date.

ARTICLE XII

If the individual claimed should be under prosecution, or in custody for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XIII

Every article found in the possession of the individual claimed at the time of his arrest shall be seized, in order to be delivered up with this person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

ARTICLE XIV

Each of the two Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.

ARTICLE XV

The stipulations of the present Treaty shall be applicable to the foreign or colonial possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a foreign or colonial possession of either Party shall be made to the Governor or chief authority of such possession by the Chief Consular Officer of the other at the seat of the Government; or, if the fugitive has escaped from a foreign or colonial possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such possession. Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of Ecuadorian criminals who may take refuge within such Colony, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XVI

The present Treaty shall come into operation two months after the exchange of the ratifications. Due notice shall in each country be given of the day. Either Party may at any time terminate the Treaty on giving to the other six months' notice of its intention.

ARTICLE XVII

The present Treaty shall be ratified, and the ratifications shall be exchanged at the capital of Ecuador within eight months after the approbation of the Legislative Power according to the laws of each country.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same in duplicate, and have affixed thereto the seal of their arms.

DONE at Quito, capital of the Republic of Ecuador, the 20th September, 1880.

Fred Douglas Hamilton
Cornelio E. Vernaza

**28. TREATY BETWEEN GREAT BRITAIN AND FRANCE FOR
THE MUTUAL SURRENDER OF FUGITIVE
CRIMINALS 1876**

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland,
and the President of the French Republic,

Having recognized the insufficiency of the provisions of the Treaty concluded on 13 February 1843 between Great Britain and France for the reciprocal extradition of criminals, have resolved, by common accord, to replace it by another and more complete Treaty, and have named as their respective Plenipotentiaries for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Richard Bickerton Pemell, Lord Lyons, a Peer of the United Kingdom of Great Britain and Ireland, Knight Grand Cross of the Most Honourable Order of the Bath, one of Her Britannic Majesty's Most Honourable Privy Council, Her Ambassador Extraordinary and Plenipotentiary to the Government of the French Republic, etc; and

The President of the French Republic, M. le Duc Decazes, member of the Chamber of Deputies, Minister for Foreign Affairs, Grand Officer of the National Order of the Legion of Honor, etc;

Who, after having communicated to each other their respective full powers (found in good and due form) have agreed upon the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who are being proceeded against or who have been convicted of a crime committed in the territory of the one Party, and who shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II

Native-born or naturalized subjects of either country are exempted from extradition. In the case, however, of a person who, since the commission of the crime or offence of which he is accused, or for which he has been convicted, has become naturalized in the country whence the surrender is sought, such naturalization shall not prevent the pursuit, arrest and extradition of such person, in conformity with the stipulations of the present Treaty.

ARTICLE III

The crimes for which the extradition is to be granted are the following:

1. Counterfeiting or altering money, and uttering counterfeit or altered money.
2. Forgery, counterfeiting or altering and uttering what is forged, counterfeited or altered.
3. Murder (including assassination, parricide, infanticide and poisoning) or attempt to murder.
4. Manslaughter.
5. Abortion.
6. Rape.
7. Indecent assault, acts of indecency even without violence upon the person of a girl under 12 years of age.
8. Child stealing including abandoning, exposing or unlawfully detaining.
9. Abduction.
10. Kidnapping and false imprisonment.
11. Bigamy.
12. Wounding or inflicting grievous bodily harm.
13. Assaulting a magistrate or peace or public officer.
14. Threats by letter or otherwise with intent to extort.
15. Perjury or subornation of perjury.
16. Arson.
17. Burglary or housebreaking, robbery with violence.

18. Fraud by a bailee, banker, agent, factor, trustee or director, or member or public officer of any company made criminal by any act for the time being in force.
19. Obtaining money, valuable security or goods by false pretences, including receiving any chattel, money, valuable security or other property knowing the same to have been unlawfully obtained.
20. Embezzlement or larceny, including receiving any chattel, money, valuable security or other property knowing the same to have been embezzled or stolen.
21. Crimes against bankruptcy law.
22. Any malicious act done with intent to endanger persons in a railway train.
23. Malicious injury to property, if the offence is indictable.
24. Crimes committed at sea:
 - (A) Any act of depredation or violence by the crew of a British or French vessel, against another British or French vessel, or by the crew of a foreign vessel not provided with a regular commission, against British or French vessels, their crews or their cargoes;
 - (B) The fact by any person being or not one of the crew of a vessel of giving her over to pirates;
 - (C) The fact by any person being or not one of the crew of a vessel of taking possession of such vessel by fraud or violence;
 - (D) Sinking or destroying a vessel at sea, or attempting or conspiring to do so;
 - (E) Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.
25. Dealing in slaves in such manner as to constitute an offence against the laws of both countries.

The extradition is also to take place for participation either as principals or accessories, in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE IV

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted.

ARTICLE V

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be denied by the Party upon which it is made to be a political offence, or to be an act committed with (*connexe à*) such an offence, or if he prove to the satisfaction of the police magistrate, or of the court before which he is brought on *habeas corpus*, or of the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character.

ARTICLE VI

On the part of the French Government, the extradition shall take place in the following manner in France:

The ambassador or other diplomatic agent of Her Britannic Majesty in France shall send to the Minister for Foreign Affairs, in support of each demand for extradition, an authenticated and duly legalized copy either of a certificate of conviction or of a warrant of arrest against a person accused, clearly setting forth the nature of the crime or offence on account of which the fugitive is being proceeded against. The judicial document thus produced shall be accompanied by a description of the person claimed, and by any other information which may serve to identify him.

These documents shall be communicated by the Minister for Foreign Affairs to the Keeper of the Seals, Minister of Justice, who, after examining the claim for surrender, and the documents in support thereof, shall report thereon immediately to the President of the Republic; and, if there is reason for it, a Decree of the President will grant the extradition of the person claimed, and will order him to be arrested and delivered to the British authorities.

In consequence of this Decree, the Minister of the Interior shall give orders that search be made for the fugitive criminal, and in case of his arrest, that he be conducted to the French frontier, to be delivered to the person authorized by Her Britannic Majesty's Government to receive him.

Should it so happen that the documents furnished by the British Government, with the view of establishing the identity of the fugitive criminal, and that the particulars collected by the agents of the French Police with the same view, be considered insufficient, notice shall be immediately given to the ambassador or other diplomatic agent of Her Britannic Majesty in France, and the fugitive person, if he has been arrested, shall remain in custody until the British Government has been able to furnish further evidence in order to establish his identity or to throw light on other difficulties in the examination.

ARTICLE VII

In the dominions of Her Britannic Majesty, other than the colonies or foreign possessions of Her Majesty, the manner of proceeding shall be as follows:

(A) In the case of a person accused: the requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Ambassador or other diplomatic agent of the President of the French Republic, accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in France, together with duly authenticated depositions or statements taken on oath before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended, he shall be brought before the Police Magistrate who issued the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the President of the French Republic.

(B) In the case of a person convicted: the course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the ambassador or other diplomatic agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

(C) Persons convicted by judgment in default or *arrêt de contumace*, shall be in the matter of extradition considered as persons accused, and, as such, be surrendered.

(D) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE VIII

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies

thereof, and certificates of or judicial documents stating the facts of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a judge, magistrate or officer of the country where they were issued or taken, provided such warrants, depositions, statements, copies, certificates and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

ARTICLE IX

A fugitive criminal may be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant justify the issue of a warrant, if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which the Magistrate exercises jurisdiction: provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London. He shall be discharged, as well in the United Kingdom as in France, if within fourteen days a requisition shall not have been made for his surrender by the diplomatic agent of his country in the manner directed by Articles II and IV of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty committed on the high seas on board any vessel of either country which may come into a port of the other.

ARTICLE X

If the fugitive criminal who has been committed to prison, be not surrendered and conveyed away within two months after such committal, or within two months after the decision of the court upon the return to a writ of *habeas corpus* in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE XI

The claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution or

punishment has been acquired by lapse of time, according to the laws of that country.

ARTICLE XII

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his surrender shall be granted to that State whose demand is earliest in date, unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

ARTICLE XIII

If the individual claimed should be under prosecution or condemned for a crime or offence committed in the country where he may have taken refuge his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, his surrender shall nevertheless take place.

ARTICLE XIV

Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property of articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime, and shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property of articles are nevertheless reserved.

ARTICLE XV

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may have consented to surrender in pursuance of the present Treaty.

ARTICLE XVI

In the colonies and foreign possessions of the two High Contracting Parties, the manner of proceeding shall be as follows:

The requisition for the surrender of a fugitive criminal who has taken refuge in a colony or foreign possession of either Party, shall be made to the Governor or chief authority of such colony or possession by the chief consular officer of the other in such colony or possession; or, if the fugitive has escaped from a colony or foreign possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

The foregoing stipulations shall not in any way affect the arrangements established in the East Indian possessions of the two countries by the IXth Article of the Treaty of 7 March 1815.

ARTICLE XVII

The present Treaty shall be ratified and the ratifications shall be exchanged at Paris as soon as possible.[1]

It shall come into operation ten days after its publication, in conformity with the laws of the respective countries.[2]

Either Party may at any time terminate the Treaty on giving to the other six months' notice of its intention.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

DONE at Paris on the fourteenth day of August one thousand eight hundred and seventy-six.

[Signed:] [Signed:] LYONS DECAZES

[1] Instruments of ratification were exchanged [UK/France] 8 April 1878.

[2] The Treaty entered into force 31 May 1878.

SUPPLIMENTS

**Convention between the United Kingdom and France Modifying
Articles VII and XI of the Extradition Treaty of August 14, 1876**

Signed at Paris, February 13, 1896.

[Ratifications exchanged at Paris, February 19, 1896]

“The text of Article VII of the Extradition Treaty of the 14th August, 1876, is amended by the substitution of the words “a Magistrate” for the words “the Police Magistrate who issued the warrant, or some other Police Magistrate in London,” in the first sentence of the third paragraph of section (a), and by the omission of the word “police” in the second sentence of the said paragraph, and in the sections (b) and (d).

The text of Article IX of the aforesaid Treaty is amended by the substitution of the words “a Magistrate” for the words a police Magistrate in London.”

**Convention between the United Kingdom and France Modifying
Article II of the Extradition Treaty of August 14, 1876**

Signed at Paris, October 17, 1908

[Ratifications exchanged at Paris, July 29, 1909]

“Article II of the Extradition Treaty of August 14, 1876 is modified as follows:

Each of the two High contracting Parties shall be at liberty to refuse to the other the extradition of its own nationals. In the case, however, of a person who, since the commission of the crime or offence of which he is accused or for which he has been convicted, has become naturalized in the country whence the surrender is sought, such naturalization shall not prevent the pursuit, arrest and extradition of such person, in conformity with the stipulations of the present Treaty.”

29. TREATY BETWEEN GREAT BRITAIN AND HAITI FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1876

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Excellency the President of the Republic of Haiti, having judged it expedient, with a view to a better administration of justice, and to the prevention of crime within the two countries and their jurisdictions, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up;

Her Britannic Majesty and the President of Haiti have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Spenser St. John, Esq., Minister Resident and Consul-General of Her Britannic Majesty in the Republic of Haiti and Her Chargé d’Affaires in the Dominican Republic,

And His Excellency the President of the Republic of Haiti M. Surville Toussaint, ex-Senator;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

ARTICLE I

The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one party, shall be found within the territory of the other party, under the circumstances and conditions stated in the present Treaty.

ARTICLE II

The crimes for which the extradition is to be granted are the following:

1. Murder, or attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
4. Forgery, or counterfeiting, or altering, or uttering what is forged or counterfeited or altered.
5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences.
7. Malicious injury to property, if the offence be indictable.
8. Crimes against bankruptcy law.
9. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.
10. Perjury or subornation of perjury.
11. Rape.
12. Abduction.
13. Child-stealing.
14. False imprisonment.
15. Burglary or housebreaking.
16. Arson.
17. Robbery with violence.
18. Threats, by letter or otherwise, with intent to extort.
19. Piracy by law of nations.
20. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
21. Assaults on board a ship on the high seas with intent to destroy life, or to do grievous bodily harm.
22. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master.

The extradition is also to take place for participation in any of the aforesaid crimes, provided such participation be punishable by the laws of both the Contracting Parties.

ARTICLE III

No Haitian shall be delivered up by the Government of Haiti to the Government of the United Kingdom, and no subject of the United Kingdom shall be delivered up by the Government thereof to the Government of Haiti.

ARTICLE IV

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed or the part of the Government of the Republic of Haiti, has already been tried and discharged, or punished, or is still under trial in Haiti or in the United Kingdom respectively, for the crime for which his extradition is demanded.

If the person claimed on the part of the Government of the: United Kingdom, or if the person claimed on the part of the Government of the Republic of Haiti, should be under examination for any other crime in Haiti or in the

United Kingdom respectively, his extradition shall be deferred until the conclusion of the trial, and the full execution of any punishment awarded to him.

ARTICLE V

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the State applied to.

ARTICLE VI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

ARTICLE VII

A person surrendered can in no case be kept in prison, or be brought to trial in the State to which the surrender has been made, for any other crime or on account of any other matters than those for which the extradition shall have taken place.

This stipulation does not apply to crimes committed after the extradition.

ARTICLE VIII

The requisition for extradition shall be made through the Diplomatic Agents of the High Contracting Parties respectively.

The requisition for the extradition of an accused person must be accompanied by a warrant of arrest issued by the competent authority of the State requiring the extradition, and by such evidence as, according to the laws of the place where the accused is found, would justify his arrest if the crime had been committed there.

If the requisition relates to a person already convicted, it must be accompanied by the sentence of condemnation passed against the convicted person by the competent Court of the State that makes the requisition for extradition.

A requisition for extradition cannot be found on sentences passed *in contumaciam*.

ARTICLE IX

If the requisition for extradition be in accordance with the foregoing stipulations, the competent authorities of the State applied to shall proceed to the arrest of the fugitive.

The prisoner is then to be brought before a competent magistrate, who is to examine him, and to conduct the preliminary investigation of the case, just as if the apprehension had taken place for a crime committed in the same country.

ARTICLE X

The extradition shall not take place before the expiration of 15 days from the apprehension, and then only if the evidence be found sufficient, according to the laws of the State applied to, either to justify the committal of the prisoner for trial, in case the crime had been committed in the territory of the said State, or to prove that the prisoner is the identical person convicted by the Courts of the State which makes the requisition.

ARTICLE XI

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the sworn depositions or statements of witnesses taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, provided such documents are signed or certified by a judge, magistrate, or officer of such State and are authenticated by the oath of some witnesses, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.

ARTICLE XII

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, he shall be set at liberty.

ARTICLE XIII

All articles seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to everything which may serve as a proof of the crime.

ARTICLE XIV

The High Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance till placed on board ship: they reciprocally agree to bear such expenses themselves.

ARTICLE XV

The stipulations of the present Treaty shall be applicable to the colonies and foreign possessions of Her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such colonies or foreign possessions shall be made to the Governor or chief authority of such colony or possession by the chief Consular Officer of Haiti in such colony or possession.

Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the said Governor or chief authority, who, however, shall be at liberty either to grant the surrender, or to refer the matter to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British colonies and foreign possessions for the surrender of Haitian criminals, who may take refuge within such colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XVI

The present Treaty shall come into force 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties, but shall remain in force for 6 months after notice has been given for its termination.

The President of the Republic of Haiti engages to apply to the Senate for the necessary authorisation to give effect to the present Treaty, immediately after its meeting.

The present Treaty shall be ratified, and the ratifications shall be exchanged as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

DONE at Port-au-Prince, the 7th day of December, in the year of Our Lord, 1874.

Spenser St. John

Survile Toussaint

30. TREATY BETWEEN GREAT BRITAIN AND DENMARK FOR THE MUTUAL SURRENDER OF FUGITIVE CRIMINALS 1873

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of Denmark having judged it expedient, with a view to the better administration of justice and to the prevention of crime within their respective territories and jurisdictions, that person charged with or convicted of the crimes hereinafter enumerated and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up; their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:

Her Majesty the queen of the United Kingdom of Great Britain and Ireland, Sir Charles Lennox Wyke, Knight Commander of the Most Honourable Order of the Bath, her Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Denmark;

And His Majesty the King of Denmark, Baron Otto Ditley Rosenörn- Lehn, Knight Commander of the Order of the Danebrog and Danebrogsmænd, His Majesty's Minister for Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE I

It is agreed that Her Britannic Majesty and His Majesty the King of Denmark shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally any persons, except native born or naturalised subjects of the party upon whom the requisition may be made, who, being accused or convicted of any of the crimes hereinafter specified, committed within the territories of the requiring party, shall be found within the territories of the other party:

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, or uttering counterfeit or altered money.
4. Forgery, or counterfeiting, or altering, or uttering what is forged, or counterfeited, or altered.
5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.

7. Crimes by bankrupts against bankruptcy law.
8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.
9. Rape.
10. Abduction.
11. Child-stealing.
12. Burglary or housebreaking.
13. Arson.
14. Robbery with violence.
15. Threats, by letter or otherwise, with intent to extort.
16. Piracy by law of nations.
17. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
18. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
19. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

Provided that the surrender shall be made only when, in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and, in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

ARTICLE II

In the dominions of Her Britannic Majesty, other than the colonies or foreign possessions of Her Majesty, the manner of proceeding shall be as follows:

1. In the case of a person accused:

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of His Majesty the King of Denmark at London, accompanied by (1) a warrant or other equivalent judicial document for the arrest of the accused, issued by a judge or magistrate duly authorised to take cognizance of the acts charged against him in Denmark; (2) duly authenticated depositions or statements taken on oath before such judge or magistrate, clearly setting forth the acts on account of which the fugitive is demanded; and (3) a description of the person claimed, and any other

particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some police magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended in virtue of such warrant, he shall be brought before the police magistrate who issued it, or some other police magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner if the crime for which he is accused had been committed in England, the police magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than 15 days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorised to receive him on the part of the Government of His Majesty the King of Denmark.

2. In the case of a person convicted:

The course of proceeding shall be the same as in the preceding case of a person accused, except that the document to be produced by the Minister or other Diplomatic Agent of His Danish Majesty in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the police magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the police magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender,

Such person shall have the right to apply for a writ of habeas corpus. If he should so apply, his surrender must be deferred until after the decision of the court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case the court may at once order his delivery to the person authorized to receive him, without the order of a Secretary of State for his surrender, or commit him to prison to await such order.

ARTICLE III

In the dominions of His Majesty the King of Denmark other than the colonies or foreign possessions of his said Majesty, the manner of proceeding shall be as follows:

1. In the case of a person accused:

The requisition for the surrender shall be made to the Minister for Foreign Affairs of His Majesty the King of Denmark by the Minister or other Diplomatic Agent of Her Britannic Majesty at Copenhagen, accompanied by; (1) a warrant for the arrest of the accused, issued by a judge or magistrate duly authorised to take cognizance of the acts charged against him in Great Britain; (2) duly authenticated depositions or statements taken on oath before such judge or magistrate, clearly setting forth the acts on account of which the fugitive is demanded; and (3) a description of the person claimed, and any other particulars which may serve to identify him.

The Minister for Foreign Affairs of His Majesty the King of Denmark shall transmit such requisition for surrender to the Minister of Justice of His Majesty the King of Denmark, who, after having ascertained that the crime therein specified is one of those enumerated in the present Treaty, and satisfied himself that the evidence produced is such as, according to Danish law, would justify the committal for trial of the individual demanded, if the crime had been committed in Denmark, shall take the necessary measures for causing the fugitive to be delivered to the person charged to receive him by the Government of Her Britannic Majesty.

2. In the case of a person convicted:

The course of proceeding shall be the same as in the preceding case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent of Her Britannic Majesty in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction.

The evidence to be produced shall be such as would, according to the laws of Denmark, prove that the prisoner was convicted of the crime charged.

ARTICLE IV

A fugitive criminal may, however, be apprehended under a warrant issued by any police magistrate, justice of the peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted, in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: provided, however, that in the United Kingdom the accused shall, in such case, be sent as speedily as possible before a police magistrate in London; and that in the dominions of His Majesty the King of Denmark the case shall be immediately submitted to the Minister of Justice of His Majesty the King of Denmark; and provided, also, that the individual arrested shall in either country be discharged if within 15 days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country, in the manner directed by Articles II and III of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas, on board a vessel of either country, which may come into a port of the other.

ARTICLE V

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the court, upon the return to a writ of habeas corpus in the United Kingdom), he shall be discharged from custody, unless sufficient cause be shown to the contrary.

ARTICLE VI

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

ARTICLE VII

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the Government upon which it is made to be one of a political character, or if in the United Kingdom he prove to the satisfaction of the police magistrate, or of the court before which he is brought on habeas corpus, or to the Secretary of State, or in Denmark, to the satisfaction of the Minister of Justice of His Majesty the King of Denmark, that the requisition for his surrender has, in fact, been made with a view to try or to punish him for an offence of a political character.

ARTICLE VIII

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a judge, magistrate, or officer of the country where they were issued or taken, and provided they are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State.

ARTICLE IX

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused or convicted person shall have taken refuge.

ARTICLE X

If the individual claimed should be under prosecution, or in custody, for a crime or offence committed in the country where he may have taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority.

ARTICLE XI

Every article found in the possession of the individual claimed at the time of his arrest, shall be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to everything that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

ARTICLE XII

Each of the two Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to the frontier of the persons whom it may consent to surrender in pursuance of the present Treaty.

ARTICLE XIII

The stipulations of the present Treaty shall be applicable to the colonies or foreign possessions of the two High Contracting Parties, in the following manner:

The requisition for the surrender of a fugitive criminal who has taken refuge in a colony or foreign possession of either of the two Contracting Parties, shall be made to the Governor or chief authority of such colony or possession by the Chief Consular Officer of the other Party in such colony or possession; or if the fugitive has escaped from a colony or foreign possession of the party on whose behalf the requisition is made, by the Governor or chief authority of such colony or possession.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

Her Britannic Majesty and His Majesty the King of Denmark shall, however, be at liberty to make special arrangements in their colonies and foreign possessions for the surrender of criminals who may take refuge therein, on the basis, as nearly as may be, of the provisions of the present Treaty.

ARTICLE XIV

The present Treaty shall come into operation 10 days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties.

After the Treaty shall so have been brought into operation, the Convention concluded between the High Contracting Parties on the 15th of April, 1862, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either party may, at any time, terminate the Treaty on giving to the other 6 months' notice of its intention.

ARTICLE XV

The present Treaty shall be ratified, and the ratification shall be exchanged at Copenhagen as soon as may be within 4 weeks from the date of signature.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

DONE at Copenhagen, the 31st day of March, in the year of Our Lord, 1873.

Charles Lennox Wyke

O. D. Rosenörn-Lehn

APENDIX III

CASE LAW AND EXTRACTS OF PRINCIPLES

APPENDIX III: CASE LAW AND EXTRACTS OF PRINCIPLES

The majority of Nigerian court cases on extradition are unreported in the periodic law reports. This is probably because most of the existing Nigerian law reports concentrate on appellate cases, while most extradition proceedings end at the trial courts, even though there is right of appeal to the Court of Appeal and the Supreme Court.

Extracts of Principles and Considerations of Law from Decided Extradition Cases

1. EMMANUEL EHIDIAIMHEN OKOYOMON V. ATTORNEY GENERAL OF THE FEDERATION. CA/A/260/2015 (Decision delivered on 6th June, 2016)

TREATY

The Extradition Treaty between the United States of America and Great Britain 1931, although recognized and enforceable in Nigeria, cannot be the legal basis for extradition of the appellant from Nigeria to the United Kingdom.

The provisions of the London Scheme for Extradition within the Commonwealth have been substantially enacted into law by the Extradition Act, 2004 and they have the force of law in Nigeria.

PRACTICE AND PROCEDURE

The allegations for which an extradition is sought need not be proved or disproved during and extradition proceedings

2. ATTORNEY GENERAL OF THE FEDERATION V. EMMANUEL EHIDIAMHEN OKOYOMON SUIT NO. FHC/ABJ/CS/670/2014 (Decision delivered on 4th May, 2015)

TREATY

The Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1931 and made applicable to Nigeria by a legal instrument on June 24, 1935 is an existing law by virtue of Section 315(4) (b) of 1999 Constitution.

INTERPRETATION OF STATUTE

Interpretation of section 9(3) of the Extradition Act on the preconditions for the grant of an extradition order.

3. ATTORNEY-GEN. OF THE FEDERATION V. JEFFREY OKAFOR FHC/ABJ/CR/180/2014 (Decision delivered on 27 October, 2014)

PRACTICE AND PROCEDURE

Even where the extradition application is unopposed, the Court will satisfy itself that the request is not frivolous but based on prime facie evidence.

The Court in considering an extradition application will satisfy itself that the Respondent will be accorded fair trial if extradited,

SPECIALITY PRINCIPLE

Where a fugitive is wanted for trial, extradition shall be for the purposes of the trial which formed the basis of the application for extradition

4. ATTORNEY-GENERAL OF THE FEDERATION V. KINGSLEY EDEGBE SUIT NO. FHC/ABJ/CS/907/2012 (Decision delivered on 1st July, 2014)

TREATIES

Signing and ratification of a treaty without domestication by an Act of the National Assembly in line with section 12 of the 1999 Constitution will not make the treaty applicable by Nigerian Courts.

The United Nations Transnational Organised Crime Convention 2002 and its Protocols cannot serve as basis for an extradition application.

PRACTICE AND PROCEDURE

Where there is a consolidation of preliminary objection and defence to substantive application for extradition, the Court will determine the preliminary objection first.

Before any person can be extradited from the Federal Republic of Nigeria to any other country for prosecution or to serve punishment, it must be shown that there is an extradition treaty or agreement made between Nigeria and that other country.

Where there is no extradition treaty between Nigeria and the requesting State, the extradition application will be struck out.

5. FEDERAL REPUBLIC OF NIGERIA V. MR. OLUGBENIGA ADEBISI FHC/L/22S'C/2008 (Decision delivered on 29th April, 2014)

PRACTICE AND PROCEDURE

Filing and service of further and better affidavit to the application for extradition.

BAIL

Bail pending extradition proceedings: Conditions for consideration.

6. ATTORNEY GENERAL OF THE FEDERATION V. RASHEED ABAYOMI MUSTAPHA CHARGE NO. FHC/L/218^C/2011

(Decision delivered on 25th March, 2014)

STATUTE

Legal Notice No, 33 of 1967 published in the official Gazette No, 23, Vol, 54 of the 13th of April, 1967 establishes the basis for extradition between the United States of America and Nigeria.

Legal Notice No, 33 of 1967 published in the official Gazette No, 23, Vol, 54 of the 13th of April, 1967 is valid and enforceable in Nigeria.

EXTRADITABLE OFFENCE

Extradition must be for conduct which would have been penalised if committed in Nigeria.

PRACTICE AND PROCEDURE

All the conditions precedent to the extradition request must be met before the grant of extradition order.

**7. ATTORNEY GENERAL OF THE FEDERATION V. OLANIYI
JONES CHARGE NO, FHC/L/12C/12 (Decision delivered on 25th
March, 2014)**

INTERPRETATION OF STATUTES

Sections 7, 8, 9 and 10 of the Extradition Act are to the effect that where a fugitive has been detained for more than two (2) months after his arrest, he should be entitled to the remedy of a discharge.

Where there were similar criminal charges pending against the Respondent in Nigeria, the extradition request will be refused under section 3(5) of the Extradition Act.

**8. ATTORNEY-GENERAL OF THE FEDERATION V. LAWAL
OLANIYI BABAFEMI SUIT NO, FHC/ABJ/CR/132/2013
(Decision delivered on 28th August, 2013)**

PRACTICE AND PROCEDURE

Where there is no form of objection by the Respondent to the application for his extradition, the Court will be satisfied that the Application/Request of the Honourable Attorney-General of the Federation for the extradition of the Respondent is proper and in accordance with the Extradition Act.

*CUSTODY OF FUGITIVE WHERE EXTRADITION APPLICATION IS
SUCCESSFUL*

Following the grant of an extradition application, the Respondent remains in the custody of the Federation of Nigeria pending his surrender and eventual extradition.

**9. ATTORNEY-GENERAL OF THE FEDERATION V. UCHE
OKAFOR PRINCE CHARGE NO: FHC/ABJ/CR/28/2013
(Decision delivered on 6th March, 2013)**

PRACTICE AND PROCEDURE

Where the Respondent desires and is willing to be extradited, the application of the Honourable Attorney-General of the Federation for the extradition of the Respondent can be deemed to be proper and in accordance with the Extradition Act.

CUSTODY OF FUGITIVE WHERE EXTRADITION APPLICATION IS SUCCESSFUL

The Respondent is kept in custody pending his surrender for extradition.

10. ATTORNEY-GENERAL OF THE FEDERALITION V.

OLAYINKA JOHNSON SUIT NO, FHC/L/16^C/2013 (Decision delivered on 1st February, 2013)

CONSTITUTIONAL INTERPRETATION

The Extradition Act is deemed to be an existing law and ranks below the Constitution in order of precedence.

The Extradition Act has on coming into force of the 1999 Constitution started to have effect with such “modification” as may be necessary to bring them into conformity with the provisions of section 251 of the 1999 Constitution.

Section 251 of the 1999 Constitution expressly conferred exclusive jurisdiction on the Federal High Court on matters of extradition.

The Jurisdiction of the Federal High Court over Extradition matters can only be taken away by an amendment of the Constitution.

The liberty of a citizen can be interfered with for the purpose of extradition.

NOTABLE STATEMENT

In the matter of extradition, the courts will always not carelessly surrender citizens and non-citizens alike unless the Court is satisfied on the facts and the position of the law.

PRACTICE AND PROCEDURE

Respondent may file a Notice of Preliminary Objection to the extradition application.

The Attorney-General has the duty to take the right steps in ensuring the due process is followed in the extradition proceedings.

The request for extradition may be passed to the Attorney General through the Ministry of Foreign Affairs.

In extradition proceedings, any of the following documents if duly authenticated shall be received in evidence without further proof, namely:

- 1. any warrant issued in a country other than Nigeria,*
- 2. any deposition or statement on oath, or affirmation taken in any such country or a copy of such deposition or statement*

For extradition proceedings, the warrant against a fugitive must be signed by a Judge, Magistrate or Officer of the country in which it was issued.

For the purpose of the Extradition Act, Judicial Notice shall be taken of the official seals of Ministers of States or countries other than Nigeria.

The requirements for extradition of a fugitive are:

- 1. A request for the surrender of the fugitive.*
- 2. The fugitive is accused of extradition offences in a country other than Nigeria.*
- 3. There is a warrant of arrest issued outside Nigeria authorizing the arrest of the fugitive.*
- 4. The warrant of arrest was issued in a country to which the Extradition Act applies.*
- 5. The warrant of arrest is duly authenticated and relates to the fugitive.*
- 6. The offences for which the fugitive is accused of are extraditable offences.*
- 7. The evidence produced will according to the law in Nigeria, justify the committal of the fugitive for trial if the offences were committed in Nigeria.*
- 8. The surrender of the fugitive is not precluded by the provisions of the Extradition Act and in particular Section 3(1) -(7) of the Act.*

TREATY

There is an existing extradition treaty between the United State of America and the Federal Republic of Nigeria.

EXTRADITABLE OFFENCE

By virtue of section 21(1) (a) of the Extradition Act, extradition applies only to offences committed outside Nigeria.

The extraditable offence does not have to be known by the same name in Nigeria as long as it can be equated to an offence in Nigeria.

**11. ATTORNEY GENERAL OF THE FEDERATION V. DION
KENDRICK LEE FHC/L/465C/2011 (Decision delivered on 24th
April 2012)**

PRACTICE AND PROCEDURE

Where the fugitive is wanted for trial, the Court shall ensure that there is a prima facie case made out by the requesting State.

**12. ATTORNEY GENERAL OF THE FEDERATION V.
EMMANUEL EKHATOR FHC/L/1^C/2011**

UNLAWFUL DETENTION OF FUGITIVE

Extradition is not a bar to the award of compensation to a Respondent who was unlawfully detained prior to the extradition Application.

PRACTICE AND PROCEDURE

The proof of the allegations contained in the extradition request is not a matter for determination at the extradition proceedings.

Where the name of deponent mentioned in the Attorney General's extradition application is different from the name of the actual deponent, the error shall be deemed to be an irregularity that does not vitiate the application.

**13. JAMES ONANEFE IBORI & 5 ORS. V. FEDERAL
REPUBLIC OF NIGERIA SUIT NO: CA/B/61C/2010 (Decision
delivered on 6th June, 2011)**

PRACTICE AND PROCEDURE

*Stay of proceedings pending extradition proceedings in another jurisdiction:
Conditions to be considered*

**14. ATTORNEY GENERAL OF THE FEDERATION V. GODWIN
CHIEDO NZEOCHA FHC/L/335C/2011 (Decision delivered on 28
May 2012)**

JURISDICTION

The High Courts of the States do not have jurisdiction to hear extradition applications

**15. PROFESSOR M.B. AJAKAIYE & ANOR V. FEDERAL
REPUBLIC OF NIGERIA CA/L/129/2001 (Decision delivered on
30th March, 2010)**

PRACTICE AND PROCEDURE

Writ of Habeas Corpus – can be used to obtain a judicial review of the regularity of an extradition process.

**16. GEORGE UDEOZOR V. FEDERAL REPUBLIC OF NIGERIA
CA/L/376/05 (26TH DAY OF FEBRUARY, 2007)**

DEFINITION

Extradition is the process of returning somebody upon request, accused of a crime by a different legal authority to that authority for trial or punishment.

INTERPRETATION OF STATUTE

Sections 6(1) and (2), 20 and 9(1) Extradition Act 1967 interpreted

Responsibility and powers to ascertain the conditionality for acceding to an extradition request on the Attorney-General (Sections 6)

The essence of the provision in section 20(1) of the Act, for a minimum sentence of two years is to ensure that a fugitive is not surrendered on a trivial offence

The provisions of section 20 of the Act cannot be interpreted to include the United States of America, the said section having specifically stated the group of nations to which the section applies

TREATY

The extradition treaty between Nigeria and the United States of America is embodied in the Legal Notice No, 33 of 1967 published in the official Gazette No, 23 Vol, 54 of the 13th day of April, 1967, known as an Extradition (United States of America.

PRACTICE AND PROCEDURE

The alleged fugitive is not on trial for the alleged offences during the extradition proceedings.

There is no legal requirement to arraign the alleged fugitive for the purpose of the extradition hearing.

The question of whether the Hon. Attorney-General had complied with the provisions of section 3(1)-(7 of the Extradition Act is a question of fact which can be brought to the attention of the trial Court only by affidavit evidence.

A Respondent who seeks to challenge the facts presented by the Attorney-General in extradition proceedings must file a counter affidavit.

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

The Court will apply the presumption of regularity in the performance of the official duty the Hon. Attorney-General.

In the absence of any serious challenge to the proper exercise of discretion by the Hon. Attorney-General for the Federation, the Court must uphold the official integrity of the Hon. Attorney-General, and presume that he carried out his duties as prescribed by section 6(1) and (2) of the Extradition Act.

Section 20 actually reposes the responsibility and powers to ascertain the conditionality for acceding to an extradition request on the Attorney-General not on the Court.

By the provisions of the Extradition Act, the Hon. Attorney-General, who is the chief legal officer of the Federal Republic of Nigeria, has the discretion to exercise the power. Once he has ascertained that there exists an offence which falls within the Extradition Act, and he so orders, the duty of the Court is delineated, the Court is circumscribed to question the exercise of discretion by the Hon. Attorney-General only upon cogent and compelling reasons challenging the proper exercise of such powers.

The powers of the Attorney-General in this issue is similar in extent as when the Hon. Attorney-General initiates a criminal proceedings or enters a nolle prosequi in a criminal matter. The Court does not question that exercise.

The discretion to accede to an extradition request is that of the Hon. Attorney-General of the Federation, not of the Court. (Refer: Sections 6 of the Extradition Act).

The role of the Court is to issue warrant and undertake such other adjudicatory functions as are required to enhance the statutory powers of the Attorney-General.

The purpose of a hearing, which is in fact purely at the discretion of Hon. Attorney-General, is not to ask the fugitive criminal if he desires to be extracted that would be ridiculous, The purpose is to determine whether requisition made shows sufficient cause to warrant extradition to so determine is reposed in the Hon. Attorney-General of the Federation by section 6(1) and (2) of the Act, not in the fugitive accused. The purpose of the extradition treaty is to prevent the escape of a fugitive accused from trial and punishment for the alleged crimes committed in the requesting country.

The purpose of the extradition hearing is not for the trial of the fugitive criminal, Rather, it is to invoke the exercise of the judicial powers, of the Court over the fugitive accused as the Court would over an accused person standing trial before it. In the circumstance, those powers are preliminary to the eventual trial of the fugitive accused, such as the power to remand or to release on bail pending the surrender of the fugitive accused to the requesting country.

SPECIALITY

It is generally regarded as an abuse of the terms of the treaty for a state to secure the surrender of a criminal for an extraditable offence and then to punish the person for an offence not included in the treaty.

17. KAYODE LAWRENCE V. ATTORNEY GENERAL OF THE FEDERATION Suit No: CA/L/521/04 (Decision delivered on 18th December, 2007)

EVIDENCE

Bias: Proof of bias by court in extradition proceedings

18. DANIEL ORHIUNU V. FEDERAL REPUBLIC OF NIGERIA Suit No: CA/L/79/2003 (Decision delivered on 4th July, 2004)

JURISDICTION

Jurisdiction in extradition matters – Interpretation of Section 251(1)(i) of the Constitution of the Federal Republic of Nigeria 1999 – Federal High Court's exclusive jurisdiction on extradition matters.

NOTABLE EXTRADITION CASES

NOTABLE EXTRADITION CASES

CASE 1

**IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY THE 6TH DAY OF JUNE, 2016**

**BEFORE THEIR LORDSHIPS
ABDU ABOKI JUSTICE, COURT OF APPEAL
MOORE A, A, ADUMEIN JUSTICE, COURT OF APPEAL
MOHAMMED MUSTAPHA JUSTICE, COURT OF APPEAL**

CA/A/260/2015

BETWEEN:

EMMANUEL EHIDIAIMHEN OKOYOMON..... APPELLANT

AND

ATTORNEY GENERAL OF THE FEDERATION.....RESPONDENT

TREATY

The Extradition Treaty between the United States of America and Great Britain 1931, although recognized and enforceable in Nigeria, cannot be the legal basis for extradition of the appellant from Nigeria to the United Kingdom.

The provisions of the London Scheme for Extradition within the Commonwealth have been substantially enacted into law by the Extradition Act, 2004 and they have the force of law in Nigeria.

PRACTICE AND PROCEDURE

The allegations for which an extradition is sought need not be proved or disproved during and extradition proceedings

JUDGMENT
(DELIVERED BY MOORE A, A, ADUMEIN, JCA)

By an originating application dated 22/09/2014 and filed on 23/09/2014 at the Federal High Court, Abuja, the respondent as the applicant therein sought the extradition of the appellant (then respondent) - Emmanuel Ehidihamhen Okoyornon, to the United Kingdom under the Extradition Act, Cap. E. 25, Laws of the Federation of Nigeria, 2014. The respondent requested to extradite the appellant to the United Kingdom to face trial for certain offences, with which the appellant was accused, under the Prevention of Corruption Act 1906, Law of England. The respondent relied on the two Treaties for the said application. The Treaties are:

1. Extradition Treaty between United States of America and Great Britain signed at London on 22nd December, 1931, and
2. The London Scheme for Extradition within the Commonwealth.

The appellant, as respondent in the lower court, filed a preliminary objection (pages 384 - 427 of the record) as well as a counter affidavit (pages 428 - 431 of the record) in opposition to the application. The grounds given in the appellant's notice of preliminary objection seeking the court to dismiss/strike out the application were:

- “1. The appellant lacks the locus standi to initiate this suit against the respondent.
2. There is no cause of action disclosed by this suit.
3. The suit of the plaintiff is purportedly predicated on two purported treaties, that is:
 - (a) The 1931 Extradition Treaty between the United States of America and Great Britain;
 - (b) The London Scheme for Extradition within the Commonwealth, 2002 both of which are unenforceable and inapplicable in Nigeria; and cannot be enforced by this honourable court.
4. Sections 1 (1) - (6) of the Extradition Act has not been satisfied with respect to United Kingdom.

5. The condition precedent to the bringing of this action has not been fulfilled.
6. There is no Act of the National Assembly domesticating or making the said two Treaties applicable to Nigeria.
7. This honourable court lacks the jurisdiction to entertain this suit.”

The appellant’s defence was that he had not committed any of the alleged offences for which the government of United Kingdom had made the request for his extradition to London to stand trial. He also claimed that there was no existing or enforceable Extradition Treaty between Nigeria and Great Britain or United Kingdom pursuant to which he could be extradited to the United Kingdom to stand trial.

The appellant’s preliminary objection and the respondent’s originating application were heard together.

In its judgment delivered on 04/05/2015, the lower court overruled the appellant’s preliminary objection and granted the application for extradition of the appellant to the United Kingdom.

Being dissatisfied with the decision of the lower court, the appellant filed two notices of appeal - one was filed on 04/05/2015 while the second notice of appeal was filed on 06/05/2015. This appeal is based on the notice of appeal filed all 06/05/2015, which contains the following 8 (eight) grounds pleaded of their particulars:

GROUND ONE

The learned trial judge erred in law when he ordered the extradition of the appellant to Great Britain to stand criminal trial.

GROUND TWO

The learned trial court erred in law when he held that the Extradition Treaty between Great Britain and the United States of America, signed at London on 22nd November, 1931 is applicable to Nigeria and ordered the extradition of the appellant to Great Britain to stand trial, relying on the Solid treaty between Great Britain and the United States of America.

GROUND THREE

The learned trial court erred in law when it held that the London Scheme for Extradition within the Commonwealth is applicable to Nigeria.

GROUND FOUR

The learned trial court erred in law when it held that the suit of the respondent disclosed a cause of action and that the respondent had the locus standi to bring the action against the appellant.

GROUND FIVE

The learned trial court erred in law when it held that the appellant is a British Citizen.

GROUND SIX

The trial court erred in law when it held that the appellant did not establish by evidence any defence against the offences for which the appellant was sought to be extradited to the United Kingdom.

GROUND SEVEN

The learned trial court erred in law when it held that the Extradition Treaty between the United States of America and Great Britain signed on 22nd December, 1931 was saved by the Provisions of Section 315 of the 1999 Constitution.

GROUND EIGHT

The learned trial court erred in law when it ordered the appellant to be remanded in prison custody. In his brief of arguments filed on 03/07/2015, the appellant formulated 4 (four) issues for determination as follows:

“1. Whether the trial court was right when it held that the Extradition Treaty between the United States of America and United Kingdom was recognized and enforceable in Nigeria and therefore ordered the remand and extradition of the appellant to the United Kingdom to stand trial based on the purported request made by the representative of the government of United Kingdom (Encompassing Grounds I, 2, 7 and 8 of the Notice of Appeal).

2. Whether the honourable trial court was clothed with jurisdiction, in the absence of any enforceable extradition treaty between Nigeria and Great Britain, to have heard and determined the matter before it. (Encompassing Ground 41 of the Notice of Appeal).
3. Whether the trial court was right when it proceeded to hold that the appellant is a British Citizen, which was neither the case of the respondent nor an issue before the court, without giving the appellant the opportunity or respondent the opportunity to address the court. (Ground 5 of the Notice of Appeal),
4. Whether the honourable trial court was right, when it held that the appellant failed to lead any evidence in respect of the alleged offences for which he was sought to be extradited. (Ground 6 of the Notice of Appeal.)”

Four issues were also framed by the respondent in his brief filed on 17/08/2015.

The issues identified by the respondent are:

- “(i) Whether there is a valid Extradition Treaty between the United States of America and the United Kingdom recognized and enforceable in Nigeria to warrant the grant by the learned trial court of the respondent’s application for the extradition of the appellant to face criminal charges in the United Kingdom.
- (ii) Whether the learned trial court is vested with jurisdiction to entertain the extradition application based on the Extradition Treaty between the United States of America and the United Kingdom made applicable to Nigeria.
- (iii) Whether the appellant citizenship status is a condition precedent under the Extradition Act and whether he was given fair hearing on the issue by the learned trial judge.
- (iv) Whether the learned trial judge was right in holding that the appellant did not counter any of the numerous allegations in the depositions against him by the respondent before the trial court.”

Since the appellant's issues cover his relevant grounds of appeal, I adopt the issues as formulated by the learned senior counsel for the appellant, as the issues for determination in this appeal. The appellant has not distilled any issue from ground 3 of his notice of appeal, that ground is deemed abandoned and it is hereby struck out.

ISSUE NO 1

It was contended by the appellant that the respondent had the burden of proof to establish the fact of existence of an Extradition Treaty between Nigeria and the United Kingdom and if such Extradition Treaty had been domesticated in accordance with the provisions of section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

It was submitted that the respondent woefully failed to lead evidence of the existence of an Extradition Treaty between Nigeria and the United Kingdom and that any such treaty had been domesticated in accordance with section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It was further contended by the appellant that:

“the Extradition Treaty between the United States of America and Great Britain signed on 22nd December 1931 heavily relied upon by the respondent at the trial, is not an existing law in Nigeria by virtue of section 315 (1)(a) and (4) of the Constitution of the Federal Republic of Nigeria, 1999; and was not made applicable to Nigeria by any legal notice or instrument dated June 24th 1935 or any other date, known to law.

The said Extradition Treaty of 1931 between the United State of America and Great Britain was a bilateral agreement between the two countries specially mentioned and who were signatories thereto. There was nothing in the said Treaty that suggested by any inference, that Nigeria was a party to the said Treaty.

The only reference to Nigeria in the said Extradition Treaty between the United States of America and Great Britain, was where the Nigerian Protectorate was mentioned, for the purpose of construing the area to be designated as the territory of Great Britain from which persons could be extradited upon a request by the United States of America by Great Britain to the United States of America.

There was nothing in the Treaty that created any obligation on the Nigerian government to extradite a person to the United Kingdom from Nigeria to stand trial in the United Kingdom or Great Britain.

Article 15 and 16 of the said Extradition Treaty of 1931 clearly provide that it is only the United States of America that could make requests for the extradition of persons from colonies under Great Britain.

By Decree No. 87 of 1966 (which is now the Extradition Act) which came into force on 31st January, 1967 vide Legal Notice No. 28 of 1967, all pre-1966 Extradition Acts and Treaties hitherto applicable to Nigeria were repealed. Section 21 (3) of the said Decree (now Act) listed the repealed statutes received from Great Britain.”

The appellant submitted that the parties to the Extradition Treaty of 1931, relied upon by the respondent, are the United States of America and Great Britain. Relying on the case of *Attorney-General, Federation v. A.I.C. Limited* (2000) 10 NWLR (PT. 675) 293, the appellant argued that the content of a contract could only be enforced by or against a party thereto.

The learned senior counsel, representing the appellant, argued that there was no Extradition Treaty between Nigeria and Great Britain or the United Kingdom before or, after Nigeria’s Independence and which had been domesticated in accordance with section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). While urging the court to resolve this issue in favour of the appellant, Dr. Alex Izinyon (SAN), learned senior counsel for the appellant submitted that “there was no Extradition Treaty that had the force of law that subsisted between Nigeria and United Kingdom or Great Britain at the time the suit was filed before the trial court and the time the trial court ordered the remand of the appellant in prison custody for the purpose of his extradition to United Kingdom.”

In response, learned counsel for the respondent submitted that “the Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1933 and made applicable to Nigeria on June 24, 1935 is a legal instrument and existing law under section 315 (4)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and is deemed to be an Act of the National Assembly under section 315(1)(a) ... and

does not require the parameters of conditions stipulated in section 12 of the 1999 Constitution (as amended)”. On this point, learned counsel for the respondent referred the court to the cases of *JFS INV, Ltd. v. Brawal Line Ltd.* (2010) 18 NWLR (Pt.1225) 495 at 535; per Adekeye, JSC and *Abubakar v. B. O. & A. P. Ltd.* (2007) 18 NWLR (Pt. 1066) 319 at 384; per Ogbuagu, JSC.

Learned counsel for the respondent contended that the Extradition Treaty of 1931 was not repealed by the provisions of section 21 (3) of Decree No. 87 of 1966, which is now the Extradition Act, 2004. He finally submitted that “the applicability of the 1931 Treaty ... is not only limited to the extradition of persons to the United States of America alone but to all countries mentioned in Articles 15 and 16 and the United Kingdom as they are party to the Treaty.”

In plain language, extradition means “the official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged, the return of a fugitive from justice, regardless of consent, by the authorities where the fugitive is found”. See *Black’s Law Dictionary*, Deluxe Edition, page 665. Treaty, under the other side, means “an agreement formally signed, ratified, or adhered to between two nations or sovereigns: an international agreement concluded between two or more states in written form and governed by international law” – *Black’s Law Dictionary*, Deluxe Ninth Edition, page 1640. In the case of *General Sani Abacha & 3 Ors. v. Chief Gani Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 at 340, per Uwaifo, JSC, the Supreme Court, on the meaning of Treaty, stated as follows:

“First, let me say that the definition of a treaty by learned counsel for the appellants as a mere contract as understood under contract law is too limited in content and is bound to mislead as to the import and purport of a treaty. I think it is useful to remember that the relevant law on the matter is now generally governed by the Vienna Conference on the Law of Treaties. According to the convention “treaty” means an international agreement or by whatever name called, e.g. Act, charter, concordant, convention, declaration, protocol or statute, concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation:

see Halsbury's Laws of England 4th, edn. Vol. 81 para. 1769 and 1769n8, page 918." (emphasis mine)

The question which arises from the arguments of the contending parties, weeded of their academic embellishments and niceties, is whether the Extradition Treaty between the United States of America and Great Britain, concluded and signed at London on December 22, 1931 is a treaty by which the Federal Republic of Nigeria, acting through the respondent (Attorney-General of the Federation) can validly extradite the appellant to the United Kingdom.

In its judgment, the trial court held, *inferred alia*, that:

"... the Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1931 and made applicable for Nigeria by a legal instrument on June 24, 1935 is an existing law by virtue of the provision or Section 315(4)(B). I hold that there is an Extradition Treaty between Great Britain and Nigeria and conversely it does not require further domestication."

I agree with the views of the trial court that by the Extradition Treaty (United States of America) Order 1967, the Extradition Treaty concluded between the United States of America and Great Britain and signed at London on the 22nd day of December, 1931 has been recognized as binding on Nigeria. See Legal Notice 33 of 1967. Therefore, by virtue of the provisions of section 315 subsection (1)(a) and (4)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Extradition Treaty between the United States of America and Great Britain concluded and signed at London on December 22, 1931, subject to the modifications set out in the Extradition (United States of America) Order 1967, is an existing Act and does not require any domestication under section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

In the case of *Alhaji Madi Mohammed Abubakar v. Bebeji Oil and Allied Products Ltd. & 2 Ors*, (2007) 18 NWLR (pt. 1066) 319 at 384; per Ogbuagu, JSC; the Supreme Court held that The Public Officers and Other Persons (Forfeiture of Assets) Order No.7 of 1977 —qualifies as an existing law by virtue of section 274(4)(b) of the Constitution of the Federal Republic of Nigeria, 1979 which provisions are *in pari materia* with section 315(4)(b) of

the Constitution of Federal Republic of Nigeria, 1999 (as amended). Therefore, the Extradition (United States of America) Order, 1967 qualifies as an existing law under section 315(4)(b) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) and no further action by the National Assembly is required to make the Extradition Treaty between the United States of America and Great Britain, 1931 have the force of law in Nigeria.

Dr. Alex Izinyon (SAN) contended in paragraph 10.29 at page 10 of his brief that:

“the Extradition Treaty of 22nd December, 1931 between the United States of America and Great Britain did not in any of its paragraphs give powers to Great Britain or the United Kingdom to seek the Extradition of any person from Nigeria to Great Britain or United Kingdom.”

I agree with this submission of the learned senior counsel for the appellant. The Extradition Treaty between the United States of America and Great Britain 1931, recognized as binding on Nigeria subject to the modifications specified in the Extradition (United States of America) Order 1967 has no provisions for extradition of persons from Nigeria to the United Kingdom. It has provisions for extradition to the United States of America only.

Under the ‘Clean State Theory’, a treaty cannot impose obligations upon a third state. This theory postulates that a new state enters international life as a new born child, with no commitments and a total freedom to choose. It also states that nationality changes with sovereignty. A state cannot also take the benefit of a treaty between her parent state and another state. Conversely, a parent State (like the United Kingdom) cannot take the benefit of a treaty between her child-state (like Nigeria) and another state.

All that I am saying here is that the Extradition Treaty between the United States of America and Great Britain 1931, although recognized and enforceable in Nigeria, cannot be the legal basis for extradition of the appellant from Nigeria to the United Kingdom.

Notwithstanding the fact that the 1931 Extradition Treaty cannot be the basis for extraditing the appellant to the United Kingdom, the request of representatives of the government of United Kingdom, cannot be set aside, if there are other legal bases for it.

It is for the foregoing reasons that I hereby resolve Issue No. 1 against the appellant.

ISSUE NO. 2

Learned senior counsel for the appellant referred to (a) the Extradition Treaty between the United States of America and Great Britain, signed on 22nd December, 1931 and (b) London Scheme for Extradition within the Commonwealth (incorporating the amendment at Kingston in November, 2002) and submitted that:

“Both documents relied upon by the respondent at the trial court are not treaties between Nigeria and the United Kingdom, the country that had requested the extradition of the appellant. Also assuming, though not conceded that the said two documents mentioned in the originating application were Extradition Treaties between Nigeria and United Kingdom. We submit that there was nothing in the originating application before the trial country that established that both treaties had been ratified or domesticated by our Act of the National Assembly as required by section 12 of the 1999 Constitution of the Federal Republic of Nigeria.

We submit therefore that there was no legal framework upon which the trial court could exercise jurisdiction relying on the said Extradition Treaty of 1931 between the United States of America and Great Britain; and the London Scheme for Extradition within the Commonwealth, 2002. The trial court with respect, donated to itself the jurisdiction when none was conferred on it by law.”

On behalf of the respondent, learned counsel stated as follows: -

“On the London Scheme for Extradition within the Commonwealth it is our submission that a country that seeks to domesticate an International Convention or Treaty can do so adopting any of the following ways:

- (i) Incorporate the substance of such Conventions in the Supreme law of the country (that is, the Constitution).
- (ii) Adapt a national law incorporating the content of the Convention or even its entire text specifying that the law is enforceable by the local courts.

- (iii) Adopt additional implementing measures by enacting new legislation or by amending an existing legislation.
- (iv) Adopt policies and regulating initiatives that ensure that many provisions of the Convention to be domesticated are implemented.

Learned counsel further argued that the London Scheme for Extradition within the Commonwealth is a component part of the Extradition Act, 2004. Learned counsel contended that Clauses 1, 2, 3, 4- and 5 of London Scheme of Extradition within the Commonwealth are domesticated. He then stated that:

“Clause 1 of the London Scheme for Extradition which is in *pari materia* with section 2 of the Extradition Act, Cap E25, LFN 2004, Clouse 2(2) of the London Scheme for Extradition is the same with Section 20(2) of the Extradition Act, 2004 Clause 3 of the London Scheme for Extradition is in *pari materia* with Section 17(1) (a) of the Extradition Act 2004 which governs the issuance of warrant of arrest.”

I have already held, under Issue No.1, that the Extradition Treaty between the United States of America and Great Britain, 1931 has the force of law in Nigeria by virtue of the provisions of Extradition (United States of America) Order, 1967. I need not say more on this point.

I have examined the London Scheme for Extradition within the Commonwealth *vis-a-vis* the provisions of the Extradition Act, Cap. E25, Laws of the Federation of Nigeria, 2004 and agree with the submissions of the learned counsel for the respondent that the relevant clauses in the said London Scheme for Extradition have been provided for in the Extradition Act, 2004. Compare, for example, Clauses 1, 2 and 3 of the London Scheme for Extradition with sections 1, 2 and 17 of the Extradition Act, 2004.

It is a matter within common knowledge, and of which the court takes judicial notice, - that Nigeria is a Commonwealth country. Commonwealth means the “organization consisting of the United Kingdom and most of the countries that used to be part of the British Empire”. See Oxford Advanced Learner’s Dictionary, page 291.

The law is quite settled that a court of law should not indulge in interpretation of statutes which will lead to breach of international obligations. See the cases of *Chevey v. Conn Airways* (1968) 1 All E.R. 779; *Corocraft Ltd. v. Pan-American Airways* (1969) 1 Q. B. 616 and *Macarthys Ltd. v. Smith* (1997) 3 All E.R. 325 cited by Sebastine Tar. Hon. (SAN) in his book: *Constitutional Law and Jurisprudence in Nigeria*, page 58.

To be brief, Nigeria has an obligation, under the London Scheme for Extradition within the Commonwealth to extradite a person sought in respect of an extradition offence to another Commonwealth country. This provision is substantially supported by the provisions of sections 1 and 2 of the Extradition Act, 2004. The lower court was right to have acted the way it did so as to avoid a situation whereby Nigeria could breach its obligations to threshold Commonwealth country, the United Kingdom.

The provisions of the London Scheme for Extradition within the Commonwealth have been substantially enacted into law by the Extradition Act, 2004 and they have the force of law in Nigeria.

I hereby resolve Issue No. 2 in favour of the respondent and against the appellant

ISSUE NO. 3

The appellant's complaint here is that the trial court wrongly raised the issue of his British Citizenship *suo motu* and resolved same without affording him the opportunity of being heard on it. Learned senior counsel contended on behalf of the appellant "the finding of the trial court that the appellant was a British Citizen which it raised *suo motu* was one of the reasons the trial court relied upon in ordering the extradition of the appellant to United Kingdom."

The learned counsel for the respondent, however, contended that the finding of the trial court was supported by the evidence before it. On this point, he referred specifically to paragraph 6 of the respondent's counter affidavit at page 429 of the record. Learned counsel argued that the appellant's British Citizenship not being a requirement under the Extradition Act, 2004 did not influence the trial court in its decision.

The decision of the trial court, complained of by the appellant, is at page 844 where the court stated, *inter alia* that:

“Let me state that outside having satisfied the documentary evidence it is worthy of note that the respondent is a British Citizen from Exhibits CA U 2.11.”

I have examined the record of proceedings in the lower court and I agree with the submission of learned senior counsel for the appellant that the lower court raised and resolved the issue of the appellant’s British Citizenship *suo motu* without affording the parties, especially the appellant, the opportunity of being heard on the issue.

The law is that it is wrong for a court to raise an issue, especially of fact, *suo motu* and decide upon it without giving the parties, particularly the party likely to be adversely affected by the issue, an opportunity to be heard. See Hon. Polycarp Effiom & 3 Ors. v. Cross River State Independent Electoral Commission & Anor (2010) 14 NWLR (Pt. 1213) 106.

Issue NO.3 is hereby resolved in favour of the appellant against the respondent.

ISSUE NO. 4

The learned senior counsel for the appellant referred to the statement of the learned trial judge, at page 45 of the record, that the appellant did not counter any of the numerous allegations against him and that “he has no defence to this application as he did not make any faint attempt to counter the applicant’s depositions”. Learned senior counsel then argued that:

“The matter before the trial court was not one for which the appellant was required to answer to the numerous criminal allegations against him. The nature of the proceedings before the trial court was such that the burden was on the respondent. The respondent was not on trial and was not required by law to prove his innocence of the alleged offences.

Besides, there was no burden on the appellant to prove any fact at the trial as the respondent did not offer any credible evidence, hence the burden did not pass to the appellant.”

In support of the second limb of his submissions, learned senior counsel referred the court to the case of Dr. Maurice A. Ebong v. Francis S. Ikpe (2002) 17 NWLR (Pt. 797) 504.

Learned counsel for the respondent disagreed with the appellant's submissions on this issue. Learned counsel for the respondent merely stated that the appellant did not counter the depositions in support of tile application and never held that the appellant failed to lead any evidence in respect of the offences for which he was sought to be extradited.

In his judgment, the learned trial judge stated at pages 844 - 845 of the record of appeal, *inter alia*, as follows:

“As I had earlier said I will only look and scrutinize what the applicant had placed before me and what are the defences of the respondent. The defences of the defendant can be summed thus that there is no Extradition Treaty between Great Britain and Nigeria as contained in the counter affidavit. Secondly, that Nigeria is not a party to the 1931 Treaty.

Thirdly, that the London Scheme for Extradition within the Commonwealth 2002 does not apply in Nigeria.

Furthermore, that Nigeria has not domesticated the two Treaties. Fifthly, that Nigeria is not a signatory to the said treaty. That the Attorney General of the Federation lacks the locus standi to bring the present suit against tile respondent. The court lacks the jurisdiction to entertain the suit. That the respondent is not aware of any pending suit against him in the United Kingdom and he did not commit any of the offences listed in the affidavit in support of this application.

What I have labored to recast is the respondent's defences to see if he has countered any of the numerous allegations against him. Put succinctly, has he shown any defence required by law as to refuse this application. My obvious answer will be in the negative as all his technical defences are all the same as the one raised in the preliminary objection which I had earlier on dismissed.”

As can be seen from the decision of the lower court, reproduced above, the learned trial judge did not place any burden on the appellant to disprove the allegations in the offences for which the extradition order was sought. The learned trial judge merely assessed the defences put - forward by the appellant why the application for extradition should not be granted. The learned trial judge, in my humble view, rightly held that the respondent made out

a case why the application should be granted, while the appellant failed by his defences to convince the court why the application should be refused.

I resolve this issue in favour of the respondent against the appellant.

CONCLUSION

The resolution of Issue No. 3 in favour of the appellant would not affect the final outcome of this appeal. This is so because the appellant has not shown how the failure to hear him on the point raised *suo motu* on the issue of whether or not he is a British Citizen has occasioned any miscarriage of justice. The law is that to warrant an appellate court's reversal of a lower court decision, the appellant must show that the failure to hear him on the point raised and resolved *suo motu* occasioned a miscarriage of justice. See *Popoola Olubode & 2 Ors. v. Alhaji Akinola Salami* (1985) 2 NWLR (Pt. 7) 282.

In this case, whether or not the appellant is a British Citizen did not affect the merits of the application for an order for his extradition, which the trial court rightly found to be meritorious based on the facts supplied by the applicant (respondent in this court).

Since the threshold issues in this appeal have been resolved against the appellant, this appeal ought to be dismissed. Accordingly, this appeal is hereby dismissed.

I affirm the decision of the trial court.

MOORE A. A. ADUMEIN

JUSTICE, COURT OF APPEAL

COUNSEL

Dr. Alex Izinyon (SAN) with C. S. Ekeocha, Esq; E. Oghojafor, Esq and Miss C. U. Adah for the appellant.

Pius Ukeyima Akutah, Esq. (Assistant Chief State Counsel, Federal Ministry of Justice) with Abdallah Mohammed, Esq. for the respondent,

CA/A/260/2015

JUDGEMENT

(DELIVERED BY ABDU ABOKI, PJCA)

I have had the privilege of reading in advance the draft judgment of my learned brother, Moore A.A. Adumein, JCA

A careful examination of the appellant's brief of argument will show that the appellant has not distilled any issue from ground 3 of his notice appeal. It is trite law that where no issue for determination is formulated from a particular ground as in the instant appeal, that ground of appeal is deemed abandoned by the appellant and would be struck out. See the cases of;

BHOJSONS PLC VS. DANIEL-KALIO 2006 5 NWLR PT.973 330 SC;
BAYERO VS MAINASARA & SONS LTD 2006 8 NWLR PT. 982 391 CA.

As rightly observed in the lead judgment international law allows the state in which a suspected criminal has sought refuge to extradite him by surrendering him to the state which has jurisdiction to try him. However, where there is the absence of treaty between the states concerned, there is no duty under the international law to extradite. For an agreement to qualify as treaty the agreement must satisfy the following criteria: it should be a written instrument or instruments between two or more parties; the parties must be endowed with international personality; it must be governed by international law; and it should be intended to create legal obligation. It is my view that the Extradition Treaty concluded between United States of America and Great Britain and signed at London, on 22nd December, 1931 which is also recognized and applicable to Nigeria qualify as treaty. See S.2 (1) of the Extradition (United States of America) Order 1967 particularly Schedule 2 thereof. I entirely agree with the reasoning and conclusion reached therein that the appeal should be dismissed. I also abide by the consequential orders made in the lead judgment.

ABDU ABOKI
JUSTICE OF THE COURT OF APPEAL

APPEAL NO: CA/A/260/2015

MOHAMMED MUSTAPHA, JCA

I had the opportunity of reading in draft form the judgement of my learned brother, A.A. Adumein, JCA

I entirely agree with the reasons and the conclusion reached therein. Having resolved the threshold issues, in this appeal against the appellant, this appeal deserve to fail, same is accordingly dismissed by me.

The judgment of the trial court is hereby affirmed.

MOHAMMED MUSTAPHA
JUSTICE, COURT OF APPEAL

CASE 2

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL HEADQUARTERS
HOLDEN AT ABUJA
ON MONDAY THE 4TH DAY OF MAY, 2015**

**BEFORE HIS LORDSHIP
HONOURABLE JUDGE E. S. CHUKWU - JUDGE**

SUIT NO. FHC/ABJ/CS/670/2014

**IN THE MATTER OF THE EXTRADITION ACT (CAP E25) LAWS
OF THE FEDERATION OF NIGERIA 2004 SECOND SCHEDULE:
FORM 1**

AND

**IN THE MATTER OF EXTRADITION OF EMMANUEL
EHIDIAMHEN OKOYOMON**

BETWEEN:

ATTORNEY GENERAL OF THE FEDERATION APPLICANT

AND

EMMANUEL EHIDIAMHEN OKOYOMON.....RESPONDENT

TREATY

The Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1931 and made applicable to Nigeria by a legal instrument on June 24, 1935 is an existing law by virtue of Section 315(4) (b) of 1999 Constitution,

INTERPRETATION OF STATUTE

Interpretation of section 9(3) of the Extradition Act on the preconditions for the grant of an extradition order,

JUDGEMENT

In this Extradition Process brought pursuant to the Extradition Act CAP E25, Laws of the Federation of Nigeria 2004, the Attorney-General of the Federation and Minister of Justice, Mohammed Bello Adoke (SAN) on the 22nd day of September, 2014 by an Order under his hand signified to this Honourable Court that a request was made to him by a Diplomatic Representative of the British High Commission in Abuja, for the surrender of Emmanuel Ehidiamhen Okoyomon who has been indicted in offence in Counts 1 - 7 of (INDICTMENT COUNT 2, 4, 6, 10, 12 & 13 of corruption, contrary to Section 1 of prevention of Corruption Act 1906, Laws of England with the jurisdiction of the U.K. of Great Britain and Northern Ireland with Arrest Warrant issued under the hand of Nicholas Evans District Judge of West Minister Magistrate Court, England on 28th day of May 2014.

In support of the application is an affidavit of 16 paragraphs deposed to by Akujah Musukeiyema, Principal State Counsel, Central Authority Unit (International Corporation) Federal Ministry of Justice; Abuja with the following attachments.

- i. A certified copy of index of depositions signed and deposed to by witnesses and sworn to before the district judges: Paul Goldspring and Nina Tampia at several dates, at the West Minister Magistrates Court and endorsed by the two judges with seal of the same Court on 2nd and 3rd of June 2014.
- ii. Certified copy of Arrest Warrant issued under the hand of Nicholas Evans, District Judge of West Minister Magistrate Court, England on the 28th day of May 2014, certified and signed by Julian Gibbs of Extradition Section of the Home Office on the 30th day of June, 2014.
- iii. Certified true copies of exhibits referred to in the said depositions sworn before the District Judges Paul Goldspring and Nina Tampia at several dates, at the West Minister Magistrates Court and endorsed by the two judges with seal of the same Court on 2nd and 3rd of June 2014.
- iv. Further certification of all the documents authenticated herein above are under the seal of the Secretary of State and are in support of the request for surrender of Emmanuel Ehidiamhen Okoyomon

signed by Julian Gibbs of the Extradition Section} Home Office,
United Kingdom on the 30th June, 2014.

- v. A letter dated 16th July, 2014 under the hand of the British High Commissioner; Andrew Pocock forwarding the Extradition request sought under the provision of the London Scheme for extradition within the Commonwealth.
- vi. A letter dated 16th July, 2014 under the hand of Anna Tamba, Executive Officer, Home Office extradition Section, Judicial Co-operation, UNITED KINGDOM CENTRAL AUTHORITY forwarding further documents confirming that the request for the extradition of Emmanuel Ehidiemhen Okoyoron is made pursuant to the Extradition Treaty between the United States of America and Great Britain, signed at London on 22 December, 1931 and recognized as binding on the Federal Republic of Nigeria, as well as under the provisions of the London Scheme for Extradition within the Commonwealth with Ref. No. B & C (B1 IN801/RF/D/VY dated 15th July 2014 and signed by Rosemary Fernandes of Serious Fraud Office (SFO) United Kingdom.
- vii. All the copies of these documents referred in the preceding paragraphs i - vi where generally marked as Exhibit A.

The Applicant served the Respondents with all these documents in support of the application, upon the Respondent filing a counter affidavit on 10/10/2014, of 17 paragraphs deposed to by Josephine Majebi. Attached to the counter affidavit are Exhibits marked as Exhibits A and B respectively.

The Applicants upon the receipt of these counter affidavit and the exhibits filed on 21/10/2014 what they termed Reply Affidavit to the Respondent's counter affidavit dated October, 2014. The said reply affidavit is of 23 paragraphs and it was deposed to by Nana Abdulkadir Madibbo. The said reply affidavit was accompanied with a Written Address in compliance with the extant provisions of our law.

The Respondents outside filing counter affidavit also filed a Notice of Preliminary Objection challenging the jurisdiction of this Court. Though I had ordered the consolidation of all applications, together with the Originating

Summons, prudence will require that this Court will determine the issue of jurisdiction one way or the other before proceeding to the substantive suit

The Respondent/ Applicant by a Motion on Notice dated 7th October and filed on 10/10/2014 is seeking in the main one relief to wit:

1. AN ORDER of this Honourable Court dismissing/striking out this Suit for want of jurisdiction.

There are 7 grounds upon which the application is predicated to wit:

1. The applicant lacks the locus standi to initiate this suit against the Respondent.
2. There is no cause of action disclosed by this Suit.
3. The Suit of the Plaintiff is purportedly predicated on two purported treaties that is:
 - (a) The 1931 Extradition Treaty between the United States to America and Great Britain, and
 - (b) The London Scheme for Extradition within the Commonwealth, 2002; both of which are unenforceable and inapplicable in Nigeria; and cannot be enforced by this Honourable Court.
4. Section 1(1) - (6) of the Extradition Act has not been satisfied with respect to United Kingdom.
5. The condition precedent to the bringing of this action has not been fulfilled.
6. There is no Act of the National Assembly domesticating or making the said two Treaties applicable to Nigeria.
7. This Honourable Court lacks the jurisdiction to entertain this Suit.

The application is supported by an affidavit of 19 paragraphs deposed to by Josephine Majebi. Attached to the affidavit are two Exhibits marked as Exhibit A and B respectively.

In compliance with the rules there is a written address accompanying the said application.

Let me recapitulate and state that the most potent averments in the affidavit are as contained in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the said affidavit. The Learned Counsel in arguing the Motion raises 3 issues for determination which he argued together. The issues for determination are hereunder reproduced verbatim for ease of reference to wit-

1. Whether the Applicant/Respondent has the locus standi, in the absence of any Act of the National Assembly in that regard, domesticating any Extradition Treaty between Great Britain and Nigeria to bring this action.
2. Whether there is a cause of action disclosed by the Suit of the Applicant.
3. Whether in the absence of an Act of National Assembly domesticating the London Scheme for Extradition within the Commonwealth, 2002 and the 1931 Extradition Treaty between the United States of America and Great Britain, this Honourable Court has jurisdiction to entertain this Suit premised on the said two Treaties in violation of Section 12(1) and (3) of the 1999 Constitution.

Learned Counsel urged the Court that he will argue the issues together as they are interwoven.

It was urged on the Court to hold that it lacks the jurisdiction to entertain the Suit. Counsel submitted forcefully that the grounds of the Respondent/Applicant's objection are interwoven and premised on the breach of Section 12(1) and (3) of the 1999 Constitution of the Federal Republic of Nigeria. That this Applicant lacks the locus standi to bring the action. Counsel In the definition of locus standi cited and relied on the cases of THOMAS VS OLUFOSOYE (1986) 1 NWLR (PT 18} 669 at 655, UBA PLC VS BTL IND LTD (2006) 17 NWLR (PT 1013) 11 at 127 and GOVT KOGI STATE VS ADAVI LGA (2005) 16 NWLR (PT 951) 327 at 336 – 337.

Learned Counsel submitted that for the Applicant/Respondent to be clothed with locus standi, there must be enabling legislation enacted by the National Assembly.

It was submitted further by Counsel that the Extradition Act CAP E 25 LFN 2004 regulates the Extradition of persons from Nigeria, but that it is not of general application, as it relates only to countries to which Section of the Act applies. In other words, the conditions spelt out in Section 1 of the Extradition Act must be satisfied before any provision of the Act can apply to such Country that has Extradition Treaty with Nigeria,

Learned Counsel quoted *in extenso* the provisions of the Act 1 to 6, Learned Counsel submitted forcefully that for the provisions of the Act reproduced above to apply 3 conditions must co-exist i.e. there must be Extradition Treaty between the two countries.

- (b) There must be an Order of the President directing that the provision should apply.
- (c) That the name of the United Kingdom or any such country year of the President Order and the number of the Legal Notice which shall be inserted in the First Schedule to the Extradition Act CAP E 25LFN 2004.

Learned Counsel submitted that none of the conditions had been fulfilled and this fact they had deposed to in the affidavit. Counsel urged the Court to hold that the countries listed in the Schedule of the Act are Liberia, The United States of America and South Africa. Counsel urged the Court to hold that where a Statute lays down a procedure or method for doing anything, only that procedure or method shall be used for doing that particular thing and the case of AMECHI VS INEC (2008) 5 NWLR (PT 1080) 227 at 318 was relied upon.

Counsel submitted further, whereas in this case there is no Extradition Treaty between Nigeria and the United Kingdom, and there has been no Order of the President of Nigeria published in any Federal Gazette applying the provisions of the Extradition Act, CAP E25, LFN 2004 this Court lacks the jurisdiction to entertain the present application the Extradition of the Respondent/Applicant.

In another breadth, Counsel submitted that in other for the case to be justiciable for the purpose of extradition such Extradition Treaty must pass

the test laid down in Section 12(1) of the Constitution of the Federal Republic of Nigeria which Counsel reproduced *in extenso*. Counsel submitted further that there has been no Act enacted by the National Assembly pursuant to Section 12(1) and (3) of the 1999 Constitution by which the said treaties relied upon by the Applicant can confer locus standi on the Applicant/Respondent to approach this Court to seek the relief he is seeking.

It was submitted further that the Courts jurisdiction cannot be activated on the basis of a Treaty that does not conform with the provision of the Constitution and this Court lacks the jurisdiction to entertain this suit.

On the intendment of Section 12 of the 1999 Constitution. Counsel placed reliance on the cases of ABACHA VS FAWEHINMI (2000) 6 NWLR (PT 660) 228 at 288; THE REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA & ORS VS MEDICAL AND HEALTH WORKERS UNION OF NIGERIAS (2P08) 2 NWLR (PT 1072) 575 at 623.

It was submitted also that for the applicant to have locus to take benefit of the provisions of Section 6 (1) - (3) of the Extradition Act, CAP E 25 LFN 2004, There must be a specific Act of the National Assembly enacting the treaties upon which the present Extradition application is predicated into law.

Counsel in another breadth urged the Court to hold that the Court is in competent to entertain the suit as the condition precedent to the exercise of the Court's jurisdiction had not been fulfilled and placed reliance on the case of MADUKOLU & ORS VS NKEMDILIM (1962) ALL NLR (PT 2) 58 at 589-590.

Learned Senior Counsel submitted forcefully that the present Suit has not been initiated by due process of law as there is no legal framework upon which the Extradition of the Respondent/ Applicant is predicated, S. 12(1) of the 1999 Constitution ousts the jurisdiction of the Courts to entertain any matter predicated on an International Treaty unless the National Assembly had passed an Act permitting the Courts to enforce the International Treaty by adapting same, See MUSTAPHA VS GOVERNOR OF LAGOS STATE & ORS (1987) 1 NSCC 632 at 636.

It was further submitted by Counsel that Nigeria was not a party to the 1931 Extradition Treaty and it is only parties to a contract that can take benefit from it. Reliance was placed on the case of *AG FEDERATION VS ALE LTD.* (2000) 10 NWLR (PT 675) 293 at 306.

In effect Nigeria not being a party to the said treaty between the United States of America and Great Britain it cannot be enforced by this Court. It was further echoed by Counsel that where a Statute prescribes a method of doing a thing only that method and no other shall be used in doing that thing. Reliance was placed on the case of *MENAKAYA VS DR. MANAKAYA* (2001) 16 NWLR (PT 738) 203 at 252.

A breach of a mandatory constitutional provision is more than a mere technicality and it touches on the legality of the whole proceedings including judgement. *EDIBO VS STATE* (2007) 13 NWLR (PT 1051) 306 at 336.

Learned Counsel submitted further that the Applicant's case did not disclose a cause of action. As there is no law that recognizes the facts deposed to reliefs against the Respondent/Applicant. Counsel urged the Court to take judicial notice of all Acts of the National Assembly and placed further reliance on Section 122 of the Evidence Act. Counsel finally urged the Court to dismiss the Extradition application as it is unconstitutional and did not comply with the extant provisions of Section 12 (1) of the 1999 Constitution as amended.

Counsel finally urged the Court to sustain the preliminary objection and dismiss the Extradition case against the Respondent Applicant.

The Applicant/Respondent filed a counter affidavit on 17/10/2014 to the preliminary objection of the Respondent/Applicant. Premised on this fact the Respondent/ Applicant on 21/10/2014 filed further affidavit of 17 paragraphs and a written reply on points of law.

The said further affidavit was deposed to by Lukman Fagbemi. The potent averments in the further affidavit are as contained in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 respectively, Learned Counsel in his reply on points of law submitted thus —By what imperial instrument or Act was the: said Treaty

made applicable to Nigeria and requiring Nigeria to extradite persons to the United Kingdom for criminal trial, instead of the United States of America.

Learned Counsel answered this poser in the negative as there is no imperial instrument or act that creates any obligation on. Nigeria to extradite the Respondent. Counsel again urged the Court not to speculate and cited in support *OBASI BROTHERS MERCHANT COMPANY LTD VS. MERCHANT BANK OF AFRICA SECURITIES LTD* (2005) ALL FWLR (PT 261) at 234. Secondly, that the Counsel has not shown that such instrument or act was not part of the instruments and acts repealed by Sections 20 and 21 of the Extradition Decree No 87, 1966 as listed in Schedule 4.

In another breadth, Counsel submitted forcefully that Decree No. 87 of 1966 presently the Extradition Act, CAP E 25, 2004 repealed all former Extradition laws made by or applicable to Nigeria prior to 31st January, 1967 when it came into force. Counsel placed reliance on Sections 20(1) (a) and (b), 21(3) of the 1966 Extradition Decree and the preamble to Act CAP E 25 LFN 2004,

It was urged on the Court to hold that the laws having been repealed were no longer existing laws by virtue of the provisions of Sections 274 (1) & 277 of the 1979 Constitution and Sections 315 (1) (a) and 4 (b) of the 1999 Constitution since the said Sections of the constitution are intended to save existing laws and not repealed laws. Counsel urged the Court to hold that the Extradition Treaty between the United States of America and Great Britain was not saved as an existing Treaty by virtue of Section 315(a) and 4 (b) to establish any reciprocal Extradition obligation between Nigeria and United Kingdom.

In another breadth, Counsel articulated firmly the ground of his objection to be that there is an absence of any reciprocal Extradition Treaty between the requesting country United Kingdom and Nigeria.

It was further urged on the Court to hold that the two Treaties relied upon by the Applicant/Respondent are unknown to Nigeria laws and thus this Court lacks the jurisdiction to entertain this Suit.

Similarly, that Section 2(1) of the Extradition Act does not avail the Applicant/Respondent as he must show that Section 1(1) b of the Extradition

Act has been complied with before this Suit was filed and Counsel placed further reliance on Section 2(5) of the Extradition Act, CAP E 25 LFN, 2004.

Counsel submitted also that the London Scheme for Extradition within the Commonwealth, 2002 is a post 1979 and 1999 Treaty which by the admission of the Applicant/Respondent is incompetent for non-compliance with Section 12(1) of the 1999 Constitution and Section a 1(1) - (6) of the Extradition Act. Counsel on this note cited and relied on the case of JFS INV. LTD VS BRAWAL LINE LTD (*supra*),

Learned Senior Counsel submitted forcefully that the content of the London Scheme for Extradition within the Commonwealth 2002 could not have formed a competent part of an Act enacted 57 years before the Scheme was conceived and urged the Court to sustain their preliminary objection and dismiss this Suit.

The Applicant/Respondent filed a Counter Affidavit of 20 paragraphs deposed to by Nana Abdulkadir Modibo (Esq). The potent averments in the counter affidavit are as contained in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 respectively. The Leaned Counsel gave a resume of the Extradition application by the Honourable Attorney General and Minister of Justice for the Extradition of the Respondent/Applicant Counsel itemized the basis of the preliminary objection.

Learned Counsel distilled 3 issues for the determination of the preliminary objection to wit:

- (i) Whether the Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1931 and made applicable to Nigeria on June 24, 1935 is domesticated by an Act of the National Assembly under the provision of the 1999 Constitution as amended.
- (ii) Whether there is a reasonable cause of action disclosed by the Extradition proceedings instituted by the Applicant/Respondent in Suit No. FHC/ABJ/CS/670/2014.
- (iii) Whether this Honourable Court is vested with jurisdiction to entertain the Extradition application in view of the provisions of the Section 12(1) and (3) of the 1999 Constitution (as amended).

On issue one, Learned Counsel urged the Court to hold that the Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1931 made applicable to Nigeria on June 24, 1935 is a legal instrument and existing law under Section 315(4) of the 1999 Constitution and it is deemed to be an Act of the National Assembly under Section 315 (1) (a) of the Constitution and does not require the conditions stipulated in section 12(1) of the 1999 Constitution {as amended}. Learned Counsel quoted *in extenso* the provision of Section 315(1) (a) and (b) and 315 (4) (b) the 1999 Constitution to define existing laws which includes instrument.

Further reliance was placed on the case of JFS INV. LTD. VS. BRAVAL LTD. (2010) 18 NWLR (PT 1225) 495 at 535 to the effect that the 1924 Hague Convention being a pre-1960 Treaty/Convention and being an existing law in Nigeria at the time the 1979 Constitution came into force, is not affected by Section 12 (1) of the 1979 Constitution.

Counsel quoted Adekaye, JSC at pages 535 paras D-H ... “The Hague Rules 1924 formed part of our laws before independence and was relieved as our laws after independence. It does not require any further ratification as stipulated in Section 12 of the 1999 Constitution before it can be applicable.

In other words, The Hague Rules 1924, having assumed the force of law in Nigeria thereby an existing law must be deemed to be an Act of the National Assembly by virtue of Sections 274 (1) and 227 of the 1979 Constitution, Counsel relied further on the case of ABUBAKAR VS B.O. & AP LTD. (2007) 18 NWLR (PT 1066) 319 at 384 to urge the Court that the Extradition Treaty between Great Britain and Nigeria is an existing law that requires no domestication.

On issue 2, Learned Counsel submitted forcefully that there exists a cause of action known to Jaw against the Respondent/Applicant in the Extradition proceedings before this Court on the following grounds:

- i. The Attorney General received an Extradition request from the United Kingdom for the extradition of the Respondent/ Applicant who is being accused of offences in counts 1 - 7 of INDICTMENT COUNTS 2, 4, 6, 8, 10, 12 and 13 of Corruption, contrary to Section 1 of the Prevention of Corruption Act 1906 Laws of

England. See pages C1, C2, C4 and C7 - 11 of the Extradition application.

- ii. There is a warrant of arrest signed/Issued by a District Judge.
- iii. There is an Extradition request accompanied by authenticated documents in accordance with Section 6(1) of the Extradition Act the Attorney General of the Federation has powers by the provision of Section 174 of the Constitution and Section 6(1) of the Extradition Act to institute the proceedings.

Counsel placed reliance on pages 12 - 45 of the Extradition application which contained the investigation report on oath deposed to by Brenda Smithwhite before the West Minister Magistrate Court in accordance with the requirement of Section 17(1) a - c of the Extradition Act E 25 LFN 2004. Based on the aforesaid reasons, Learned Counsel urged this Court to hold that there is a reasonable cause of action against the Applicant/Respondent.

On issue 3) which is on the jurisdiction of this Court to entertain this Suit in view of the provisions of Section 12(1) and 3 of the 1999 Constitution. Counsel urged the Court to hold that it has the jurisdiction to entertain this Suit by virtue of Section 215 (1) (i) of the 1999 Constitution.

Secondly, that by the Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1931 made applicable to Nigeria on June 24, 1935 is a legal instrument and existing law under Section 315(4) (b) of the 1999 Constitution and it is deemed to be an Act of the NATIONAL ASSEMBLY under Section 315 (1) (a) of the 1999 Constitution which does not require the conditions stipulated in Section 12 of the 1999 Constitution as amended. Based on the aforesaid Counsel urged the Court to hold that the Court has the jurisdiction to entertain the Suit and that the requirements stipulated in the case of *MADUKOLU VS NKEMDILIM* (1962) ALL NLR (PT 11) 581 at 589 -590 are present in the Extradition proceedings and it was initiated by due process of law.

It was after this that Learned Counsel went into what he termed argument of the learned Senior Counsel which in substance was a repetition of his earlier argument just summed up.

COURT: In the determination of this preliminary objection, I will adopt as mine the issues as distilled by the Learned Counsel for the Applicant/Respondent which is in all fours with the 3 issues distilled by the Learned Senior Counsel for the Respondent/Applicant.

Save to add that a resolution of one of the issues can and will effectively determine the preliminary objection. Let me quickly add that in the argument of the preliminary objection, parties had inadvertently or surreptitiously gone into the merit or otherwise of the substantive case that any pronouncement on the preliminary objection will definitely determine the substantive Suit on the merit as there is nothing left in the gamut of the substantive case.

In effect, I will be circumspect to avoid repeating myself in the substantive suit or I just give my reasons now since everything is fought on affidavit evidence and adopt my reasoning in the preliminary objection as my judgment also in the substantive Suit.

Let me state the obvious that why the Learned Senior Counsel have bombarded the court with legal authorities that there is no existing Extradition Treaty between Nigeria and the United Kingdom which has been domesticated in accordance with the provisions of Section 12(1) of the 1999 Constitution as to make or cloth the Applicant/Respondent with the locus standi to pursue and prosecute this Extradition proceeding.

The Learned Counsel for the Applicant/Respondent had maintained forcefully that the December 22nd 1963 Treaty made applicable to Nigeria on June 24, 1935 by a legal instrument is an existing law by the provisions of Section 315 (1) (a) of the 1999 Constitution and may not be subjected to crucibles of Section 12.

In effect if am swayed that the Extradition Treaty of ever, date is an existing Law, automatically I will have nothing to add but state the obvious and correctly too that an existing law before the coming into force of the 1999 Constitution does not have to be domesticated again before the Courts will apply same. This is the purport of section 315(1) (a) and 315(4) of the 1999 Constitution and I so hold.

On this my proposition of the law I will place strict reliance on the case of *JFS INVESTMENT LTD VS BRAWAL LINE LTD* (2010) 18 NWLR (PT 1225) PAGE 495 at S35 per ADEKEYE, JSC.

“...The reason being that by October 1st 1960 at the Nigerian Independence, the Government of the Federation assumed all obligations and responsibilities of the Colonial Regime of the government which arose from valid International instrument such as the Rules, 1914. Nigeria became a party through exchange of letters between Hague, the United Kingdom and the Government of Nigeria on October 1, 1960.

The Hague Rules 1924 was extended to Nigeria as a legislation which formed part of our laws before independence. It does not require any further ratification as stipulated in Section 12 of the 1979 Constitution before it can be applicable. In other words, The Hague Rules (1924) having assumed the force of Law in Nigeria there by an existing law must be deemed to be an Act of the National Assembly by virtue of Sections 274 (1) and 277 of the 1979 Constitution.

In short, Abacha's and Higgs' cases cited are applicable to all post 1979 Treaties or conventions which would need to be enacted to become part of our municipal laws, but surely this is not applicable to pre 1960 Treaties and convention.”

With this unequivocal pronouncement of the law lord I can stop here by stating the obvious that there is nothing more to add, that is the immutable position of the law and am bound leg, head and toe to apply same.

In effect what I have to look for now is whether all the letters and dictates of the Extradition Treaty had been applied and followed to the hilt as the freedom of an innocent Nigerian is involved.

Let me state that having held that the Extradition Treaty between the United States of America and the United Kingdom dated December 22, 1931 and made applicable for Nigeria by a legal instrument on June 24, 1935 is an existing law by virtue of the provision of Section 315(4) (8), I resolve the 1st issue against the Respondent/Applicant and hold that there is an Extradition Treaty between Great Britain and Nigeria and conversely it does not require further domestication.

I do not have to be very loud in the second issue but hold that at least for now there seems to be vestiges of a cause of action/the success or otherwise I will determine in the Substantive Suit.

Having resolved issue one/ two and three in favour of the Applicant/Respondent I have no doubt in mind that the preliminary objection ought to fail and it is accordingly dismissed.

I make no order as to cost.

HON. JUSTICE E. S. CHUKWU
JUDGE
FEDERAL HIGH COURT
ABUJA
1/2/2015

Having dismissed the Preliminary Objection, I will proceed with the merit of this application.

This Court had in considering the Preliminary Objection dealt with some vital issues which were equally argued by the parties in the Preliminary Objection. The said Preliminary Objection is deemed as adopted in this substantive judgment. I will start from considering the Affidavit, Further Affidavit, Counter Affidavit and Further Counter Affidavit if any. Learned Counsel submitted forcefully that this application is brought pursuant to the Extradition Act, Cap E25 LFN 2004, that the Honourable Attorney General of the Federation, Minister of Justice, Mohammed Bello Adoki (SAN) on the 22nd September 2014 by an Order under his hand, signified to this Honourable Court that a request was made to him by a Diplomatic representative of the British High Commission in Abuja for the surrender of Emmanuel Ehidiomhen Okoyomon who has been accused of offences in counts 1 to 7 indictment count 2, 4, 6, 8, 10, 12 and 13 of Corruption. Contrary to Section 1 of the Prevention of Corruption Act 1906 Law of England. Learned Counsel itemised the punishment for the offence as contained in Section 1 of the Prevention of Corruption Act 1906.

Learned Counsel submitted that the offence for which the suspect is accused of is also an Extraditable Offence under Articles 3 (8) and (22) of the Extradition Treaty between the United States of America and Great Britain

signed at London, on 22nd December 1931 and recognized as binding on the Federal Republic of Nigeria as the legal basis of the present application to this Honourable Court. Learned Counsel also relied on Article 2 of the London Scheme for Extradition within the Commonwealth (Incorporating the Amendments agreed at Kingstown in November 2002) which is the other legal basis for the extradition request.

Learned counsel submitted that in support of the application the Attorney-General attached an affidavit with several exhibits which is attached to the extradition request. There is certification and further certification of all the documents authenticated herein under the seal of the Secretary of State and are in support of the request for the surrender of Emmanuel Ehidiomhen Okoyomon. The Applicant Counsel relied on the facts as itemized in the affidavit in support of the application. It was after this elaborate statement of facts that learned counsel distilled a lone issue for the determination of this suit to with:

“Whether the Applicant has placed enough evidence before the Honourable Court to justify all the preconditions for the grant of the order sought.”

The Learned Counsel defined a fugitive criminal as provided for in Section 21(1)(a) of the Extradition Act, Cap E25 LFN 2004. Learned Counsel submitted forcefully that in an application of this nature what the Applicant is required to prove is provided for in Section 17 (1)(a) & (b), 3 (a) and (b), 4 of the Extradition Act Cap E25 LFN 2004 to wit:

—In proceedings under this Act, any of the following documents if duly authenticated shall be received in evidence without further proof, namely:

- a. Any warrant issued in a country other than Nigeria.
 - b. Any deposition or statement on oath or affirmation taken in any such country or a copy of such deposition or statement.
- ii. The requirements of this subsection are as follows: -
- a. A warrant must be signed by a Judge, Magistrate or Officer of the country in which it was issued.
 - b. A document such as is mentioned in subsection (1)(b) of this Section must be certified under the hand of a Judge, Magistrate or Officer of the country in which it was taken to be the original or a copy, as the case may be of the document in question.

iii. For the purpose of this Act, Judicial notice shall be taken of the official, seals of Ministers of State of other countries other than Nigeria.

Learned Counsel submitted further that Sections 3, 5, 6 and 9 of the Act are also relevant for this application. It was also submitted that the Section provides for the procedure to be adopted by the Court.

Counsel submitted also that by Section 251(1)(i) the Federal High Court is vested with the jurisdiction to hear the Suit.

Counsel submitted that the requirements for extradition of a fugitive as provided in the referred Sections in extradition application can be grouped as follows to wit:

- a. That there is a request for the surrender of the fugitive.
- b. That the fugitive is accused of extradition offences in a Country other than Nigeria.
- c. That there is a warrant of arrest issued outside Nigeria authorising the arrest of the fugitive.
- d. That the warrant of arrest was issued in a country to which the Extradition Act apply.
- e. That the warrant of arrest is duly authenticated and same relate to the fugitive.
- f. That the offences which the fugitive is accused of are extraditable offences.
- g. That the evidences produced will according to the law in Nigeria, justify the committal of the fugitive for trial if the offences were committed in Nigeria: and
- h. That the surrender of the fugitive is not precluded by the provisions of the Extradition Act and in particular Section 3(1) - (7) of the Act.

Section 9(3) of the Extradition Act, Cap. E25, Laws of the Federation of Nigeria, 2004 in particular provides:

(3) "In the case of a fugitive criminal accused of an offence claimed to be an extradition offence, if there is produced to the Magistrate a warrant of arrest issued outside Nigeria authorizing the arrest of the fugitive and the magistrate is satisfied:

- a. that the warrant was issued in a country to which this Act applies, is duly authenticated, and relates to the prisoner.

- b. that the offence for which the fugitive is accused of is an extradition offence in relation to the country.
- c. That the evidence produced would according to the law of Nigeria, justify the committal of the prisoner for trial if the offence of which he is accused had been committed in Nigeria: and
- d. that the surrender of the fugitive is not precluded by this Act and in particular by any of subsections (1) - (6) of Section 3 thereof and where the country requesting the surrender of the fugitive is one to which this Act applies by virtue of an order under Section 1 of this Act, is also not prohibited by the terms of the extradition agreement as recited or embodied in the order.”

Learned counsel submitted that all the requirements have been complied with in this application as the applicant has placed all that is needed in evidence for the Court to grant the application.

Counsel submitted that Section 6 did not specify how the, surrender of a fugitive criminal should be done by the Attorney General and once he gets to know that he should take the right steps which he has done in the instant case.

In the instant case the Applicant got to know that he was a fugitive criminal needed in the United Kingdom via a letter under the hand of the British High Commissioner, Andrew Pocock who forwarded the extradition request. It was urged on the Court that anything that happened before then did not concern the Applicant as he only got involved by filing the application on 23/9/2014 after the request had been made. Counsel cited and relied all the case of *UDEOZOR VS FRN* (2007) 15 NWLR (Pt 1058) 449 at 578 - 579.

It was urged on the Court that the Respondent is accused of an indictable offence as per the deposition of Brenda Smith White which contains the explanatory statement of law as in Exhibit BS11. There is also placed before the Court a copy of Warrant of Arrest issued by West-minister Magistrate Court on 28th May, 2014 signed by Nicholas Evans, District Judge. It is endorsed by TAPAN DEBNATH Solicitor of the serious fraud office UK on 6/6/2014 which is also a deposition marked as Exhibit TD/9.

Learned Counsel submitted forcefully that the United Kingdom of Great Britain and Northern Ireland subject to the extradition treaty between the United States of America and Great Britain, signed at London on December 1931 and recognized as binding on FRN and

incorporate into the Nigeria's Extradition Act Cap E25 LFN 2004. 'The warrant is authenticated and it relates to the Respondent.

It was submitted that Certified True Copies of depositions in the list of Exhibits in paragraphs 1-6 (i) (ii) & (iii) are depositions in support of the request for Extradition of the Respondent, sworn before a District Judge Paul Goldspring and Nina Tempia. It was further submitted that the offences for which the Respondent is Accused of are extradition offences if the said offences were committed in Nigeria and evidence produced will according to the law in Nigeria justify the I comital of the fugitive as the offences for which he is charged is also an offence equated with corruption under Section 494 of Chapter 49 of the Criminal Code Act Cap C 38} LFN 2004 and Section 8 of the ICPC and Other Related Offences Act 2000.

Furthermore, Counsel submitted that if the offences were committed in Nigeria the Respondent would have been tried and convicted in Nigeria under Nigerian Laws and placed reliance on Section 20 of the Extradition Act Cap E25 LFN.

It was submitted that the request for the surrender of the Respondent is not precluded in Section 3(1) - (7) of the Act and the Respondent have not denied the Commission of the Offence. Counsel submitted that since all the relevant documents needed in proof of his extradition application with other documents that are not even statutorily mandatory were all certified with the seal of the Secretary of State and since all the documents are duly authenticated they shall be received in evidence without further proof as stipulated in Section 17 of the Extradition Act.

Counsel urged the Court not to import anything to the statutes to preclude the Respondents surrender if such is not stipulated by the Extradition Act. Counsel relied on the following unreported case to wit:

"Attorney -General of the Federation V. Olayinka Johnson Suit No: FHC/L/16C/2013, Judgment delivered on 1st February, 2013; Attorney-General of the Federation V. Rasheed Abayomi Mustapha, Charge No. FHC/I/218C/2011, Judgment delivered on so January, 2012 and; Attorney-General of the Federation V. Godwin Chiedo Nzeocha, Charge No. FHC/L/335C/2011, Judgment delivered on 30th May, 2012."

Learned Counsel urged the court that the basis of the application is predicated on the fact that the 1931 treaty between the US and United Kingdom signed in London on 22nd December 1931 and made applicable to Nigeria in 1935 the legal basis of this application is a legal instrument and an existing law under Section 315 (b) 4 (b) of the 1999 Constitution.

To buttress this last assertion and statement of the law counsel placed reliance on the cases of *ABUBAKAR V. B.O. & A.P. LTD* (2007) 18 NWLR Pt. 1066, pg. 319 at 384 paras F-G and *JFS INV. LTD V BRAWAL LINE LTD* (2010) 8 NWLR. (PT. 1225) PG 495 at 535 Paras O-H.

Counsel finally urged the Court to exercise its discretion in favour of the Applicant and grant the surrender sought and commit the Respondent to prison custody to await the order of the Attorney General for his surrender to the United Kingdom. The Applicant upon the receipt of the Respondent counter affidavit filed on 21/10/2014 filed what he termed Reply Affidavit to Respondents' Counter Affidavit dated 10/10/2014. The said reply affidavit was also deposed to by Nana Abdulladir Modibbo (Esq.)

The reply affidavit is of 22, paragraphs. The potent averments therein are as contained in paragraphs 5 to 21, The Applicant filed a reply to the Respondents written address in opposition to the extradition application in which he formulated one issue for determination to wit:

“Whether the Extradition Treaty between the United States of America “and Great Britain) signed at London on 22nd November 1931; and the London Scheme for Extradition within the Commonwealth are applicable and justiciable in Nigeria within the meaning of the provisions of Section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria; and Section 1 (1) - (6) of the Extradition Act, Cap E25, LFN 2004; to warrant the grant of the Order by this Honourable this Court for the Extradition of the Respondent.”

Learned Counsel submitted that by the various constitutional developments Nigeria became a legal entity in 1914 which had the capacity to enter into contract as a Nation such as the Extradition Treaty of 1931 made applicable to Nigeria in 1935. Learned Counsel submitted that as at 1931, Nigeria was a legal entity recognized by law by virtue of the 1914 Constitution which can be a party to in agreement such as the Extradition Treaty of 1931 made applicable to Nigeria in 1935.

The Treaty is recognized by the 1999 Constitution as a valid legal instrument and qualified as an existing law under Section 315 of the 1999 Constitution as amended.

In another breath Counsel submitted that a protectorate status does not obliterate or remove the status of a legal entity with capacity to sue and be sued. In effect the applicability of the 1931 Treaty is not limited to the extradition of persons to United State but to all countries mentioned in Article 16 and the UK as a party to the Treaty.

Counsel also urged the Court to hold that the 1931 treaty was not repealed by the Extradition Act, Decree No. 87 of 1966 which came into force on 31st January, 1967 and he listed all the Treaties that were repealed as the provisions of Section 20 and 21 (3) of the Extradition Decree No. 87 of 1966} does not apply to the Extradition Treaty of 1931.

Legal notice No. 33 of 1968. Counsel urged the Court to hold that it was made to apply to countries that is not a member of the Commonwealth like the United State of America. Similarly, that the Extradition Act Cap E25 LFN 2004 did not repeal the Extradition Treaty of 1931.

In another breath counsel submitted that the Extradition Treaty of 1931 between the United States of America and Great Britain made applicable in Nigeria in 1935 does not require the conditions stipulated in Section 12 of the 1999 Constitution before it will be made applicable to Nigeria because the 1931 treaty is a legal instrument and existing law under Section 315 (4) (b) of the Constitution which is deemed as an Act of the National Assembly under Section 315 (1) (a) of the 1999 Constitution. See the case of JFS INV LTD VS BRAWAL LINE LTD (Supra).

Counsel urged the court to hold that the cases of ABACHAVS FAWEHINMI (supra) and others cited by the Respondent Counsel are not relevant to this case as they dealt with post 1979 treaties. It was urged on the court to hold that domestication of an international treaty is not done only by the enactment of a convention as a local legislation; it can be done by enactment of a separate and distinct law containing the substance of the International Convention in spirit and letter. Conventions usually state the broad

principles of the agreement while details are expected to be in local legislation.

Learned counsel finally urged the Court to dismiss the submission of Respondent Counsel and hold thus:

1. The Extradition Treaty between the United States of America and Great Britain, signed at London on 22nd December 1931 and made applicable to Nigeria in 1935 is a Valid Extradition Treaty and is still subsisting in view of Section 315 (1) (4) (b), of the 1999 Constitution as amended.
2. The provisions of Section 12 of the 1999 Constitution is not applicable to the present case in view of Section 315 of the Constitution.
3. The London Scheme for the Extradition of persons within the Commonwealth is applicable to Nigeria.
4. A communal reading of Section 1 (1) - (6) and 2 of the Extradition Act 200, Sections 12, 251, 315.

In summary that the Court should grant their application as prayed.

The Respondent in opposing the application for his extradition to the United Kingdom filed a counter affidavit of 17 paragraphs with paragraph 9 having sub- paragraphs A-K respectively. The said Counter Affidavit was deposed to by Josephine Majebi. The potent averments in the counter affidavit are as contained in paragraphs 5 to 16 respectively. Learned Counsel relied on all the paragraphs of the counter affidavit and distilled the following issues for determination to wit:

“Whether the Extradition Treaty, between the United States of America and Great Britain, signed at London on 22nd November 1931, and the London Scheme of Extradition within the Commonwealth are applicable and justiciable in Nigeria within the meaning of the provisions of Section 12 (1) of the 1999 Constitution of the Federal Republic of Nigeria and Section 1 (1) - (6) of the EXTRADITION ACT, CAP E25. LFN 2004, TO WARRANT THE WARRANT OF THE, ORDER BY THIS HONOURABLE COURT FOR THE EXTRADITION OF RESPONDENT?

Learned Senior Counsel submitted that the Respondent has deposed to fact that the said purported two Treaties upon which the Applicant's application for extradition is, premised are not applicable to Nigeria and cannot grant his Extradition as sought by the Applicant to the United Kingdom for criminal trial.

Learned Counsel submitted that the Applicant's application is incompetent and the Court should refuse it. It was urged on the Court that there is no Treaty between the United Kingdom and Nigeria for the purpose of the extradition of the respondent or any other person as the Extradition Treaty relied upon by the Applicant applied to pre-independent Nigeria as part of the territory of Great Britain at the time Nigeria was a British Protectorate. Counsel relied on Section 14 of the Treaty.

Counsel submitted further that after Independence, all imperial Treaties and Acts applicable to Nigeria were repealed by the Extradition Act Decree No. 87 of 1966 which came into force on 31st January 1967. Counsel submitted forcefully that by the Legal Notice No. 28 of 1967, the Extradition Decree No 87 of 1967 became the only Substantive Extradition Act applicable in Nigeria.

Learned Senior Counsel submitted further that the purport of the provision of Sections 20 and 21(3) of the Extradition Decree No. 87 of 1967 and Schedule 4 attached thereto was a complete repeal of all Acts and Treaties that applied hitherto applied to Nigeria as a colony of Great Britain prior to independence.

Counsel urged the Court that Sections 1(1) - (6) of the Decree empowered the Federal Executive Council to make the order applying the provisions of the Decree to such other countries that had Extradition Treaty before or after the Decree came into force.

Learned Silk after quoting the Legal Notice No. 33 of 1967 summarized that Extradition Treaty as far as Nigeria was clearly made away with Great Britain and asserted its own sovereignty. Learned Counsel submitted further that the said Extradition Decree No. 87 of 1967 by virtue of Section 315 of the Constitution of the Federal Republic of Nigeria has been adapted as an existing law and is not the Extradition Act, CAP E25, Laws of the Federation of Nigeria, 2004.

It was further submitted that by Section 22 of the Extradition Act, CAP E25 LFN 2004, the proceedings permissible and justiciable under which requests have been made to the appropriate Nigerian authority, or warrant for apprehension had been issued before the 31st January 1967, when the Extradition Act CAP E25 LFN 2004 came into effect.

It was urged by Learned Senior Counsel that the originating application as filed by the Applicant shows that the requisition for the Respondent pursuant to the 1931 Treaty, was only made on 7 day of July 2014 by the British High Commissioner to Nigeria and since it came 47 years after the Extradition Act, CAP E 25 LFN 2004, came into force is not saved by Section 22 of the Extradition Act, CAP E 25 LFN 2004 and it is incurably defective as it offends Sections 1(1) - (6) and 22 of the Extradition Act.

Secondly, the said application violates Section 12(1) of the, Constitution of Nigeria 1999 as any Extradition agreement must pass the test laid down in the said Constitution and Section 1(1) - (6) of the Act, CAP E 25 LFN 2004. Learned Counsel submitted that we have Extradition agreement with United States of America and cited in support the case of ABACHA VS FAWEHINMI (2000) 6 NWLR (PT 660) 228 at 228 to support the argument further reliance was placed on the case of THE REG. TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONER S OF NIGERIA & ORS VS MEDICAL & HEALTH WORKERS UNION OF NIGERIA (2008) 2 NWLR (PT 1072) 572 at 633.

Counsel submitted further that there is no existing Extradition by the National Assembly adapting and making applicable and justiciable in Nigeria, the 1931 Extradition Treaty between the United States of America and Great Britain to the extent that persons can be surrendered by Nigeria upon request to the United Kingdom for trial in the United Kingdom.

Similarly, the Court must uphold the Constitution. In effect Counsel submitted that the application of the Extradition Act will only become applicable to the United Kingdom after the order prescribed in Section 1(1) of the Extradition Act is issued and published in a Federal Gazette. Reliance was placed on Sections 1(1) (2) 5 and 6 of the Act.

It was further urged on the Court that by virtue of Section 41(1) of the 1999 Constitution no citizen of this Country Nigeria can be expelled from Nigeria

to any country except in the manner prescribed in Section 41(2) (6) of the 1999 Constitution.

It was argued that the Applicant has not shown to his Court that there is reciprocal Extradition Treaty between Nigeria and United Kingdom.

In effect there is no reciprocal obligation for Extradition of persons between Nigeria and Great Britain created by the Extradition Treaty between United States of America and Great Britain in 1931.

Counsel submitted further that only a party to a contract has an obligation created under it, to ensure its fulfilment and placed reliance on the case of *A-G FEDERATION VS A.I.C. LTD* (2000) 10 NWLR (Pt 675) 293 at 306. In effect that since Nigeria is not a party to the Treaty between United States of America and Britain, they cannot bring the present application against the respondent.

Similarly, that the onus was on the Applicant to prove the existence of reciprocal Treaty between United Kingdom and Nigeria.

On the issue of proof, Counsel placed reliance on the case of *OLANIYAN VS OYEWOLE* (2011) 14 NWLR (PT 1268) 445 at 468 AND *BUHARI VS OBASANJO* (2000) 2 NWLR (PT 910) 241 at 505.

It was argued strenuously by senior counsel that even when there is a reciprocal Treaty that the application will still fail as the Applicant had not established the existence of any order of the President of the Federal Republic of Nigeria made pursuant to Section 1(1) - (6) of the Extradition Act, CAP E25 LFN 2004.

Learned Counsel submitted also that there is no legislation made in accordance with Section 12(1) of the 1999 Constitution give recognition to the London Scheme for Extradition within the Commonwealth as to make it binding, justiciable or enforceable in Nigeria.

Counsel urged in the circumstance to distinguish the facts of the case of *UDEOZOR VS FRN* (supra) as it is not in all fours with the instant case in that Nigeria had a reciprocal Extradition Treaty with United States of America by virtue of Legal Notice No 33 which, was an order of the Federal Executive Council made in line with the provisions of the Extradition Decree

No, 87 of 1966, Counsel also urged the Court to distinguish the cases cited by Applicant Counsel as there were inapplicable, III conclusion, Counsel urged the Court to dismiss this application as been incompetent, frivolous and the Respondent should be released forthwith.

COURT:

In my ruling on the preliminary objections, I made it abundantly clear that parties in advertently argued the Substantive Suit that a resolution of the preliminary objection one way or the other had the effect of determining the substantive Suit. But I had a clause to it that what is left was for the Court to scrutinize and see if the provisions of the Extradition Act were followed to the hilt.

In effect without fear of equivocation the issue for determination as raised by the Learned Senior Counsel may have been effectively determined in the ruling on the preliminary objection and I am bound by it. For avoidance of doubt I will reproduce the Learned Senior Counsel issue for determination the Substantive Suit which I adopt as mine to wit:

- 2.1 The sole issue that arises for determination in the humble view of the Respondent is: whether the Extradition Treaty between the United States of America and Great Britain, signed at London on 22nd November 1931, and the London Scheme for Extradition within the Commonwealth are applicable and justiciable in Nigeria within the meaning of the provisions of section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria; and Section 1(1) - (6) of, the Extradition Act, Cap E25, LFN 2004, to warrant the grant of the Order of this Honourable Court for the Extradition of the Respondent?

Let me without fear of being prosecuted for prolixity state the obvious here that for the reasons which I had earlier on given in the preliminary objection state here that the Extradition Treaty between the United States of America and the United Kingdom dated December 22nd 1931 and made applicable to Nigeria by a legal instrument on June 24th 1935 is an existing law by virtue of the provisions of Section 315 (1) (a) and 315 (4) of the 1999 Constitution and I further hold.

The next issue which have been elaborately contested by the Respondent Counsel is 'that even' if there is a reciprocal Treaty between the United

Kingdom and Nigeria that section 12(2) of the Nigerian Constitution must be complied with. This with all sense of humility is not the true intendment of the Extradition Act.

Having said that the 1931 Treaty made applicable to Nigeria is an existing law it does not require to pass the crucible of post 1999 Treaties which must be subjected to the provisions of section 12(2) of the said Constitution. For emphasis I will reproduce *in extenso* the provisions of sections 315(1) of the Constitution which provides thus: “subject to the provisions of this constitution, an existing law shall have effect with such modifications as may be necessary to bring it in conformity with the provisions of this Constitution and shall be deemed to be:

(a) An Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by the Constitution to make laws. Subsection (3) nothing in this Constitution shall be construed as affecting the power of a Court of law or any Tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provisions of any other law, that is to say:

- (a) Any other existing law;
- (b) A law of a House of Assembly
- (c) An Act of the National Assembly and
- (d) Any provision of this Constitution

With all sense of humility on the strength of the provisions of section 4(2) and 315(1) and (3) which I quoted above it is beyond do it that- Extradition Act Cap E 25 (2004) LFN being an existing law which is deemed to have been made by the National Assembly.

What I have laboured to say is that the provisions of the Extradition Act has on coming into force of the 1999 Constitution have the effect of law with such modifications as may necessarily effectuate its application without the niceties encapsulated in section 12, This my proposition of the law is fortified by the Supreme Court decision in JFS INVESTMENT VS BRAWAL LINE LTD (supra) per ADEKEYE, JSC at pages (495) where the distinguished law lord opined as follows:

Paragraph O-H. The Supreme Court held that the Hague Rules 1924, being a pre-1960 Treaty/convention and therefore an existing law in Nigeria at the

time the 1976 Constitution came into force, is not affected by Section 12(1) of the 1979 constitution, This is so because an existing law by virtue of Section 27 4(4) (b) of the 1979 Constitution, the Hague Rules, 1924 is deemed to be an enactment or Act of the National Assembly and therefore requires no further Legislative Act such as ratification or- adoption before its provisions can be implemented in Nigeria. Per ADEKEYE, JSC at pages 535 paragraphs O-H stated:

“The reason being that by October 1st at the Nigeria Independence the Government of the Federation assumed all obligations and responsibilities of the colonial regime of the government which arose from valid International Instruments such as The Hague Rules, 1924. Nigeria became a party through exchange of letters between Hague, the United Kingdom and the Government of Nigeria on October 1, 1960. The Hague Rules 1924 was extended to Nigeria as a legislation which formed part of our laws before Independence, and was received as our laws before independence. It does not require any further ratification as stipulated in section 12 of the 1979 constitution before it can be applicable. In other words, The Hague rules 1924, having assumed the force of law in Nigeria thereby an existing law must be deemed to be an act of the National Assembly by virtue of Sections 274(1) and 277 of the 1979 Constitution. In short, Abacha’s and Higgs cases cited are applicable to all post 1979 treaties or conventions which would need to be enacted to become part of our municipal laws, but surely this is not applicable to pre 1960 Treaties and Convention.”

The aforesaid decision of the law lord settles all the argument beyond doubt and I am bound to apply it hook, line and sinker.

As I had earlier said I will only look and scrutinize what the Applicant had placed before me and what are the defences of the Respondent. The Defences of the Defendant can be summed thus that there is no Extradition Treaty between Great Britain and Nigeria as contained in the counter affidavit. Secondly, that Nigeria is not a party to the 1931 Treaty.

Thirdly, that the London Scheme for Extradition within the Commonwealth 2002 does not apply in Nigeria.

Furthermore, that Nigeria has not domesticated the two Treaties.

Fifthly, that Nigeria is not a signatory to the said treaty. That the Attorney General of the Federation lacks the locus standi to bring the present Suit against the Respondent. The Court lacks the jurisdiction to entertain the Suit. That the Respondent is not aware of any pending Suit against him in the United Kingdom and he did not commit any of the offences listed in the affidavit in support of this application.

What I have labored to recast is the Respondents defences to see if he has countered any of the numerous allegations against him. Put succinctly, has he shown any defence required by law as to refuse this application. My obvious answer will be in the negative as all his technical defences are all the same as the one raised in the preliminary objection which I had earlier on dismissed. So for all intents and purposes I will be stating the obvious to hold that he has no defence to this application as he did not make any faint attempt to counter the Applicants depositions.

Let me rhetorically state the obvious here has the applicant satisfied the conditions necessary for the Extradition of the Respondent as provided in the Extradition Act CAP E25 2004 to wit

- a. that there is a request for the surrender of the fugitive;
- b. that the fugitive is accused of extradition offences in a country other than Nigeria;
- c. that there is a warrant of arrest issued outside Nigeria authorizing the arrest of the fugitive;
- d. that the warrant of arrest was issued in a country to which the Extradition Act apply.
- e. that the warrant of arrest is duly authenticated and same relate to the fugitive.
- f. that the offences which the fugitive is accused of are extradition offences;
- g. that the evidences produced will according to the law in Nigeria, justify the committal of the fugitive for trial if the offences were committed in Nigeria; and
- h. that the surrender of the fugitive is not precluded by the provisions of the Extradition Act and in particular 3(1) - (7) of the Act.

Section 9(3) of the Extradition Act, Cap E25 Laws of the Federation of Nigeria, 2004 in particular provides:

- (3) “In the case of a fugitive criminal accused of an offence claimed to be an extradition offence, if there is produced to the magistrate a warrant of arrest issued outside Nigeria authorizing the arrest of the fugitive and the magistrate is satisfied.
- a. that the warrant was issued in a country to which this Act applies, is duly authenticated, and relates to the prisoner;
 - b. that the offence for which the fugitive is accused of is an extradition offence in relation to the country;
 - c. that the evidence produced would accordingly to the law of Nigeria, justify the committal of the prisoner for trial if the offence of which he is accused had been committed in Nigeria; and
 - d. that the surrender of the fugitive is not precluded by this Act and in particular by any of subsections (1) to (6) of Section 3 thereof and where the country requesting the surrender of the fugitive is one to which this Act applies by virtue of an order under section 1 of this Act. Is also not prohibited by the terms of the Extradition Agreement as recited or embodies in the order.”

With the following list as a guide I will be stating the obvious that the Applicant has satisfied this Court with materials substantial enough to grant this application, I had listed graphically all the materials which the Applicant had placed before this Court at the beginning of this Judgment that I will not repeat myself here.

Let me state that outside having satisfied the documentary evidence it is worthy of note that the Respondent is a British Citizen from Exhibits CAU 2. I referred to this fact because this Court will never recklessly surrender a Nigeria citizen and possibly non-citizens alike unless the court is satisfied beyond measure of the facts and the position of our law and its equitable, and

reasonable to do so bearing in mind that this Court is not trying to Respondent.

In the end, I resolve the issue for determination in the affirmative which in the main is whether this Court will grant the application of the Honourable Attorney General of the Federation to Extradite the Respondent to United Kingdom.

In other words, has the Applicant placed sufficient material evidence before the Honourable Court to justify all the preconditions for the grant of the Order sought? My answer again is in the affirmative. The application has merit, it succeeds and is to be granted as prayed. The Attorney General has followed the procedure.

The Court therefore commit the Respondent EMMANUEL EHIDIAMHEN OKOYOMON to prison for Extradition to the United Kingdom as a fugitive to face trial for the crimes alleged. The fugitive shall be committed to await his Extradition to United Kingdom within thirty days of this Order to face the trial of the offences allegedly as stated earlier. This is the Judgment of this Court.

HON. JUSTICE CHUKWU
JUDGE
FEDERAL HIGH COURT
ABUJA
4/5/2015

CASE 3

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, THE 1ST DAY OF JULY, 2014**

**BEFORE HIS LORDSHIP
HON JUSTICE A. R. MOHAMMED (JUDGE)**

SUIT NO.FHC/ABJ/CS/907/2012

BETWEEN:

ATTORNEY-GENERAL OF THE FEDERATION APPLICANT

AND

KINGSLEY EDEGBE..... RESPONDENT

TREATIES

Signing and ratification of a treaty without domestication by an Act of the National Assembly in line with section 12 of the 1999 Constitution will not make the treaty applicable by Nigerian Courts

The United Nations Transnational Organised Crime Convention 2002 and its Protocols cannot serve as basis for an extradition application

JUDGMENT

By an Application dated 23/12/13 but filed on 24/12/13, the Honourable Attorney General of the Federation and Minister of Justice (as Applicant) sought/applied for the surrender and Extradition of KINGSLEY EDEGBE (Respondent herein) to the Kingdom of the Netherlands to face charges preferred against him by the National Public Prosecutor's Office Rotterdam, National Squad Team, North and East Netherlands Unit in case Public

Prosecutor's Office Number: 07/630201.06 filed in March, 2012 the District of Zwolle, the Netherlands for the offences of:

- Count 1: Commission of Human Trafficking (Section 73a/273f Wvsv Dutch Penal Code).
- Count 2: Commission of Human smuggling (Section 197a Wvsv Dutch Penal Code)
- Count 3: Falsification of Travel Documents (Section 231 Wvsv Dutch Penal Code)
- Count 4: Acts of Forgery of Documents (Section 225 Wvsv Dutch Penal Code)
- Count 5: Abduction of Minor, from the Authority having legal custody/supervision over them (section 279 Wvsv Dutch Penal Code).
- Count 6: Participation in a Criminal Organization (Section 140 Wvsv (Dutch Penal Code).

The basis for the application is that the offences are criminalized in the following TOC conventions:

- a. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; and
- b. Protocol Against the Smuggling of Migrants by Land, Sea and Air, signed on 15 November, 2000 in New York and adopted on the 15th November, 2000

That Nigeria has signed and ratified the TOC Convention along with its protocol on the 9th December, 2003 and 14th December, 2004 and the Netherlands did the same on 10th December, 2003 and 31th October, 2006.

The application gave the result of investigation on the activities of the Respondent KINGSLEY EDEGBE as follows:

- i. the recruiting of minor girls' victims, who are Nigerian women;
- ii. providing accommodation to the women in anticipation of their trip to Europe (the Netherlands);
- iii. giving instructions regarding the declarations the women are to make to the Dutch Authorities upon their arrival in the Netherlands in respect of their application for asylum;
- iv. preparing/supplying false travel documents and other false documents in support of the applications for asylum forcing the women to

undergo voodoo ritual, as a result of which the women feel compelled to do what the organization wanted them to do;

- v. instructing the women victims on how to contact the organization after their arrival at the asylum Seekers' Centre in the Netherlands;
- vi. arranging air travel from Nigeria to the Netherlands, accompanied by a member of the organization, and
- vii. making arrangements from Nigeria to coordinate the girls' running away from the asylum Seekers' Centres by communicating the victims' details to members of the organization in the Netherlands, and putting them in contact with one another.

The application is also supported with various Reports of the Respondent's criminal activities contained in the said Reports. The said Reports are annexed to the application as Appendix 1 to 10 respectively. In further support of the application, are the relevant documents required to bring an application for extradition of a fugitive/suspect. Also in support, is an affidavit of six paragraphs deposed to by Nana Abdulkadir Modibbo, a Senior State Counsel in the Chambers of the Attorney General of the Federation and Minister of Justice. The application is further accompanied with a written address dated 28/1/14 but filed on 29/1/14.

The Respondent reacted to the application for his extradition by filing a Counter Affidavit dated 7/3/14 and deposed to by Osaretin A. Uwangue, a Counsel in the law firm of Solicitors to the Respondent. The Counter Affidavit is accompanied with a written address in opposition. The respondent also brought a Notice of Preliminary Objection seeking the order of the Court to strike out this suit for lack of jurisdiction of the Court to entertain the action. The Notice of Preliminary Objection is accompanied with a Written Address, both dated 7/3/14.

The Applicant filed a Reply Affidavit to the Respondent's Counter Affidavit, which is accompanied with a Written Reply address in opposition to the Extradition Application. The Applicant also filed a Written Address in opposition to the Respondent's Notice of Preliminary Objection. Both processes were filed by the Applicant on 11/3/14.

In the Applicant's Written Address in support of Extradition Application, this issue was formulated for determination:

“Whether the Applicant has placed enough evidence before the Court to justify all the preconditions for the grant of the order sought”.

In his argument, Learned Applicant's Counsel referred to section 17 (1) (a) and (b), (3) (a) and (b) and (4) of the Extradition Act Cap. E 25, Laws of the Federation Nigeria, 2001 on the requirements to be satisfied in an application of this nature, which are:

- a. any warrant issued in a country other than Nigeria;
- b. any deposition or statement on oath or affirmation taken in any such country or a copy of such deposition or statement;
- c. a warrant purported to be signed by a Judge, Magistrate or Officer of the Country in which it was issued.

Reference was also made to sections 3, 5, 6 and 9 of the Extradition Act. That section 3 of the Act Counsel said, provides for the restrictions on surrender of the suspect/fugitive criminal. That section 5 provides for liability of suspect criminal to surrender. That section 6 provides for request for the surrender and powers of the Attorney General thereto, while section 9 Counsel said, provides for the procedure to be adopted. That the power to commit the suspect/fugitive to prison to await the order of the Attorney General of the Federation for his surrender rested in the Federal High Court under section 251 (1) (i) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended). It was submitted for the Applicant that the requirements for extradition of a suspect/fugitive are

- a. that there is a request for the surrender of the suspect/fugitive criminal;
- b. that the suspect/fugitive is charged with extradition offences in a Country other than Nigeria;
- c. that there is a warrant of arrest issued outside Nigeria authorising the arrest of the suspect/fugitive criminal;
- d. that the warrant of arrest is duly authenticated and same relate to the suspect/fugitive;
- e. that the offences which the suspect/fugitive is charged with are extraditable offences.

- f. that the evidences produced will according to the law in Nigeria, justify the criminal charges against the suspect/fugitive if the offences were committed in Nigeria; and
- g. that the surrender of the suspect/fugitive, is not prejudiced by the provisions of the Extradition Act and in particular section 3(1) - (7) of the Act.

It was then submitted that all the requirements have been complied with in this application. That the Applicant has signified to the Court that a request has been made to him by the Diplomatic Representative of the Embassy of the Kingdom of Netherlands in Abuja, for the surrender of the Respondent. That the Applicant got to know that the Respondent is a fugitive criminal and he is needed by the Kingdom of the Netherlands vide a NOTE VERBAL NO. UTL —U — 2012017593 from the Embassy of the Kingdom of the Netherlands, Abuja with seal of the Embassy dated 18 July, 2012. That there is also a Certified Copy of Letter of Extradition Request from the Ministry of Security and Justice, the Kingdom of the Netherlands, dated 19th June, 2012 addressed to the competent Authority of the Federal Republic of Nigeria and endorsed by MR. G. R. C. VEURINK, Public Prosecutor, Office of the National Prosecutor, the Kingdom of the Netherlands. There is also the original copy of Leer dated 5th July, 2012 concerning the Extradition 01 KINGSLEY EDEGBE, address to the competent Authorities of the Federal Republic of Nigeria and endorsed by M.C. COFFENG, Head Department of International Legal Assistance in Criminal Matter of the Kingdom of Netherlands, also placed before this Court.

On the domestication of the United Nations Convention against Transnational organized crimes (UNTOC CONVENTION), it was stated that the UNTOC CONVENTION and its Protocol of 2000 gave birth to the National Agency For the prohibition of Trafficking in person (NAPTIP) Act, 2003 (as amended) and the Economic and Financial Crimes Commission (EFCC) (Establishment) Act, 2001, That Nigeria became signatory to the UNTOC Convention on 13th December, 2000, Reference Was made to the prologue to the NAPTIP Act. It was also stated that the UNTOC Convention and Protocol on Trafficking in Persons Protocol on 13th December, 2000, articles 5 of the said Protocol enjoins State parties to criminalize practices and conducts that subject human beings to all forms of exploitation which includes in the minimum, sexual and labour exploitation. That there are 12 penal provisions

(sections 11 - 29, 39 and 16 of the law) prescribing different punishment ranging from twelve months to life imprisonment. The Court was urged to hold that the UNTOC convention is domesticated as a law in Nigeria.

On the UNTOC Convention and its protocols as the basis of the request, the offences for which the Respondent is charged with and their nexus to Nigeria's domestic law, the Court was referred to Article 16 (1) of the UNTOC Convention which counsel said is to the effect that the offences covered by the convention which is of transnational in nature and involving organized group provides that the person subject of the request for extradition is located in the Territory of the requested state party (i.e. Nigeria), the offence is punishable under the domestic law of both the requesting state party and the requested state party.

It was further contended that the request for the surrender of the Respondent is not prejudiced by the provision of the Extradition Act vide section 3 (1) - (7) of the Act. Reference was made to Articles 2, 3, 5, and 6 of the UNTOC Convention on Trafficking in Persons, prevention, investigation and prosecution of offences established, the need for each party state to adopt legislative measures to establish criminal offences and smuggling of migrants by land, sea and Air. Reference was then made to sections 11, 12, 13, 14, 15 and 16 of National Agency for the prohibition of Trafficking in Persons (NAPTIP) Act which created offences regarding trafficking in persons, procurement of persons, causing and encouraging the seduction or prostitution of any person under 18 years and foreign travels which promotes prostitution.

On making false document, the Court was referred to section 362 of the penal code law cap. 89 laws of Northern Nigeria, which makes it criminal offence. That sections 36, 272, 273, 281, 362, 363, all of the penal code Law of Northern Nigeria provide for punishment for forgery, abduction, Traffic in woman and abduction of girls under 16. It was therefore contended that sufficient material has been placed before the Court to warrant the surrender of the Respondent to the Kingdom of the Netherlands. The court was further referred to the following decisions of this Court:

1 SUIT NO: FHC/L/218C/2011- AG FEDERATION VS ABAYOMI MUSTAPHA delivered by Hon. Justice P.I. Ajoku sitting in Lagos division on 30th January, 2012.

2. SUIT NO: FHC/L/16C/2013 AG FEDERATION VS OLAYINKA JOHNSON delivered by Hon. Justice I. N. Buba sitting in Lagos Division on 1st February, 2013.

In the Respondent's written address in support of his counter Affidavit, three issues were formulated for determination:

1. Whether there exists an extradition treaty between Nigeria and the Netherlands under which this application can be entertained by this Court.
2. Whether the United Nations Convention Against Transnational Organized Crime (simply referred to as the TOC Convention) along with its protocol is an enforceable law in Nigeria.
3. Whether this Court has jurisdiction to entertain the application for extradition.

Learned Respondent's counsel then argued the three issues together. It was submitted that there does not exist an extradition treaty between Nigeria and the Netherlands under which the application for extradition can be entered by this Court. It was also submitted by the Respondent's Counsel that this proceeding is founded on the Extradition Act Cap E25 Law of the Federation of Nigeria, 2014. That section 1 (1), (2) and (3) of the Extradition Act provide that before this Court can grant an application for extradition the following conditions must be fulfilled, to wit:

- i. there must be an existing extradition Treaty or Agreement between Nigeria and the country requesting for the Extradition;
- ii. there must be an existing order reciting or embodying the term of an existing extradition agreement applicable to the requesting country under which this court could order the surrender of a person sought to be extradited; and
- iii. the Extradition Act shall apply to the requesting country subject to the terms of an existing order and extradition Treaty between Nigeria and the requesting Country.

It was contended that the country requesting for the extradition of the Respondent in this suit (the Netherlands) has no extradition Treaty between it and Nigeria. That the Argument of the Applicant's counsel

that Nigeria has signed and ratified the TOC convention and its protocols are not part of Nigerian Law. Reference was made to the case of *ABACHA VS FAWEHINMI* (2005)51 WRN 29 at 82 - 83 decided by the Supreme Court of Nigeria. The Court was further referred to the Report of the Conference on the TOC Convention held at Abuja, Nigeria in November, 2002, jointly organized by the United Nations office on Drugs and Crime and the Federal Ministry of Justice, Nigeria, at page 53.

It was further contended by the Respondent's counsel that having alleged that there is an extradition treaty between Nigeria and the Netherlands, the onus is on the Applicant, i.e. the Attorney General of the Federation to donate to the Court the terms of such treaty. In other words, the burden lies on the Applicant to prove to the Court that there is a treaty between Nigeria and the Netherlands on the need for any convention or international law to be enforced in Nigerian Courts, Respondent's counsel referred to the Supreme Court decision in the case of *REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA VS MEDICAL AND HEALTH WORKERS UNION OF NIGERIA* (2008) 3 MJSC 121 At 148 -149.

It was further contended by the Respondent's counsel that assuming without conceding that the TOC convention has been domesticated in Nigerian, the domestication does not satisfy the requirement of section 1(1) Extradition Act, therefore, the argument of the Applicant counsel on purported domestication of other international treaties on the subject human trafficking is completely misconceived, misleading, inapplicable and irrelevant to this suit. It was also contended that the requirement of section 1 (1) of the Extradition Act is the existence of an Extradition Treaty between Nigeria and the requesting country and not the domestication of substantive international criminal law treaties on an offence allegedly committed by the person sought to be extradited. Learned Respondent's counsel then stated that the situation would have been otherwise if the Request for the extradition of the Respondent were made by the Republic of South Africa in which there exist an extradition Treaty between Nigeria and the Republic of South Africa and same has been domesticated by the National Assembly in accordance with section 12 (1) of the Constitution of the Federal Republic of Nigeria, 1999.

The said Treaty counsel said is “Extradition Treaty” between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2005.

It was submitted that section 1 (1), (2) and (3) of the Extradition Act are meant to protect a section or class of people in the society. That the position of the law is that protective statutes ought to be construed in such a way to meet the objective of protecting the class of persons intended to be protected. Reference was made to the case of *EGBE VS ALHAJI*. (1990) 1 NWLR PART 128, 546 at 600.

On the need for the court not to exercise its jurisdiction where an action is not properly constituted, reference was made to the following cases:

- i. *OGWUCHE VS. MBA* (1994) 4 NWLR PART 336, 75 at 85;
- ii. *MADUKOLU VS. NKEMDILIM* (1962) 1 ALL NLR, 587;
- iii. *OGUNSANYA VS. DADA* (1990) 6 NWLR PART 156, 347;
- iv. *OSAFILÉ VS. ODI (NO.1)* (1990) 3 NWLR PART 137, 230;
- v. *ATTORNEY-GENERAL VS. SODE* (1990) 1 NWLR PART 128, 500; and
- vi. *ODOFIN VS. AGU* (1992) 3 NWLR PART 229, 230.

It was finally submitted that in the absence of an existing treaty between Nigeria and the Netherlands, this Court cannot properly exercise jurisdiction over this suit. The court was urged to sustain and uphold the preliminary objection and to strike out this suit.

I have earlier in the beginning of this judgment mentioned that the Respondent has filed a Notice of Preliminary Objection challenging the competence of this suit. A careful reading of the said Notice of preliminary objection and the grounds thereto would show that it is brought on the same issues and argument canvassed by the Respondent’s counsel in Support of the Respondent’s counter Affidavit. It is therefore unnecessary to again consider the argument and grounds constituted in the said Notice Preliminary Objection. Suffice it to say that the Court will adopt the argument proffered by the Respondent’s counsel in support of the counter as argument in support of the Notice of preliminary objection. Inter words, the argument made in support of the Respondent’s counter affidavit have adequately covered the argument in support of the Notice of preliminary objection.

In the Applicant's Reply address, it was contended that it is not true as argued by the Respondent's counsel that there exists no extradition treaty between Nigeria and the Netherlands. It was submitted by the Applicant counsel that the TOC Convention 2000 is the basis of the treaty to which both Nigeria and the Netherlands are signatories and accordingly Ratifies, Accepted and Acceded to and thereby domesticated as law in Nigeria under section 12(1) of the constitution. That Nigeria belongs to the comity of Nations and is legally bound to honour its international obligations once it become a party to a convention such as the "TOC Convention". It was further contended that the TOC Convention and its Protocols of 2000 is domesticated in Nigeria under section 12(1) of the constitution by virtue of the fact that it gave birth to the National Agency for the prohibition of Trafficking in Persons (NAPTIP) Act, 2003. That the legal framework of National Agency of the Prohibition of Trafficking in Persons (NAPTIP) Act is based on the prohibitions of the TOC Convention".

On the issue of Jurisdiction of this Court, it was submitted that section 251(1)(i) of the 1999 constitution vested jurisdiction on extradition matters on this Court. It was therefore contended that the requirement of section 1 of the Extradition Act have been satisfied by the Applicant in the instant case.

I have reviewed the argument of learned counsel for the parties on the applicant's application for the extradition of the Respondent to the Kingdom of the Netherlands. As the Respondent has brought a Notice of preliminary objection challenging the jurisdiction of the Court, the said objection must be determined first. The crux of the Respondent's objection is two fold, namely:

1. That there is no extradition treaty between Nigeria and the Kingdom of Netherlands to warrant the present application for the extradition of the Respondent to Netherlands. -
2. That the United Nations Convention Against Transnational Organised Crimes (simply referred to as the "TOC Convention") has not been domesticated in Nigeria as part of the laws of the Federation of Nigeria.

For the above grounds, the Respondent relied principally on the provisions of section 12 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and section 1 (1), (2) and (3) of the Extradition Act, Cap E25 Laws

of the Federation of Nigeria, 2004. The Applicant, on the other hand contended that “TOC Convention” and its protocols having been signed and ratified by the Government of Nigeria and the Kingdom of Netherlands, then the signing and ratification qualify as a treaty between the two countries. It was also contended by the Applicant’s counsel that the National Agency for the Prohibition of Trafficking in Persons Act (otherwise called NAPTIP Act) is the Nigerian response to the (TOC Convention, therefore, the TOC convention has been domesticated in Nigeria.

In the determination of the preliminary objection, recourse must be had to the provision section 1 (1) of the Extradition Act and section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Section 1(1) of the Extradition Act Cap E25, Laws of the Federation of Nigeria, 2004 provides as follows:

“Where a treaty or other agreement in this Act referred to as an (extradition agreement) has been made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment, the President may by order published in the Federal Gazette apply this Act to that country”.
Underlining supplied by me.

Section 12(1) of the Constitution of the Federal Republic of Nigeria, (as amended) provides as follows:

“No treaty between the Federation and any other country shall have force of law except to the extent to which any such treaty has been enacted into law by the National Assembly”.

From the wordings of section 1(1) of: The Extradition Act, before any person could be extradited from the Republic of Nigeria to any other country for prosecution or to serve punishment, it must be shown that there is a treaty or agreement made between Nigeria and that other country in that regard. The question to be resolved therefore is, does Nigeria have an extradition treaty or agreement with the Kingdom of the Netherlands? Learned Applicant’s counsel had argued strenuously that the signing and ratification of the TOC Convention by Nigeria and the Netherlands constitutes an extradition treaty or agreement. The point to be made is whether mere signing of a treaty or agreement without more, should qualify as a treaty for the purpose of extradition? I will at once answer this question in the negative. This is

because Nigeria has an existing treaty on extradition with the United States of America. The treaty is known as The Extradition (United States of America) order of 1967 published in the special Gazette No. 23, vol. 54 of the 13th April, 1967. Similarly, there is an extradition treaty between Nigeria and Republic of South Africa and it is called Extradition Treaty Between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act 2005. The two treaties referred to above have been domesticated and made part of the National Laws of Nigeria.

An example of how a treaty, convention or other international law is domesticated can be seen from the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Laws of the Federation of Nigeria, 2004. The African Charter is a convention or rules adopted and ratified by African Nations, but it only became applicable in Nigeria when the National Assembly domesticated it as an enforceable law in the Federation of Nigeria. It should also be pointed that a country could signed and ratify a treaty or convention, but until it is made enforceable by an Act of the National Assembly, it cannot apply in any proceedings before the Courts in this Country. In the case of *UDEOZOR VS FEDERAL REPUBLIC OF NIGERIA* (2007)¹⁵ NWLR Part 1058, page 499 at page 522 paragraph B, the Court of Appeal held thus: "The right of one state (country in the present circumstance), 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".

On the contention of the Applicant's counsel that the "TOC Convention" has been domesticated in Nigeria under section 12 (1) of the Constitution by virtue of the fact that it gave birth to the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) Act, the issue to be considered is whether domestication is done by the enactment of another separate and distinct law different from the convention sought to be domesticated? The answer must be in the negative. The reason is that domestication is done by adopting a convention or treaty as it is and making it an Act of the National Assembly, and not by enacting another law. I have earlier demonstrated the procedure in relation to the African Charter on Human and Peoples' Rights.

The point should also be made that issue of extradition is governed by statute, i.e., the Extradition Act Cap E25, Laws of the Federation of Nigeria, 2004. The proceedings relating thereto must also be governed by the extant law. It would in my humble view, be setting a dangerous precedent to abandon the enabling law on the subject and to embark on analogies and guess work in order to justify an application for the extradition of a suspect/fugitive. In the case of *ABACHA VS FAWEHINMI*, supra, at pages 82 - 83, the Supreme Court, per Ogundare JSC stated the correct position as follows:

“Before its enactment into law by the National Assembly, an international treaty has no such force of law as to make its provisions justiciable in our courts.”

Furthermore, in the case of *REGISTERED TRUSTEES OF NATIONAL ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA VS MEDICAL AND HEALTH WORKERS UNION OF NIGERIA*, Supra, at pages 148-149, the Supreme Court held thus:

It goes without saying that the basis for that relief was the International Labour Organization, in which case it was incumbent on the 1st Appellant to place the evidence of the domestication of the law and its applicability to Nigeria. The law, being an international one, its proof of domestication in Nigeria is very important if any Court in Nigeria is to invoke and apply it to any litigation before it. It is of paramount importance that any party who raises an issue or a law must show and convince the court of the efficacy of its reliability and applicability – “In so far as the ILO Convention has not been enacted into law by the National Assembly it has no force of law in Nigeria and it cannot possibly apply”.

As this Court has not been referred to or shown any extradition treaty or agreement between Nigeria and the Kingdom of Netherlands and there being no domestication of the TOC Convention by the National Assembly as required by section 12(1) of the Constitution of Nigeria, 1999, this Court is not prepared to hold that the present application for the extradition of the Respondent to the Kingdom of Netherlands was brought in accordance with the provisions of the Extradition Act Cap E25 Laws of the Federation of Nigeria, 2004.

The point should also be made that the requirements of showing the existence of an extradition treaty between Nigeria and the Netherlands and the domestication of TOC Convention by the National Assembly, are conditions precedent to the filing of a proper competent application for extradition in this Court. Where the said requirements have not been fulfilled, there cannot be a competent extradition application before the Court.

On the decisions of my learned brothers I. N. Buba and P. I. Ajoku JJ, which the court was referred to by the Applicant's counsel, let me say that a careful reading of the two decisions would show that the extradition applications in the cases were made pursuant to an extradition treaty between Nigeria and the United States of America. In the case at hand, no such treaty has been produced or referred to as existing between Nigeria and the Netherlands. The two decisions are clearly distinguishable with the present matter under consideration by this Court

Now, having held that the present application for extradition of the Respondent to the Netherlands has not complied with the clear provision of section 1 (1) of the Extradition Act Cap E25 Laws of the Federation of Nigeria, 2004 and the mandatory provision of section 12 (1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended), I have no hesitation in declaring the present extradition application incompetent. The Court lacks the necessary Jurisdiction to entertain the Applicant's application for the surrender and/or extradition of the Respondent - KINGSLEY EDGBE to the Kingdom of Netherlands. In consequence of the above findings, this suit, be and is hereby struck out for being incompetent.

COUNSEL

M. S. HASSAN (H.O.D.) INTERNATIONAL COOPERATION IN
CRIMINAL MATTERS, OFFICE OF THE A.G. F WITH C. S. NNANNA
(MISS) (SSC). FMJ.

A.O. UWANGUE ESQ FOR THE RESPONDENT

CASE 4

**IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT LAGOS, NIGERIA
ON TUESDAY, THE 29TH DAY OF APRIL, 2014
BEFORE THE
HONOURABLE JUSTICE SALIU SAIDU
JUDGE**

SUIT NO. FHC/L/229C/2008

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....APPLICANT/RESPONDENT

AND

MR. OLUGBENIGA ADEBISI.....RESPONDENT/APPLICANT

PRACTICE AND PROCEDURE

Filing and service of further and better affidavit to the application for extradition

BAIL

Bail pending extradition proceedings: Conditions for consideration

RULING

This Ruling is sequel to the Applicant's Motion on Notice dated the 16th day of June, 2010 and the Respondents motion on Notice dated the 19th day of October, 2010.

The Applicants Motion is praying for the following orders:

1. AN ORDER granting leave to the Applicant to file and serve a further and better Affidavit, in furtherance of the Affidavit of DAVID OLUSOJI ATUNRASE dated 4th March, 2008 in support of the Extradition application dated 28th March, 2008, to amend her Originating process, pleadings/averments in this matter by filing a supplemental Affidavit of ALFRED RUBEGA, ESQ, the Assistant U.S. Attorney dated 22nd October, 2009 to rectify his (ALFRED RUBEGA, ESQ) Original/Initial affidavit dated 20th July, 2007.

2. FILING of supplemental Affidavit of ALFRED RIBEGA ESQ attached to the further and better affidavit of OKONJI FRANCIS IZUKA dated June, 16, 2010 with the accompanying and forwarding documents from:

- i. Directorate of Public Prosecutions of the Federation. Abuja dated 10th March, 2010
- ii. Ministry of Foreign Affairs, Abuja, dated 1st December, 2009.
- iii. Sealed and Certified document from U.S Department of State dated October 28, 2009.
- iv. Sealed and Certified document from U.S. Department of Justice dated October 28, 2009.
- v. Certified Certificate from the Office of International Affair U.S Department of Justice, dated October 27, 2007 in addition to this (ALFRED RUBEGA, ESQ) initial affidavit dated 20th July, 2007 in support of the Extradition application in respect of the Respondent.

3. AN ORDER for Extension of time within which the Applicant will file and serve the further and better affidavit of OKONJI FRANCIS IZUKA dated June 16, 2010, together with the supplemental affidavit of ALFRED RUBEGA, ESQ dated 22nd October, 2009, with the Accompanying and forwarding documents attached to the affidavit in support of this application (EXHIBIT “DPPF 2”).

4. AN ORDER deeming the already filed and served further and better affidavit of OKONJI FRANCIS IZUKA, dated June 16, 2010, together with the supplemental affidavit of ALFRED RUBEGA, ESQ dated 22nd October, 2009, with the accompanying and forwarding documents attached to the affidavit in support of this application (EXHIBITS “DPPF 2”) as properly filed and served.

5. AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstances.

In support of the Motion is a 5 paragraph Affidavit with Exhibits attached and a Written Address. The Applicant in its Written Address raised a sole issue for determination, which is;

Whether the Applicant is entitled to the prayers sought to amend her Originating process/averments in the initial Affidavit of ALFRED RUBEGA, ESQ THE U.S. ASSISTANT ATTORNEY DATED 20TH JULY, 2007 in support of the Extradition application, by filing a further and better Affidavit dated June 16, 2010, attaching the supplemental affidavit of (AFRED RUBEGA, ESQ, dated 22nd October, 2009 in addition to and/or in furtherance of his initial Affidavit dated 20th July, 2009 in support of the Extradition application in respect of the Respondent in this matter?

The Applicant argued that he is entitled to be granted leave and extension of time within which to amend the court processes filed by the Applicant in this matter. A right exists to the Applicant in this regard at any time before judgment/Ruling is delivered in the matter. Placing reliance On ORDER 17, RULE 1, OF THE FEDERAL HIGH COURT (CIVIL PRODECURE) RULE 2009 AND SECTION 6(6) (e) OF THE 1999 CONSTITUTION OF NIGERIA.

The Applicant further submitted that the amendment sought will ensure clear display of facts on the side of Applicant to this Honourable Court and to ensure fair hearing on the matter as guaranteed under Section 36 of the 1999 Constitution before ruling on the matter. The Applicant finally submitted that courts have long moved away from sticking to technicalities as opposed to the determination of parties' rights on merit and substantial justice. STATE VS GWONTO (1983) 1 S.C.N.L.R 142. The Applicant urges this court to grant the Application. In opposition the respondents filed 9 paragraphs Counter-Affidavit and a Written Address wherein a sole issue was raised for determination which is; Whether in the light of the facts of this case, Applicant is entitled to amend the evidence/affidavits of David Olusoji Atunrase and Alfred Rugeba, Esq on record which have been challenged by the Respondent for not meeting the requirement of the law of Evidence Act and the Extradition Act? The Respondent argued that the Rules of Court under which Applicant has brought this application do not apply to amendment of affidavits but, pleadings. In spite of the fact that these proceedings are by way of affidavit evidence, the affidavits do not constitute the pleadings in this case. The affidavits are only evidence upon which the parties are relying to get judgment. ALAMIEYSEIGHA VS IGONIWARI (NO.2) (2007) 7 NWLR (PT. 1034) 524. AT 589 PARA-F-G.

The Respondent further submitted that there is no Rule of Court that permits a party to amend his evidence on record. Once evidence is offered it cannot be amended; it is either it is admissible and relied upon or same is rejected and struck out. The Respondent submit that the Applicants have conceded the defects identified by the Respondent in the affidavit which form a basis for the Extradition Proceedings, referring to paragraphs 2,3 and 4 of the supplemental affidavit attached to motion as Exhibit DPPF1.

In the circumstances as these, the court will refuse an amendment of an affidavit. Citing the case of *AGBAKOBIA VS DIRECTOR OF S.S.S.* (1993) 7 NWLR (PT. 305) 353 AT 365 PARA B-C, the Respondent further submitted that in considering an application for amendment, the court must ensure that the right of any party to the proceedings is not prejudiced by the grant of the amendment. Where an application for amendment will overreach any of the parties, the court will readily refuse such application. Citing the case of *KODE VS YUSUF* (2001) 4 NWLR (PT. 703) 392 AT 418 PARA C-F.

Finally, it is submitted by the Respondent that where a party's affidavit is defective, the right thing to do is to withdraw same and file an appropriate one. The Applicant ought to discontinue the entire proceedings by withdrawing same. The Respondent urges this court to dismiss the Applicants application with substantial cost.

I have raised one issue for determination, which is: Whether the Applicant/respondent is entitled to amend its Affidavits in this suit?

On the issue I have raised above, it is settled law that the primary purpose of pleadings is to allow the case of each party to be stated clearly without ambiguity so that the opponent will know precisely the issues he is facing. See the case of *BALOGUN VS ADEJOBI* (1995) 2 NWLR (PT. 376) 151 AT 158, PARA C.

The law generally is that an application to amend pleadings can be made any time before judgment. See the case of *CELTEL (NIG) LTD VS ECONET WIRELESS LTD* (2011) 3 NWLR (PT; 1233) 156 AT 167, PARAS C-D AND ORDER 17, RULE (1) FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009. There is nothing in the Evidence Act that can stop a party to a Suit from filing a better and further Affidavit in a case; all

that is required in law is that the Respondent would also have a right to reply to such Affidavit. All the Applicant has required from the court is to seek the leave of court to file a further and better Affidavit, in addition to their earlier Affidavit before the court and permission to amend her Originating Process, pleadings and averment by filing a supplementary Affidavit. I have not seen any injustice this will do to the Respondent as long as the Respondent has a right of reply.

It is in the best interest of justice to allow parties put all their facts before the court. I hereby grant the Applicant prayer dated 26th day of June 2010 as prayed.

And now the Respondent application for bail.

The Respondents Application dated the 19th day of October 2010 is praying for the following;

1. AN ORDER releasing on or admitting the Respondent/Applicant to bail pending the hearing and determination of the extradition proceedings.
2. AND for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the Application is 9 paragraphs Affidavit with a Written Address attached as argument in support of the application. The Respondent raised a sole issue for determination in its Written Address, which is:

Whether in the peculiar circumstances of this case, the Applicant is not entitled to the grant of bail?

The Respondent submit that by the provisions of the Constitution, an accused person awaiting trial is entitled to bail. Citing Section 35(1) (c) and (4) of the 1999 Constitution of Nigeria, OSHINAY A VS C.O.P (2004) 17 NWLR (PT. 901) 1 AT PG. 15 PARA G-H.

The Respondent further enjoined this court to consider the principles that guide the grant or refusal of bail pending trial. Citing the cases of ABACHA VS STATE (2002) 5 NWLR (PT. 761) 638 AT PG. 674 AND ENWERE VS C.O.P (1993) 6 NWLR (PT. 299) 333.

The Respondent submitted that prior to the filing of the present proceedings, the Applicant was kept in detention over one year without an order of court remanding him in custody and against the clear provisions of Section 8(5) (a)

of the Act which mandatorily provides that a person awaiting Extradition can only be detained pursuant to an order remanding him in custody, and after the filing of this case, the court processes were not also served on the Applicant until after one year of the commencement of these proceedings. The Applicant was merely dumped in custody without any order till date. The Respondent submitted that by Sections 8 (6) and 14(6) of the Act, this Court is empowered to release the Applicant on Bail after 30 days of arrest without the extradition of such fugitive.

Finally, the respondent submitted that the health conditions also put into consideration in granting bail to the accused. Thus, where an accused who is in detention is in such a state of health that the medical services needed for his health are not available at the place of his detention, the court would readily grant bail to such an accused. In the instant case, the Applicant has been held in police custody for about 40 months where no Medical Services are available at all and has critically affected his state of health. *FAWEHINMI VS STATE* (1990) 1 NWLR (PT. 270) 486.

The Respondent/Applicant urges this court to grant this application and admit the Applicant to bail for the reasons adumbrated in its address. In opposing the Bail Application, the Applicant/Respondent in this case filed a 9 paragraphs Affidavit with a Written Address.

The Applicant/Respondent raised a sole issue for determination, which is; “Whether bail is available to a fugitive criminal remanded in custody pending the determination of extradition proceedings against him in court?”

The Applicant/Respondent argued that bail is at the discretion of the court. However, in an Extradition offences/Proceedings as is in this matter, the court is very cautious in granting bail to a fugitive criminal indicted of several fraudulent Criminal offences with various punishment attached to such offences on conviction as IS applicable to the present Respondent/ Applicant.

The Applicant/Respondent further submit that both the statutory authorities and decided cases cited in the Written Address of the Respondent in support of the bail application are distinguished in this matter as the Respondent/Applicant is not facing a criminal trial before this Honourable Court, but an extradition proceedings which the order of this court may lead

to the Respondent/Applicant's Extradition to the United States of America to face trial on his criminal indictments therein.

Granting bail to the Respondent/Applicant may cause him to jump bail and escape the justice of the extradition proceedings against him. The same Respondent/Applicant ran away from America after committing some criminal offences to China where he committed other offences, tried and convicted in China where he served some terms of imprisonments and was arrested by the Interpol on his way to Nigeria sometime in June, 2007.

The Respondent/Applicant has a bad criminal record and there is the likelihood of his repetition of the offences if he is granted bail. Citing *ABACHA VS THE STATE* (2002) 5 NWLR (PT. 761) 638 AT PG. 674.

Finally, the Applicant/Respondent submitted that there is no medical report in the present case to convince this Honourable Court of the ill-health of the Applicant/Respondent. The Respondent/Applicant urges this Honourable Court to discountenance all the assertions of the Applicant/Respondent and refuse the bail application.

I have raised a sole issue for determination, which is: Whether the Respondent/Applicant has satisfied this court with the requirement to be met for Bail to entitle the Respondent/Applicant to be granted bail?

The Supreme Court in plethora of cases had laid down the requirement for an application for bail to be granted. The requirements include:

- (a) The Evidence available against the accused.
- (b) Availability of the accused to stand trial
- (c) The nature and gravity of the offence
- (d) The likelihood of the accused committing another offence while on bail.
- (e) The likelihood of the accused interfering with the course of justice.
- (f) The criminal antecedents of the accused person.
- (g) The likelihood of further charge being brought against the accused
- (h) The probability of guilt.

See the cases of *EMMANUEL OFULUE VS F.G.N* (2004) 8 FR 66, *BAMAIYI VS THE STATE* (2001) 8 NWLR (PT. 715) 270, *FASHEUN VS*

A. G. FEDERATION (2008) ALL FWLR (PT. 423) 1396 AT 1408, PARAS C.F.

Taking a painstaking look at the Affidavit in support of the application none of the conditions stated above was stated therein. The only condition the Respondent/Applicant deposed to in paragraph 7 (h) of its Affidavit is that the Respondent/Applicant's health condition has deteriorated considerably by reason of his arrest and detention. No medical report of such ill-health was attached as evidence. Mere averment in pleadings proves nothing at all, if it is not supported by credible evidence, be it oral or documentary. See ENECHUKWU VS NNAMANI (2009) ALL FWLR (PT. 492) 1087 AT 1125, PARAS B-C.

It is important to state that paragraphs 4 (f) (g), 5, 6 and 7 of the Applicant/Respondent's Counter-Affidavit were unchallenged by the Respondent/Applicant. Where facts in an affidavit remain unchallenged and uncontradicted, the court is bound to accept those facts as established and as facts deemed to have been admitted. Those facts must be taken as true by the court unless they are obviously false to the knowledge of the court. See the case of HONDA PLACE VS GLOBE MOTORS HOLDINGS NIGERIA LTD (2005) 14 NWLR (PT. 945) PG. 273 AT 293.

I hereby refuse the Respondent/Applicant's bail application. As he has not satisfied the conditions that will make me grant him bail in this case especially considering his Criminal records as put forward by the Applicants/Respondent which the Respondent/ Applicant has not denied by way of Affidavit.

JUSTICE S. SAIDU

JUDGE

29/04/2014

APPEARANCES:

M. S. Hassan, Esq with Abimbola A. Lawal For the Applicant

Gabriel Uduafi, Esq For the Respondent

CASE 5

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, THE 25TH DAY OF MARCH, 2014
BEFORE HIS LORDSHIP HON. JUSTICE A. R. MOHAMMED
JUDGE**

CHARGE NO. FHC/L/12C/2012

BETWEEN:

ATTORNEY GENERAL OF THE FEDERATION APPLICANT

AND

OLANIYI JONESRESPONDENT

INTERPRETATION OF STATUTES

Sections 7, 8, 9 and 10 of the Extradition Act to the effect that where a fugitive has been detained for more than two (2) months after his arrest, he should be entitled to the remedy of a discharge.

Where there were similar criminal charges pending against the Respondent in Nigeria, the extradition request will be refused under section 3(5) of the Extradition Act.

JUDGMENT

This is a matter of an application to the Chief Judge of the Federal High Court by the Attorney-General of the Federation and Minister of Justice (hereinafter referred to as “The Applicant”) for the extradition of Olaniyi Jones (hereinafter referred to as “The Respondent”). It is dated 20th January, 2012.

The application reads as follows:

**IN THE MATTER OF THE EXTRADITION ACT (CAP. E25)
LAWS OF THE FEDERATION OF NIGERIA, 2004
SECOND SCIEDULE
FORM I**

TO THE CHIEF JUDGE, FEDERAL HIGH COURT, LAGOS

WHEREAS, in pursuance of the Extradition Act, a request has been made to Nigeria by a Diplomatic Representative of the Embassy of the United States of America, Abuja, for the surrender of OLANIYI JONES who is the subject of an indictment, along with six (6) others, in the United States District Court for the District of New Jersey, Case No.11 -CR-299 and filed on the 28th April, 2011 for the offences, specifically of:

1. **Count 1:** Conspiracy to commit wire fraud, in violation of 18, United States Code, Section 1340, carrying a maximum penalty of 20 years' imprisonment for each count; and
 2. **Count 2-5:** wire fraud, in violation of 18 United States Code, Sections 1341 and 2, carrying a maximum penalty of 20 years' imprisonment for each count; and
 3. **Count 10:** conspiracy to commit identity theft, in violation of 18 United States Code, Section 1028(a)(7) and 1028(f), carrying a maximum penalty of 5 years imprisonment.
2. All offences are covered by Article 3, Items 17 and 18, of the Extradition Treaty between the United States and the United Kingdom of December 22, 1931, made applicable to Nigeria on June 24, 1935, and continued in force between the United States and Nigeria.
3. These offences are also covered by Article 3, items 17 and 18 of Extradition (United States of America), Legal Notice No. 33 of 1967.
4. There is no statute of limitation for prosecution applicable to the offences charged in each count as provided by the United States Laws.
- 5 **NOW I, MOHAMMED BELLO ADOKE, SAN.** CER the Attorney General of the Federation and Minister of Justice, by this Order, under my hand, signify to you that this request has been made and require you to deal with the case in accordance with the provisions of the Extradition Act, Cap E25, LEN 2004.
6. In support of the Order, I attached an affidavit together with the Exhibits thereto, deposed to by **AKUTA PIUS UKEYIMA**, Nigerian, Male, Christian, Senior State Counsel, Prosecutions, Federal Ministry of Justice containing the following documents:
- i. Original Certificate with Seal of the United States Department of State, signed by the Secretary of State, **HILLARY RODHAM CLINTON** dated 22nd day of August, 2011, and subscribed by the Assistant Authentication Officer of the said Department.

- ii. Original Certificate document with Seal of the United States Department of Justice dated 19th day of August, 2011 by the Acting Associate Director, Office of International Affairs, Criminal Division, Department of Justice, United States of America, **JEFFREY COLE** and duly commissioned and qualified in the presence of **ERIC H HOLDER, Jr.** Attorney General of the United States, whose signature is also affixed,
- iii. Original copy of Certificate signed and executed by **JEFFREY COLE** Acting Associate Director, Office of International Affairs, Criminal Division, Department of, Justice, United States of America on the 19th day of August, 2011.
- iv. Original copy of affidavit in support of request for Extradition of **OLANIYI JONES** sworn, deposed to by **SETH KOSTO**, Assistant United States Attorney, for the District of New Jersey, sworn and subscribed before Honourable **MARK FALK**, United States Magistrate Judge, United States District Court, District of New Jersey, on the 9th day of August, 2011 and attached with the following Exhibits:
 - a. **EXHIBIT 'A'**: Certified Copy of the indictment issued against **OLANIYI JONES** who is being indicted in the United States District Court for the District of New Jersey, Case No.: I I CR-299 and tiled on the 28^o April, 2011 for the offences of: (I) Count I : conspiracy to commit wire fraud, in violation of 18, United States Section 1349, carrying a maximum penalty of 20 years imprisonment; (2) Count 2 - 5: wire fraud, in violation of 18 United States Code, Section 1341 and 2, carrying a maximum penalty of 20 years imprisonment for each count; and (3) Count 10: Conspiracy to commit identity theft, in violation of 18 United States Code, Section 1028 (a)(7) and 1028(f), carrying a maximum penalty of 5 years imprisonment. "A **TRUE BILL**" signed by **PAUL J. F1SMAN**, United States Attorney and confirmed by **SETH B. KOSTO**, Assistant U.S. Attorney, Newark, New Jersey (973) 645 - 2737.
 - b. **EXHIBIT 'B'**; Certified copy of Warrant of Arrest issued by the US District Court for the District of New Jersey, certified and endorsed by the issuing officer, United States Magistrate Judge, **HON. PATTY SHWARTZ** on the 9th day of August, 2011 at Newark, New Jersey.
 - c. **EXHIBIT 'C'**: Certified copy of United States of America's relevant Statutory Laws governing the offences and punishments for which the suspect is charged.

- d. **EXHIBIT ‘D’**: Photograph **OLANIYI JONES** obtained from his e-mail account,
- e. **EXHIBIT ‘E’** Photograph of **OLANIYI JONES** Describing him as “Born on 15th February 1982 in Nigeria. A citizen of the Federal Republic of Nigeria, a black, male, with black hair and brown eyes, approximately 167 centimetres tall, and weighing approximately 68 kilograms.”

Given under my hand this 20th day of January, 2012

(Signed)

MOHAMMED BELLO ADOKE, SAN, CFR

Hon. Attorney-General of the Federation and Minister of Justice

In support of the application is a 3 paragraph affidavit deposed to on 24. January, 2012 by one Akutah Pius Ukeyima, a Senior State Counsel in the Department of Public Prosecutions in the Chambers of the Applicant. Annexed thereto is Exhibit FMJ vide paragraph J of the affidavit in support. There is also in support of the application a written address dated 24th January 2012 but filed on 26th January, 2012. Also filed is a Reply Affidavit sworn to on 11th May, 2012 by one Oyalowo Omotola, a Deputy Detective Superintendent with the Economic and Financial Crimes Commission (EFCC), to which is attached Exhibit FMJI vide paragraph 7 of the affidavit. Accompanying this is the Applicant’s Reply Address on Points of Law dated 20TH May, 2012 but filed on 11th May, 2012. All processes filed in support of the application were relied on and adopted during its hearing.

The Respondent in opposition to the application filed a counter—affidavit of 16 paragraphs deposed to by one Owolabi Dawodu, one of the Legal Practitioners representing the Respondent in this matter. Attached to it are Exhibits OJI-OJ4. Accompanying this is a written address dated 20th 2012. Also filed by the Respondent is a Further Affidavit of 8 paragraph sworn to on 24th May, 2012 by one Kolawole Cecillia Amaka (Mrs), a Litigation Clerk in the Law Firm of the Respondent’s Counsel to which Exhibits ‘A’ – ‘D’.

It is my respectful opinion that one main issue arises for this application, which is: Whether, considering all the facts and the provisions of the relevant

laws on the subject matter, this application for extradition is proper and competent.

The Learned Leading Counsel, to the Applicant, M. S. Hassan, Esq. submitted in his written address dated 3th April, 2012 that in an application of this nature, what is required of the Applicant is contained in Section 17(1)(a) and (b), (3)(a) & (b), 4) of the Extradition Act Cap. E25 LFN, 2004 that also relevant are Sections 3, 5, 6 and 9 of the Extradition Act 2004.

He also submitted that the power to commit the fugitive to prison to await the Order of the Attorney General of the Federation for his surrender is also vested in the Federal High Court by virtue of Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended). He stated that the requirements for extradition of a fugitive when put together are:

- a. That there is a request for the surrender of the fugitive;
- b. That the fugitive is accused of extradition offences in a country other than Nigeria;
- c. That there is a warrant of arrest issued outside Nigeria authorising the arrest of the fugitive;
- d. That the warrant of arrest was issued in a country to which the Extradition Act applies.
- e. That the warrant of arrest is duly authenticated and same relates to the fugitive;
- f. That the offences which the fugitive is accused of are extraditable offences
- g. That the evidence produced will according to the law in Nigeria, justify the committal of the fugitive for trial if the offences were committed in Nigeria, and
- h. That the surrender of the fugitive is not precluded by the provisions of the Extradition Act and particular Section 3(1) - (7) of the Act.

It is Mr. Hassan's submission that all the requirements have been met in his application and that the Applicant has placed before this Court more than the evidence needed to warrant granting the application.

He contended that the Applicant only knew that the Respondent was a fugitive criminal and was needed by the United States of America only on

27th October, 2011 vide a letter front Nigeria's Foreign Affairs Ministry. He further contended that anything that happened before 27th October, 2012 did not involve the Applicant, which is the reason why this application was filed on 24th January, 2012 after the request for the official extradition of the Respondent from Nigeria was made.

He also submitted that the offences for which the Respondent is charged are extradition offences and if the said offence were committed in Nigeria, the evidence produced would according to the law in Nigeria, justify the committal of the fugitive. He stated as an example that conspiracy to violate laws of the United States such as Wire Fraud and identity theft can be equated with conspiracy contrary to Section 516, stealing and fraudulent Conversion contrary to Section 484 of the Criminal Code Act, Cap. C38 of the LFN, 2004 and Section 1 (1)(a) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006.

Mr. Hassan emphasized that these are extradition offences as they are items 17 and 18 of Article 3 of the Extradition (United States of America) Order, 1967, He stated that the Respondent has also denied the commission of the offences.

He submitted that sufficient facts have been placed before this Court to warrant the surrender of the Respondent to the United States of America.

On his part, Akin Olatunji Esq. of Learned Counsel to the Respondent submitted that it is not just that sufficient evidential materials have been placed before this Court to warrant the extraction of the Respondent, but such evidential materials must satisfy the provision of the Evidence Act for the Court to act upon same.

He opined that in the instant case, the entire evidence upon which these proceedings for extradition of the Respondent is based is affidavit evidence; being the affidavit of Akutah Pius Ukeyima and Seth B. Kosto Esq. That principally, the affidavit of Akutah Pius Ukeyima is the primary evidence in support of these proceedings on which every other piece of evidence derives from and so any defect in it is fatal to the entire proceedings. Also that the same goes to the affidavit of Seth B. Kosto Esq. to which is attached all the

purported indictment and warrant of arrest issued against the Respondent, as a defect in the said affidavit will affect the accompanying documents.

Olatuuji Esq. went on to observe that whereas the affidavit of Akutah Pius Ukeyima is headed in The Federal High Court of Nigeria in The Lagos Judicial Division Holden at Lagos, the notarization of same was done before the Commissioner of Oaths, Federal High Court Abuja on 24th January, 2012.

Furthermore, that the Cashier's official stamp affixed to page 1 dated 24th January, 2012 bears Federal High Court Abuja, while yet another Cashier's stamp dated 26 January, 2012 is affixed to page 4 of the same affidavit. He argued that this shows that the affidavit was sworn to before the Federal High Court sitting in Abuja and simultaneously made before the Federal High Court in Lagos. He said this is a defect that is very obvious and which renders the affidavit invalid. He stressed that their contention is not that an affidavit meant to be used before the Federal High Court Lagos cannot be deposed to at the Federal High Court Abuja, but that an affidavit for the use of a Court must be made before that Court or a particular Court, which is not the case here, He pointed out that while from the title the affidavit is purported to have been made in the Lagos Division of the Federal high Court, same is shown in the attestation part to have been sworn at the Federal High Court Abuja. That this is contrary to Section 90(a) of the Evidence Act which provides that every affidavit shall be headed in the Court before which it is made and in the cause or matter to which it relates. He submitted that the affidavit of Akutah Pius Ukeyima which is the pillar of these proceedings lacks any evidential value and this Court is precluded from attaching any probative value to it, having been made in contravention of the relevant provision of the to the case of **JOSIEN HOLDINGS LTD. VS. LORNAHEAD LTD (1995)1 NWLR (PT. 371) SC 254 265.**

Olatunji Esq. also drew attention to paragraph 3 (h) of the affidavit of Akutah Pius Ukeyima to the effect of having deposed that there are no criminal proceedings pending against Olaniyi Jones in Nigeria for the offence which his surrender is sought. He submitted that this assertion is false and misleading as shown by paragraph 9 (vi)-(xv) of the Respondent's counter affidavit dated 31st January, 2012 with details and particulars of criminal

charges pending at the High Court of Ondo state, Akure as per attached Exhibits JO1 to JO4.

He referred to Section 35 of the Extradition Act which forbids a fugitive criminal being Surrender if criminal proceedings are pending against him in Nigeria in respect of the offence(s) for which extradition is sought. He stated that the charges exhibited by the Respondent show that it is the same charges for which the Respondent is standing trial in Nigeria that he is sought to be extradited. He stated that this proves that the offences are recognisable and punishable under the laws of Nigeria and that Nigerian laws are adequate to deal with the allegations if they turn out to be true.

Olatunji Esq. submitted that since the Respondent is already being tried in Nigeria, this application is in violation of Section 3(5) of the Extradition Act. He urged that the request for the Respondent's extradition by the U.S.A. should not be acceded to, else it will look like ceding Nigeria's sovereignty acceptance that the Legal System of the U.S.A. is superior to that of Nigeria. He urged this Court to refuse the application.

He also drew attention to their Further Counter Affidavit sworn on May, 2012 in response to the Reply Affidavit filed on 11th May, 2012 by the Applicant. He stated the Further Counter Affidavit as going to show that the Respondent filed an appeal against an order of mere discharge of the Respondent as an accused person by the Lower Court instead of acquitting him. That this shows that the Respondent has pending prosecution against him in Nigeria. According to Olatunji to Esq the State Wii lose nothing if the Respondent is tried in Nigeria which is a familiar environment to him, rather than extradite him to the U.S.A. He urged this Court to refuse the application.

Replying on points of law, Hassan Esq. first submitted that Exhibits OJ1, OJ3A and OJ3B to the Respondent's counter affidavit dated 31st 2012 and Exhibits A, B, C and D of the Further Counter Affidavit are public documents which are not certified contrary to Sections 87, 102 and Evidence Act, 2011. He further submitted that paragraph 9(i) - (viii) of the counter affidavit offend the provisions of Section 115 (4) of the Evidence Act, 2011. That this is because the information, identity, the place and time of the source of information are not disclosed. He urged the Court to strike out that portion of

paragraph 9 of the Counter affidavit or to discountenance it. He cited the case of **EDU VS. COMMISSONER FOR AGRIC., WATER RESOURCES & RURAL DEVT. (2000)12 NWLR (PT. 681) 316 at 334 PARAS. C - D**. He argued that once this is done, the Responded will have no basis to stand.

As to the heading of their Reply Affidavit, Hassan Esq. urged the court to look at the substance and not the form, referring to Section 113 of the Evidence Act. He also submitted that the rule of double jeopardy does not apply in this case. He referred to Section 36(9) of the 1999 Constitution of Nigeria.

He further submitted that the criminal charge against the Respondent has been withdrawn. He argued that the Attorney General of the Federation did not institute the criminal action against the Respondent before the Akure High Court and was not a party to it. He referred to Section 174 of the 1999 Constitution, arguing that for the Attorney General of Federation to have taken over, it means that another establishment was in Charge.

He submitted that the Extradition Act has not been breached by filing this application as the criminal charge was no longer in place. He urged this Court to disregard the Respondent's objection and grant the Applicant's application.

It is necessary to state at this juncture that by virtue of Section 150 (1) of the Constitution of the Federal Republic of Nigeria 1999, the Attorney- General of the Federation is acknowledged as the Chief Law Officer of the Federation. And pursuant to Section 174 (1) of same Constitution, the Attorney-General of Federation is empowered to institute and undertake criminal cases against any person before any Court of law in Nigeria, other than a Court-martial; to take over and continue any such criminal proceedings that may have been instituted by any other authority or person and to discontinue at any stage before judgement any such criminal proceedings instituted or undertaken by him or any other authority or person. What this means is that the A-G. Federation has Overriding authority over all criminal proceedings in Nigeria and indeed no Government establishment can validly undertake criminal prosecution without express permission of the AG Federation, Judicial notice is taken that the EFCC for instance, has often been said to be an

Establishment under the office of the A-G Federation therefore any criminal proceedings instituted or undertaken by the EFCC is deemed to be by the AG. Federation. It is hence not tenable to disclaim such criminal proceedings, as sought to be done by Mr. Hassan in this case. And to lend credence to the view just expressed, the A-G Federation intervened in the matter involving the Respondent, ostensibly relying on Section 174 (1) (c) of the 1999 Constitution.

It is noteworthy that Olatunji, Esq did attack the affidavit in support the application as having signs on it which give the impression that it was sworn to simultaneously at Lagos and Abuja and hence offensive to the provision of the Evidence Act and rendered invalid. On this, I wish to respectfully endorse the submission of Hassan, Esq. in his written Reply on Points of Law dated 2nd May, 2012, with reliance on Section 46(3) of the Federal High Court Act, Cap. F 12, LEN 2004 read with Section 64 of the same Act. This is to the effect that the Chief Registrar, Registrars and Deputy Registrars shall have power to administer oaths and perform such other duties with respect to any proceedings in the Court as may be prescribed by the rules. I agree with Mr. Hassan that the issue goes more as to form rather than substance and is discountenanced.

Another issue is whether paragraph 9 i - xviii offends Section 115(4) of the Evidence Act and should be disregarded. That subsection provides that when a person deposes to his belief in any matter of fact and the belief is derived from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information. In the instant case, the opening line of paragraph 9 of the Respondent's counter-affidavit, which then introduces subparagraphs i - xviii reads thus:

“That the Respondent informed me as follows and I verily believe him that:”

it is obvious from this that whereas the deponent's informant is stated to be the Respondent, particulars as to time, place and circumstance are not furnished. This provision which is similar to Section 88 & 89 of the Evidence Act Cap. 112 LEN .1990 is held to be mandatory and that failure to strictly comply with any of those requirements will make such affected paragraphs of an affidavit irregular and rejected. See **AJOMALE VS. VADUAT (No.1)**

(1991) 5 NWLR (Pt.191) 257 at 283, ABIODUN VS. C. J. KWARA STATE (2007) 18 NWLR (Pt. 1005) 109 at 155 Paras B - E. This being the position, paragraph 9 of the Respondent's counter -affidavit is discountenanced in its entirety. However, whether this has the effect of completely removing the platform from under the Respondent's feet remains to be seen.

Mr. Hassan also did contend that Exhibits OJ1 - OJ3B to the Respondent's Counter affidavit and Exhibits A – D to the Further Counter affidavit are public documents which have not been certified and are inadmissible. I have looked at the said documents, which are actually photocopies of public documents such as charges, enrolment of orders and Court rulings among others, but which have not been certified. It is however trite law that the only type of secondary evidence permissible is a certified true copy of the document and none other. See **ARAKA VS. EGBUE (2003)17 NWLR (Pt.848)1; FAWEHIM1 VS. I.G.P (2002)7 NWLR (Pt.767) SC 606.** The said documents are thus inadmissible and unreliable and I so hold.

An Issue that is very crucial to this application is the averment in paragraph 34 of the affidavit of Akutah Pius Ukeyima in support of the application to the effect that there is no criminal proceeding pending against the Respondent in Nigeria for the offence which his surrender is sought. It should be noted that this affidavit was deposed to on 24 January, 2012, This Court is mindful that though paragraph 9 of the Respondent's counter affidavit is jettisoned, paragraphs 10-13 thereof are to be reckoned with and it is strongly averred therein that paragraph 43 in support is false and misleading.

It is significant to note that even without the Respondent's counter affidavit coming into play, the affidavit evidence furnished by the Applicant by itself resolves that issue. It is indisputable that the affidavit of Akutah Pius Ukeyima was sworn to on 24th January, 2012 but Exhibit FMJI attached to what termed Applicant's Reply Affidavit of the Points of Law|| deposed to by Oyalowo Omolola Shows that the criminal charges against the Respondent were discontinued at the High Court in Ondo State. Akure Judicial Division on 711 Mach, 2012. This leads to the inevitable conclusion that the charges were discontinued well after this application for the extradition of the Respondent was filed it can be said in the circumstance that the withdrawal

was tendentious, in order to accord some approval to the application. It is thus beyond argument that at the material time of deposing to the affidavit in support of the application, the charges had not been discontinued and so it amounted to falsehood for Akutah Pius to assert that there were no similar criminal charges pending against the Respondent in Nigeria. Therefore, this does not only offend the provisions of the Evidence Act, but also Section 3(5) of the Extradition Act, with effect on the competence of the whole application. I therefore uphold the submission of Olatunji Esq. of Counsel for the Respondent that anything done contrary to the provisions of a statute which authorize a particular act, renders such act void and a nullity. **See INAKOJU VS. ADLELEKE (2007) 4 NWLR (Pt. 1 025) at 697.** I hereby so declare the Applicant's application for extradition of the Respondent is refused.

Further to that, cognizance is also taking of the provisions of section 7, 8, 9 and 10 of the Extradition Act to the effect that where a fugitive has been detained or more than two (2) months after his arrest, should be entitled to the remedy of a discharge.

I am in agreement with Olatunji Esq. that the Respondent in this case having been in detention for longer than two months specified by the Extradition Act should be discharged. I so hold and order accordingly.

Hon. Justice A. R. Mohammed
Judge
25/03/2014

CASE 6

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, THE 25TH DAY OF MARCH, 2014
BEFORE HIS LORDSHIP
HON. JUSTICE A.R. MOHAMMED (JUDGE)**

CHARGE NO. FHC/L/218C/2011

BETWEEN:

ATTORNEY GENERAL OF THE FEDERATION.....APPLICANT

AND

RASHEED ABAYOMI MUSTAPHA.....RESPONDENT

STATUTE

Legal Notice No, 33 of 1967 published in the official Gazette No, 23, Vol, 54 of the 13th of April, 1967 establishes the basis for extradition between the United States of America and Nigeria,

Legal Notice No, 33 of 1967 published in the official Gazette No, 23, Vol, 54 of the 13th of April, 1967 is valid and enforceable in Nigeria,

Extradition must be for conduct which would have been penalized if committed in Nigeria

All the conditions precedent to the extradition request must be met before the grant of extradition order,

JUDGEMENT

This Judgment is in respect of the Applicant's application dated the 23rd day of May, 2011 for the extradition of the Respondent to the United State of America and the Respondent's Notice of Preliminary Objection dated 12th day of September, 2011 but filed on the 3/9/2011 in respect of same.

The Respondent's Notice of Preliminary Objection is brought pursuant to Sections 6 (6) (b) and Section 12 (1) of the 1999 Constitution of the Federal Republic of Nigeria, Cap C 23 LFN 2004 and under the inherent jurisdiction of the Court. It is supported by an eight paragraph affidavit deposed to by one Collins N. Ogbonna, a Counsel in the Respondent's solicitor's law firm with one annexure thereto attached as Exhibit A.

In moving the Notice of Preliminary Objection the Learned Senior Advocate Dr. Joseph Nwobike with O.U. Innah Esq. and Collins Oghonna Esq. Counsel for the Respondent placed reliance on the Respondent's affidavit in support of the Notice of Preliminary Objection and exhibit A and submitted in his written address dated the 12/0/2011 but filed on the 13/9/2011 one issue for determination by the Court i.e. whether the Extradition Treaty between the United States of America and United Kingdom dated December 22, 1931, made applicable to Nigeria on June 24, 1935 and the United Nations Convention Against Transnational Organised Crime (TOC Convention) adopted on the 1st November, 2010 are enforceable by this Honourable Court in view of the Provisions of Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)l.

He submitted that the Honourable Attorney-General of the Federation has by an application dated the 23/5/2011 commenced proceedings for the Respondent's extradition to the United States of America on request by the latter; and that the Respondent is expected on his extradition to face trial for some offences allegedly committed in the United States of America.

He contended that the basis of the Applicant's case is founded on the Provisions of **Article 3 Items 17 and 18 of the Extradition Treaty** between the USA and U.K, which Treaty was made applicable to Nigeria on the 24/6/1935 and the United Nations Convention Against Transnational Organised Crime (TOC Convention) also adopted on the 15/11/2010.

The Learned Senior Counsel drawing the attention of the Court to paragraph 2 of the Applicant's application submitted that by the Legal Notice No. 33 of 1967, the said Extradition Treaty of December 22, 1931 was applied to Nigeria by executive Order pursuant to the Provisions of Section 1 (2) of the Extradition Act Cap E.25 LFN 2004.

Furthermore, that apart from the Legal Notice No. 33 of 1967, the **Extradition Treaty of 22/12/1931** has not been enacted into law nor domesticated by the National Assembly. The Learned Senior Counsel placing reliance on **paragraphs 5 and 6** of the affidavit in support of the Notice of the Preliminary Objection submitted that by virtue of Section 12 (1) of the 1999 Constitution, the exclusive right and powers to domesticate treaties/convention is vested in the National Assembly. Reliance was placed on **Abacha Vs Fawehinmi (2000) 6 NWLR pt. 660 p. 228 at 288** wherein the Supreme Court held that an international treaty entered into by the Government of Nigeria does not become binding until enacted into law by the National Assembly. Further reliance was placed on the Privy Council's decision in **Higgs & Anor Vs Minister of National Security & Ors reported in the Times Magazine of 23/1 2/1999** and the Supreme Court in **Health Practitioners & 2 Ors Vs Medical & Health Workers & Ors (2008) 1 SC pt.11 p.1 at pp.36-37** on the Fact that conventions like treaty does not become binding until domesticated.

The Learned Senior Counsel thus contended that 22/12/1931 treaty between the USA and the U.K made applicable to Nigeria on the 24/6/1935 and the United Nations Convention Against Transnational Organised Crime (TOC Convention) adopted on the 15/11/2010 are unenforceable in Nigeria; same having not been domesticated. He further contended that the Legal Notice No, 33 of 1967 does not qualify as an Act of National Assembly hence does not give the treaty or convention the force of law in Nigeria. Reliance was placed on the unreported case of **FRN Vs Abiodun Micheal Bukare: FHG/L/33/06 at pp. 14 - 16** per Abutu J. (as he then was). He contended that the Provisions of Sections 1 (1), (2), (3), (4) and (5) of the Extradition Act Cap E 25 LFN.2004 are void and of no legal effect in so far as they are inconsistent with the Provisions of Section 12 (1) of the 1999 Constitution. Reliance was placed on **Section 1 (3) of the Constitution; Aminu Tanko Vs The State (2009) 4. NWLR pt. 1131 p.430 at 453.**

Furthermore, that it is the National Assembly that has the constitutional powers to enact/domesticate treaties in to Law in Nigeria and that the Extradition Treaty dated 22/12/1931 and the United Nation's Convention Against Transnational Organised Crime (TOC Convention) adopted on the 15/11/2010 not having been enacted into law by the National Assembly, same

remain unenforceable in Nigeria. Reliance was placed on **Cadbury Nig. Plc. Vs FBIR (2010) 2NWLR pt. 1170 p. 561 at 561 at 579 - 580** wherein the Supreme Court held that:

“The Constitution is Supreme, it is tile organic or fundamental law and it is the ground norm of Nigeria. The Court has therefore, the jurisdiction to declare any other law or Act inconsistent with the Provisions of the Constitution invalid and therefore null and void. This is because, the Constitution has also been described as the *fons et origo*. Any Act which infringes or runs contrary to those organic principles or systems or provisions must be declared to be inconsistent.”

Further reliance was placed on **N.U.E.E. Vs B.P.E (2010) 7 NWLR pt.1194 p.536 at 570— 571.**

He contended therefore that this Court cannot validly assume jurisdiction over the extradition application nor order the extradition of the Respondent on the basis of the Extradition treaty dated the 22/12/1931 and the United Nations Convention Against Transnational Organised Crime (TOC Convention) adopted on the 15/11/2010, both laws being unenforceable under the Nigerian Law, and not having been domesticated within the meaning of Section 12 (1) of the Constitution. The Learned Senior Counsel also contended that both laws seek to limit, infringe and affect the enjoyment of the Respondent/Applicant’s rights both under the Common Law and the statute. Reliance was placed on the Supreme Court in **Abacha Vs Fawehinmi (2000) supra at p.288** thus “In the law of England and the Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the crown. Treaties formed no part of domestic law unless enacted by tile legislature. Domestic courts had no jurisdiction to construe or treaty, nor could unincorporated treaties change the law of the Land. They had no effect upon citizens’ duties in common or statute laws”.

He submitted that the Court lacks the jurisdiction to hear and determine the extradition application as presently constituted. Reliance was placed on **Madukolu Vs Nkemdilim (1962) ALL NLR pt. 11 p.581 at pp 589 - 590**, urging the Court to strike out the extradition application and to discharge the Respondent/Applicant.

The Learned Counsel to the Applicant/Respondent M. S. Hassan Esq. in opposing the Notice of Preliminary Objection relied on the Applicant/Respondent's Nine paragraph counter affidavit deposed to by one Rashidat Ronke Oyeneyin, a Senior Detective Superintendent with the Economic and Financial Crimes Commission and submitted in his written address in respect of same that the Honourable Attorney General of the Federation and Minister of Justice on the request of the United States of America for the surrender of Rasheed Abayomi Mustapha filed an extradition application in respect of the request. He contended that the offences for which the request was made include conspiracy to commit mail fraud, conspiracy to commit money laundering, theft from a Retirement Fund and Aggravated identity theft all in violation of the United States of American Laws.

The Learned Counsel formulated two issues for determination by the Court which are:

“- Whether the Extradition Treaty between the d States of America and the United Kingdom dated 22/12/1931 and made applicable to Nigeria on the 24/6/1935 and the United Nations Convention against Transnational Organised Crimes (TOC Convention) adopted on 15/11/2010 are in conflict with the Provision Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

- Whether Section 1 (1), (2), (3), (4) and (5) of the Extradition Act Cap E25, LFN 2004 is in conflict with Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).”

Arguing his issue No. 1, above, Learned Counsel submitted that the Extradition Treaty between the United States of America and the United Kingdom dated the 22/12/1931 and made applicable to Nigeria on the 24/6/1935 and the United Nations Convention against Transnational Organised Crimes (TOC Convention) adopted on the 15 11/2010 are not in conflict with the Provisions of Section 12 of the 1999 Constitution. He contended that the Extradition Treaty between Nigeria and the United States of America is embodied in the Legal Notice No. 33 of 1967 published in the Official Gazette No. 23, Volume 54 of the 13/4/1967; which Treaty forms part of the Extradition Decree of 1966 No 87. Furthermore, that Section 2(1) of the Extradition (United States of America) Order 1967 i.e. Legal Notice No. 33 of 1967 provides that the Extradition Decree of 1966 shall apply to the

United States of America for the purpose of giving effect to the Extradition Treaty set out schedule 2 of the Order, Counsel contended that this is binding on Niger subject to the modifications specified in schedule I.

It was also his contention that Section 2 (2) of that law provides thus:

“In Schedule I of that Decree there shall be inserted the following entry.

“2” The United States of America L.N. 33 of 1967”

He submitted that the Extradition Decree No, 87 of 1966 is now the Extradition Act Cap E25 LFN 2004; and that both the Extradition Decree No. 87 of 1966, the Legal Notice No. 33 of 1967 which further amended the Extradition Decree No. 87 of 1966 and the Extradition Act Cap E25 LFN 2004 are all existing laws by virtue of Section 315(1) of the 1999 Constitution as amended; and hence need not be re-enacted by virtue of Section 12 of the Constitution of 1999.

He contended that the case of **Health Practitioners & 2 Ors Vs Medical and Health Workers & Ors** *supra* relied upon by the Learned Senior Counsel is not relevant to this case as it deals with ILO and international conventions and not Extradition and so is the case of **Abacha Vs Fawehenmi** *supra* which only states the procedure with which a treaty can be made. The case, he further submitted came up after the 1999 Constitution after the enactment of the laws relied upon by the Applicant Respondent. Reliance was placed on **George Udeozor Vs FRN (2007) 15 NWLR pt.1058 p.499 at 515-516 paras H - C** wherein the Court held thus:

“The requisite legislations governing extradition between Nigeria and the United States of America are as follows:

- (a) The Extradition (United States of America) Order of 1967 published in the Special Gazette No. 23 Vol. 54 of the 13th April, 1967
- (b) Extradition Act Cap 125, Laws of the Federation of Nigeria 2004.
- (c) Evidence Act Cap 112 Law of the Federation of Nigeria 2004.
- (d) The Criminal Procedure Act.
- (e) Legal Notice No. 33 of 1967.
- (f) The Immigration Act Cap 171 Laws of the Federation of Nigeria 1990 and
- (g) The Constitution of the Federal Republic of Nigeria 1999.”

Further reliance was placed on the unreported cases of **In the Matter of Extradition Act Attorney-General of the Federation Vs Olurenmi Adebayo**: wherein Justice Nauta at p 13 of the Ruling stated thus:

“Section 1 (3) of the Extradition Act, Cap E 25 LFN 2004 applied to the United States of America subject to the Provisions of the Legal Notice No. 33 of 1967. This Honourable Court adopts in toto, the conclusion reached by the Court of Appeal with regard to the applicability of the Treaty to USA and vice versa...”

and in **Attorney - General of the Federation Vs Emmanuel Ekhalor: Suit No. FHC/IC/2011** delivered on the 26/7/2011 by Hon. Justice Binta Nyako granting the application of the Applicant for the extradition of the Respondent.

Learned Counsel contended that the offences for which the Respondent/Applicant is charged with, are covered by the TOC Convention which both Nigeria and the United States of America are signatories to, which law is also domesticated as Law in Nigeria. Furthermore, that the TOC Convention to which Nigeria became signatory to on the 13/12/2000 gave birth to the Economic and Financial Crimes Commission (Establishment) Act 2004, the Independent Corrupt Practices and Other Related Offences Act. 2003 (ICPC), the National Agency for the Prohibition of Trafficking in Persons Act etc. He therefore urged the Court to hold that the Extradition Treaty between the United States of America and the United Kingdom dated the 22/12/1931 and made applicable to Nigeria on the 24/6/1935 and the United Nations Convention against Transnational Organised Crimes (TOC Convention) adopted on the 15/11/2010 are not in conflict hence enforceable within the Provisions of Section 12 of the 1999 Constitution as amended.

On issue No. 2 Learned Counsel submitted that **Sections 1(1), (2), (3d), (4) and (5) of the Extradition Act** is not in conflict with Section 12 of the Constitution and that the Extradition Act is an existing law within the meaning of the Provisions of Section 315 of the 1999 Constitution. Reference was made to **Section 1 (1) of the Extradition Act** which Counsel contended does not vest law-making Powers on the President of the Federal Republic of Nigeria; and that he was only to publish treaties or other agreements in the Federal Gazette. This, he argued is not the same as —making law”.

Learned Counsel on the definition of “Gazette” relied on the Oxford Advanced Learners Dictionary, 8th Edition p. 620 which defined same as “an official newspaper published by a particular organization containing important information about decisions that have been made amid people who have been employed”. He urged the Court to hold that the act of the President in ordering the, publication of a treaty in the Federal Gazette as provided by **Section 1 (1) of the Extradition Treaty** is not making of laws nor the performance of the functions of the National Assembly. He further urged the Court to strike out **paragraphs 6 (i) - (v) of the affidavit in support** of the Preliminary Objection as same contains legal conclusions and arguments hence contravening Provisions of **Sections 86, and 87 of the Evidence Act.**

On the issues raised by the Respondent/Applicant as contained in the Learned Senior Counsel’s written address, on the Legal Notice No. 33 of 1967 and the Extradition Treaty of the 22/12/1935 having been enacted into Law nor domesticated by the National Assembly, he submitted that both the Legal Notice No. 33 of 1967 and the Extradition Treaty of the 22/12/1931 did not apply to Nigeria by Executive Order but rather forms part of the Extradition Act LFN 2004; as the Legal Notice No. 33 of 1967 amended the Extradition Decree No. 87 of 1966. Reliance was placed on **Sections 2 (1) and 2 (2) of the Extradition U.S.A Order 1967.** He contended that both **Decree No 66** and the **Legal Notice No. 33 of 1967 all form part of the Extradition Act Cap E25 LFN 2004.** Furthermore, that **Section 1 of the Extradition Act** did not give the President power to make laws.

On the argument of the Respondent/Applicant that the TOC Convention adopted on the 15/1 1/2010 is unenforceable, same not having been domesticated and the Learned Senior Counsel’s placed reliance on **Abiodun Bakare’s** case, he submitted that the TOC Convention forms part of the establishment of our law enforcement Agencies for the purpose of combating organised crime and other forms of criminality in Nigeria. Furthermore, that **Article 16** of that law which deals on extradition generally is domesticated by virtue of the Extradition Act Cap E25 LFN 2004; and that the EFCC, the ICPC, and the NAPTIC laws, are all creations of the TOC Convention. He contended that the case of **Abiodun supra** is not binding on this Court and that the case is on appeal and the Court of Appeal is yet to pronounce on it.

Learned Counsel submitted further that the extradition Law is not inconsistent with the provisions of the 1999 constitution; hence the cases of **Amino Tanko Vs The States (2009) 4 NWLR pt. 1131 p. 430 at 453**, **Cadbury Nigeria Plc. Vs FBIR (2010) 2 NWLR pt.1179 p.561 at 579-580**, **NUEE Vs BPE (2010) 7NWLR pt.1194 p.538 at p.570-571** and **Abacha Vs Favehinmi 2000** supra are not relevant to the instant case.

On the issue of jurisdiction raised by the Respondent/Applicant, and the reliance on **Madukolu Vs Nkemdilim (1962) ALL NCR Pt. II p. 581 at p. 589- 590**, he submitted that the Extradition Treaty of the 22/12/1931 and the TOC Convention adopted on the 15/11 /2010 form part of the Extradition Act that the Court is competent to entertain and to determine the Applicant/Respondent's application for the extradition of the Respondent/Applicant. Reliance was placed on **Sections 251 (I) of the 1999 Constitution**.

He urged the Court to dismiss the preliminary objection and to assume jurisdiction in the extradition proceedings. The Learned Senior Advocate replying on points of Law submitted that **paragraph 6 of the affidavit** in support of the preliminary objection does not contravene **Sections 86 and 87 of the Evidence Act**. Furthermore, that the Applicant/Respondent has already joined issues in respect of same and hence cannot be heard to raise objections. He contended that the **Legal Notice No. 33 of 1967** cannot amend, add, or modify the **Extradition Act No. 87 1966** and that where it is so stated, it will be invalid. Reference was made to **Section 1 (5) Extradition Act No. 87 of 1966**. And that where it is so stated, it will be invalid. References was made to **Section 1 (5) Extradition Act No. 87 of 1996**. Furthermore, that the Extradition Act of 1967 is not absolute. Reliance was placed on **Sections 1 (6) of the 1967 Law**.

The Learned Senior Counsel further contended that the **Legal Notice No. 33 of 1967** is subsidiary to Decree no. 87 of 1966 within the contemplation of **Sections 1(1) and (5) of the 1966 Act**. Furthermore, that the Legal Notice No. 33 of 1966 is not an existing law within the meaning of **Section 315 (1) (a) of the Constitution**, same not qualifying as an instrument within the Provisions of **Section 1 (b) of the Constitution**. The Learned Senior Counsel also submitted that in view of the provisions of **Section 12 (1) of the**

Constitution, and Section 1 of the Extradition Act, 1966, the Legal Notice No. 33 of 1967 cannot form the basis for the extradition proceedings; same not having been made by the Parliament. He submitted further that in 1967 there was a body exercising legislative power. Reliance was placed on **Lakomi Vs AG Western Region**. Furthermore, that, this body did not exercise its legislative powers to bring about the Legal Notice of 1967. He urged the Court to uphold the Preliminary Objection.

I have carefully examined the affidavit evidence, the exhibits and the submissions of Counsel to both parties in respect of the Preliminary Objection. The Respondent/Applicant had argued that there is not law in existence between the Nigerian Government and time United States of America warranting the extradition of the Respondent/Applicant as sought by the Applicant/Respondent in its application dated the 23/5/2011. The Learned Senior Counsel has equally contended that the **Legal Notice No.33 of 1967** is not domesticated in the Nigerian Laws within the meaning of **Section 12(1) of the 1999 Constitution**. He contended that this being the case, same does not qualify as an existing law within the meaning of **Section 315 of the 1999 Constitution**. He contended that the Court lacked the jurisdiction to entertain the Applicant/Respondent's application for the extradition of the Respondent/Applicant based on a non-existing law; urging the Court to decline jurisdiction to entertain same.

The Applicant/Respondent on the other hand contended that the Court has jurisdiction to entertain the application for the extradition of the Respondent/Applicant within the meaning of the **Extradition Decree No. 87 of 1966, Legal Notice No. 33 of 1967** which all form part of the **Extradition Act Cap E25 LFN 2004**. Counsel has also contended that they are existing laws within the provisions of **Section 315 of the 1999 Constitution**. Furthermore, that the Provisions of **Section 12** of the Constitution does not affect the said Extradition Laws, same having already been domesticated before the enactment of the Provisions of **Section 12 of the 1999 Constitution**; urging the Court to assume jurisdiction.

I must say having critically examined the issues raised above that, the issue of the jurisdiction of this Court can best be resolved by the determination:

Whether or not the Extradition Laws comprising the Extradition Decree No. 87 1966, Legal Notice No. 33 of 1967 and the Extradition Act Cap E25 LEN 2004 are indeed enforceable Laws in Nigeria and hence capable of invoking the jurisdiction of this Court under Section 25 1 of the 1999 Constitution.

I agree with the Learned silk for the Respondent/Applicant that were these Laws are not enforceable either because they were not made by the proper authority or procedure or that they have not been domesticated as Nigerian Law, this Court will have no jurisdiction to entertain any application brought in respect of them. Having said this, it is trite that this Court in deciding the validity, enforceability or otherwise of the Extradition Laws quoted above will examine the Laws in order to determine the body vested with the power to make Laws/domesticate same before the enactment of Section 12 of the 1999 Constitution.

The Extradition Decree 1966 No, 87 which Decree commenced on the 8th day of March, 1967 provides as follows:

Whereas the Extradition Treaty concluded between the United States of America and Great Britain and signed at London, on 22 December, 1931 for the surrender of fugitive offenders, has been recognized as binding on Nigeria subject to the modifications specified in schedule hereof:

NOW THEREFORE, in exercise of the powers conferred by Section 1 of the Extradition Decree 1966 and of all other powers enabling it in that behalf the Federal Executive Council hereby makes the following order:

This order may be cited as the Extradition (United States of America) Order 67 and shall apply throughout Nigeria.

2 The Extradition Decree 1966 **shall apply to the United States of America for the purposes of giving effect to the Extradition Treaty set out in Schedule 2 of this Order which, subject to the modification specified in Schedule 1 below is binding on Nigeria.**

3. Accordingly, in Schedule 1 of that Decree there shall be inserted the following entry.

2. The United States of America Legal Notice 33 of 1967

Furthermore, **Schedule 2 of the Extradition (United States of America) Order 1967** provides thus:

“Extradition Treaty between the United States of America and Great Britain, signed at London, on 22 December, 1931, and recognized as binding on the Federal Republic of Nigeria.”

The Learned Senior Advocate had argued on behalf of the Respondent/Applicant that the **1967 Legal Notice** cannot amend the Extradition Decree of 1966 being a subsidiary legislation. I am however, minded to disagree with the Learned Senior Counsel in this respect. This is because it is obvious from the wordings of the **Extradition (United States of America) Order 1967** that the then law making body i.e. the Federal Executive Council intended to amend the 1966 law by including the United States of America as stated in **Section 1 of that Law**. Furthermore, it is pertinent to state that the Federal Military Government of Nigeria promulgated the **Decree No. 1 of 1966**, which law in **Section 3** gave the Federal Military Government power to make laws for the peace, order and good government of Nigeria. However, the Decree No.1 further stated in **Section 10 (1) of that Law** thus;

“where a power to make an instrument is conferred on the Head of the Federal Military Government of the Supreme Military Council by any Law, then, **without prejudice to the exercise of the power by the Head of the Federal Military Government in person or by the Supreme Military Council itself as the case may be, any instrument made in exercise of that power may be executed by the hand of the Secretary to the Federal Government.**”

I observe that the said Legal Notice No. 33 of 1967 was signed/made by “H. A, Ejueyitche” the Acting Secretary to the Federal Military Government of Nigeria on the day 8th of March, 1967. I further observe this is in accordance with the Provisions of **Section 10 of Decree No.1 otherwise known as the Constitution (Suspension and Modification) Decree 1966 No. 1**. It is also not in doubt that the Said **Decree No. 1** suspended the **1963 Constitution of the Federal Republic of Nigeria**. Thus in the absence of the Constitution it became the *ground norm*. It is equally trite that in the absence of the Constitution the hierarchy of the Laws changed from the Constitution to the

unsuspended Sections of the Constitution, and Decrees of the Federal Military Government, the Edicts, followed, by judicial precedents etc. it is pertinent to observe that the **Extradition Laws of 1966 and 1967 were all promulgated before Section 12 of the 1999 Constitution**. To that end they became Acts/instruments recognised under **Section 315 of the Constitution 1999** as existing Laws.

I am therefore unable to agree with the Learned Senior Advocate that any of the legislations made before **Section 12 of the 1999 Constitution** or in fact **Legal Notice No. 33** need to be recognised/domesticated as the case may be after the **1999 Constitution**. This being that they were made by a recognised Government as at the time. The Provisions of **Section 12 of the 1999 Constitution** remains relevant to instruments made after the military era, which era though not popular but cannot be wiped away from our Laws or history.

In the **Miscellaneous Offences Tribunal Vs Okoroafor (2001) 18 NWLR pt.745 p. 295 at p. 335** the Supreme Court stated thus:

“it is generally acknowledged that the court faced with the interpretation of a statute has a duty to first discover the intention of the Law- makers. This has to be discovered from the words used in their ordinary and natural sense - when there is no ambiguity about their meaning.”

Nigerian Shipping Council Vs United World Ltd. Inc. (2001) 7 NWLR (PT 713) P 576 at 584; and Nufiu Rabin Vs the State (1980) 8 - 11 SC p. 130 at 148-149.

There is no doubt in my mind that the proper interpretation of the **Legal Notice No. 33 of 1967** is that the highest law making body at the time i.e. the Supreme Military Council intended to and did amend the Extradition Law of 1966 to include the United States of America with the **Legal Notice No. 33 of 1967** published in the **official Gazette No. 23, Vol. 54 of the. 13th of April, 1967** and known as **Extradition (United States of America)**.

It is therefore my humble view that the **Legal Notice No. 33 of 1967** known as **Extradition (United States of America) Order 1967** is a valid and an enforceable Law in Nigeria and I so hold. I thus overrule the objections of the Respondent/Applicant in his Notice of Preliminary Objection dated the 2/9/2011 but filed on the 13/9/2011. Consequently, the Notice of Preliminary Objection is hereby dismissed.

In the light of my ruling above, I will now consider the Applicants application for the extradition of the Respondent dated the 23 day of May, 2011.

The Applicants application is dated the 23/5/2011 signed by the Honourable Attorney General of the Federation and Minister of Justice, pursuant to the **Extradition Act Cap E25 LFN 2004**.

It is supported by a three paragraph affidavit deposed to on the 26/5/2011 by one Akutak Pius Akeyima, a Senior State Counsel in the department of Public Prosecutions in the Chambers of the Honourable Attorney-General of the Federation and Minister of Justice with four annexures attached thereto as **Exhibits A, B, C, and D**. The exhibits were stated to contain the following:

1. **Exhibit A:** Time CTC of the indictment/charge of the fugitive by the United States of American Government as contained at pages 38-55 of the Extradition application.
2. **Exhibit B:** Copy of the Warrant of Arrest issued by the U.S District Judge contained at **pages 56— 57** of the Extradition application
3. **Exhibit C:** The CTC of the United States of American Laws governing the offences and punishment for which the fugitive is charged as contained at **pages 58-70** of the Extradition application.
4. **Exhibit D:** The photograph/picture describing Rasheed Abayomi Mustapha, the fugitive as contained at **page 72** of the Extradition application.

Also attached to the affidavit is the Original Certificate with the seal of the United States of American Government signed by the Secretary of States- Hilary Clinton dated the 28/4/2011 subscribed by the Assistant Authentication Officer, Department of State as contained at page 9 of the extradition application.

1. An Original Certificate with the seal of the United States of American department of Justice dated the 28/4/2011 signed by one David E. Wanner, an Associate Director of international Affairs Criminal division which was commissioned and qualified by one Eric H. Holder JC as contained at **pages 10 to 11** of the Extradition application:
2. An Original Copy of the affidavit in support of the Request for the extradition of the Respondent deposed to by one Mark E. Coyne, an Assistant United States of American Attorney before Hon. Claire

Cechi, a United States of American Magistrate Judge in the district of New Jersey dated the 27/1/2011 as contained at **pages 12 to 37** of the Extradition application; which document is attached with **exhibits A, B, C and D.**

Learned Counsel to the Applicant Hassan A. S. Esq. with A. T. Alamakura Esq. and O. Oddisi Esq. Counsel in moving the Extradition application placed reliance on all the documents as above listed, the affidavit evidence and the exhibits and submitted in his written address dated the 20/9/2011 that the Applicant pursuant to the Extradition Treaty between Nigeria and the United States of America as contained in the Extradition Act seeks the order of Court for the surrender of the Respondent to the United States of America to face trial on some indictments, Counsel submitted that by virtue of Decree No. 1 1966, the then Military Government established the legitimacy of the Military Government of the Federal Republic of Nigeria at the time and the making of Laws for the country. Reliance was placed on Section 3(1) of Decree No. 1 1966. Further reliance was placed on **AGF Vs Guardian Newspaper & Ors. (1999) 9NWLR pt. 618 p.187 at p. 211 paras E-G and p. 239 paras C—E** wherein the Supreme Court interpreted **Decree No. 1 of 1966**. He submitted that pursuant to Decree No. 1 of 1966, which gave powers to the Federal Military Government to make Laws, the then Federal Military Government promulgated the **Extradition Decree No. 87 of 1966** and further in 1967 a **Legal Notice No. 33 of 1967** to amend the Extradition Decree of 1966, He contended that this is an existing Law within the meaning of the provisions of **Section 315 (4) (b,) of the 1999 Constitution.**

Counsel submitted that the **Legal Notice No. 33 of 1967** is not a subsidiary legislation but that same forms part of the **Extradition Act Cap E25 LFN 2004**. Reference was made to the **Schedule of the Extradition Act Cap E25 LFN 2004.**

Learned Counsel formulated one issue for determination by the Court:

“Whether the Applicant has placed enough evidence before the Honourable Court to justify all, the preconditions for the grant of the order sought.”

In arguing this sole issue, counsel submitted that **Section 21 (1) (a) of the Extradition Act Cup E25 LFN 2004** defines ‘fugitive criminal’ as any person accused of an extradition offence committed within the jurisdiction of a country other than Nigeria.

Furthermore, that in an application of this nature, all that is required of the Applicant is as provided by **Sections 17 (1) (a) and (b), (3) (a) and (b) and**

(4) of the Extradition Act Cap E25 LFN 2004 which Section provides thus:

- i. in any proceedings under this Act, any of the following document, if duly authenticated shall be received in evidence without further proof namely:
 - a. Any warrant issued in a country other than Nigeria.
 - b. Any deposition or statement on Oath or affirmation taken in any such country or a copy of such deposition or Statement
- ii. The requirement of this subsection are as Follows:
 - a. A warrant must purport to be signed by a judge, magistrate or Officer of the country in which it was issued.
 - b. A document such as is mention in subsection (i) (b) of this Section must purport to be certified under the hand of a judge, magistrate or officer of the country in which it was taken to be the original or a copy, as the case may be document in question.
- iii. For the purpose of this Act, judicial Notice shall be taken of the official seals of Ministers of State of other countries other than Nigeria.

Learned Counsel submitted that the **Extradition Act Cap E25 LFN 2004 in Section 3** provides for restrictions on surrender of fugitives, **Section 5** for liability of fugitive to surrender, **Section 6** for the Request for the surrender and the power of the Attorney General thereto while Section 9 provides for the procedure to be adopted by the Honourable Court and the issues to be considered by the Court before the committal of the fugitive.

He submitted that the magistrate is to commit the fugitive to prison to await the order of the Attorney General for his surrender; which order is vested in the Federal High Court as provided by **Section 251 (1) of the 1999 Constitution.**

Learned Counsel therefore submitted that the above requirements have been met by the Applicant hence the application. Reliance was placed on the following:

1. That there is a request for the surrender of the fugitive.
2. That the fugitive is accused of extradition offences in a country other Nigeria.
3. That there is a warrant of arrest issued outside Nigeria authorizing arrest of the fugitive.
4. That the warrant of arrest was issued in a country to which Extradition Act apply.
5. That the warrant of arrest is duly authenticated and same relate to fugitive.
6. That the offences which the fugitive is accused of are extraditable offences.
7. That the evidences produced will according to the Law in Nigeria justify the committal of the fugitive for trial if the offences were committed in Nigeria.
8. That the surrender of the fugitive is not precluded by the provisions of Extradition Act in particular Sections 3 (1) - (7) of the Act.

Counsel further submitted that **Section 9 (3) of the Extradition Act E25 LFN 2004** provides thus:

“(3) In the case of a fugitive criminal accused of an offence claimed to be an extradition offence, if there is produced to the magistrate a warrant of arrest issued outside Nigeria authorising the arrest of the fugitive and the magistrate is satisfied.

- (a) That the warrant was issued in a country to which this Act applies, is duly authenticated and relates to prisoner,
- (b) That the offence for which the fugitive is accused an extradition offence in relation to the country.
- (c) That the evidence produced would according to the Law of Nigeria, justify the committal of the prisoner for trial if the offence of which he is accused had been committed in Nigeria; and
- (d) That the surrender of the fugitive is not precluded by this Act and in particular by any of subsections (1) to (6.) of Section 3 thereof and where the country requesting the surrender of the fugitive is one to which this Act applies by virtue of an order under

Section 1 of this Act, is also not prohibited by the terms of the extradition agreement as recited or embodied in the Order.”

He contended that all the requirements above have been complied with in the application. Thus, the Applicant has shown the Court that a request was made to it by a Diplomatic Representative of the Embassy of the United States of America for the surrender of the Respondent within the meaning of the Provisions of **Section 6 of the Act**; the Applicant having received a letter to that effect on the 13/5/2011 from the Nigeria’s Foreign Affairs Ministry - necessitating its application to this Court on the 26/5/2011. Counsel submitted that the Respondent is accused of extradition offences in the United States of America, Reliance was placed on the certified copy of indictment issued against the Respondent on the 31/10/2008, signed by one Christopher J. Christie, United States Attorney which document the Applicant has placed before the Court. Furthermore, is a copy of warrant of arrest issued by the United States District Court for time District of New Jersey, certified and endorsed by the clerk, William T. Walsh, United States District court, District of New Jersey and signed by the issuing officer, United States District Judge, Hon. Katharine S. Hayden on the 25/4/2011 He contended further that in so far as the Extradition Act applies to the United States of America subject to its treaty with the UK which was made applicable to Nigeria on the 24/6/1935, which treaty forms part of the **Extradition Act Cap E25 LFN 2004**; that the Warrant is therefore duly authenticated.

Learned Counsel also placed reliance on the certified copy of the affidavit in support of the request for extradition of the Respondent deposed to by Mark E. Coyne, Assistant United States, Attorney (AUSA) sworn and subscribed before Hon. Claire C. Cecchi, a United States of America Magistrate Judge New Jersey in the district of New Jersey on the 27/4/2011 which document is also before the Court.

He contended that the offences for which the Respondent is charge with are extradition offences as they are such that if committed in Nigeria the evidence in respect of them will justify committal within the meaning of **Sections 9 (3) (1) of the Act**, Reference was made to the offences of conspiracy to violate laws of the United State namely Mail fraud and money Laundering which can all be equated with the offences of conspiracy contrary to **Section 516 and Section 98A of the Criminal Code Act Cap C38 LFN 2004 and the Money**

Laundering (Prohibition) Act 2004 and the Economic and Financial Crimes Commission Act.

Counsel further contended that the above listed offences are extradition offences within the meaning of **items 17 and 18 of Article 3 of the Extradition (United State of America) Order 1967**. Furthermore, that the offences are covered by the United Nations Convention Against Transnational Organised Crimes (the TOC Convention) to which Nigeria and the United States of America are signatories to and which treaty has been ratified and ceded to by the Nigerian Government. Reliance was placed on **Article 16 of the TOC Convention** which makes such offences Extraditable offences in any extradition treaty between the parties.

Learned Counsel submitted that the request for the surrender of the Respondent is not precluded by the provisions of **Section 3 (1) - (7) of the Extradition Act**. The Respondent, he further submitted has not denied the commission of the offences in the United States of America as alleged. He contended that the relevant documents needed in proof of the extradition application as in the instant case were all certified by a letter of certification, With the seal of the United States Department of State; which document bears the name of the Secretary of Stale; Hillary Rodham Clinton subscribed by the Assistant Authentication Officer of the department with a Letter of Certification with the seal of the United States of American Department of Justice signed by the Associate Director, Office of International Affairs, Criminal Division Department of Justice, United States of America, David P. Warner and duly commissioned and qualified in the presence of Eric H. Holder JR; Attorney General of the United States of America.

Learned Counsel therefore submitted that the Applicant has placed sufficient materials before the Court to justify its application for an order of this Court for the surrender of the Respondent to the United States of America. Reliance was placed in **African Newspaper Vs FRN (1985) 2 NWLR pt. 6 p. 137 Adewunmi Vs AG Ekiti State (2002) NWLR pt.251 p. 454 at 510- 523. Ugwu Vs Ararume (2007) 12NWLR pt. 1048 p. 519**, urging the Court to give a literal interpretation of the Extradition Laws and to order the Extradition of the Respondent as sought and to commit him to prison custody

to await the order of the Hon. Attorney—General of the Federation for his surrender to the United States of America.

In opposing the Extradition application on behalf of the Respondent, the Learned Senior Advocate, Dr. J. Nwobike (SAN) with Zainab Kelani (Miss) and Collins Ogbona Esq. of Counsel relied on the Respondent's eight paragraphs affidavit deposed to by Peter Ojih, a Senior Litigation Officer in the Law firm of the Respondent's Solicitors' law firm with three annexures attached thereto as **exhibits A, B and C** which are the judgements of Liman J of the Federal High Court 13/5/2011, and the enrolled order thereto with a copy of the Bilateral extradition treaties made on the 22/12/193 1 between the Governments of Nigeria and Great Britain.

Learned Senior Counsel contended that the **Legal Notice No. 33 of 1967** is not a legislative Act capable of either amending the Extradition Decree 1966 or bringing about a legislation. Furthermore, that the said Legal Notice No. 33 of 1967 is inconsistent with the provisions of Section 34 (1) of the **Constitution Suspension Decree 1966** which legislation made the mode exercising such powers to be by the signature of the Head of the Nigerian Military Government. He submitted that the Notice was instead signed by the Acting Secretary to the Federal Military Government; thus making same void for all purposes including the instant proceedings. The Learned Senior Counsel further contended that the **Legal Notice No: 33 1967** cannot form part of the Extradition Decree of 1966 now **Extradition Act Cap E25 LFN 2004**. In the alternative he submitted that the alleged offences for which the Government of the United States of America intends to prosecute the Respondent, are not the type of offences enumerated under **items 17 and 18 of the Legal Notice No. 33 of 1967**; urging the Court to hold that he cannot be extradited on account of the offences listed in Form 1 of 2nd Schedule of **23/5/2011** of the Hon. Attorney General of the Federation. Reliance was placed on **Buhari Vs Yusuf (2003) 6SC, pt.11 p.156 at p. 168** to the effect that where certain things are mentioned, those not mentioned are excluded. He urged the Court to find the **Legal Notice No. 33 of 1967** as invalid, same not having complied with the Provisions **Sections 4 (1) / 3 (1) of Decree No. 1 of 1966**. Furthermore, it has not passed the Constitutional test provided by Section 12 of the 1999 Constitution. The Learned Senior Counsel raised one issue for determination by Court.

“Whether upon a proper of the extradition agreement (treaty) between Nigeria and the USA dated December 22, 1931, the offences for which the defendant is sought to be extradited, are extraditable offences.”

He urged the Court to strike out the Applicant’s written address dated 21/7/2011 that it is incompetence, same not having been signed by a Legal Practitioner known to law. Reliance was placed on **Sections 24 and 2(1) of the Legal Practitioners Act Cap L11 LFN 2004**, and **Sections I74(1) (2) of the 1999 Constitution**.

Further reliance was placed on **Peak Merchant Bank Ltd. Vs NDIC (2011) 12NWLR pt. 1261 p. 254 at 260 - 261** wherein the Court held thus:

“ I am of the fine view that any person signing a process on behalf of a Principal Partner in the Chambers must state his name and designation to show that he is a Legal Practitioner. This is to avoid a situation where a clerk, messenger or secretary would sign processes filed in Court on behalf of Principal Partners in Chambers. Nobody is saying that a junior Counsel in Chambers cannot sign processes filed in Court behalf of a Principal Partner but his identity must be stated. It is not enough to just sign the process without indicating the name and designation of such person, a clear example could be seen in the case of **Edet Vs Chief of Air Staff** (supra) heavily relied upon by the Appellant’s Counsel.”

Learned Senior Counsel further submitted that in the unreported case of **Sunday Adeneye Vs Disu Adekanmu Oroleye, Appeal No. CA/L/266/2002** (Ademu JCA) cited with approval the decision in the unreported Court of Appeal case of **Onward Ent. Ltd. Vs Olam International Ltd. & Ors. CA/L/365/2008** wherein the Court stated thus:

“Name of signatory is therefore necessary to fulfil the requirement of valid and legally recognisable signature. Even common sense dictates that signature is only identifiable by name of the signature. A court initiation process like notice of appeal must therefore be signed - appending the name of the signature in the absence of which it will be impossible to ascertain who the signatory is, much less being a legal practitioner in Nigeria. By the definition of signature in the Black’s Law Dictionary as noted above, the mere typing of name on a

process does not satisfy the requirement of signature. The person signing is required to write his name in long hand and in a legible and readable manner in order to satisfy the requirement of signature, which mere scribbling falls short of. I am not saying the signature must be readable, but the name of the signatory must be clearly slated on the Notice of appeal which must be that of a legal practitioner. I am unable therefore to agree with the Learned Senior Counsel for the Appellants submissions that the signature of an unnamed signatory satisfied the requirement of signature by a legal Practitioner. Any attempt to detect the unnamed signatory will be tantamount to converting the Court into laboratory.”

Arguing his sole issue above, the Leaned Senior Advocate submitted that the Respondent is not primarily standing trial for any offence in this suit; and that the Court is only to determine whether from the evidence and facts before it the Respondent is liable to be extradited or surrendered, to stand trial for alleged offences in a country other than Nigeria Reliance was placed on **Section 9 (2) of the Extradition Act Cap E25 LFN 2004.**

Furthermore, that the Provisions of **Sections 1 (1) (3.) of the Extradition Act Cap E25 LFN 2004** states when the extradition agreement/treaty between the countries is to be effective. He contended that the Extradition Act only applies to extradition proceedings covered by an extradition agreement/treaty where the President by order published, in the Federal Gazette applies/extends the applicability of the Act to that extradition agreement/treaty. Reliance, was placed on **Sections 1 (1) (3) of the Extradition Act** and the Applicant’s application as in **Form 1.**

The learned Senior Counsel therefore submitted that the Principal instrument applicable to the instant proceedings is the extradition agreement/treaty of 22/12/1931 between Nigeria and the United States, of America. Furthermore, that by virtue **Section 1 (3) of the Extradition Act**, the application of the Act is made subject to the extradition agreement/treaty and the particular offences which the extradition agreement/treaty of 22/12/1931 prescribes as extraditable. Reliance was placed on **Sections 9 (2) the Extradition Act.**

He contended that upon a proper construction of the agreement/treaty, the Court will find that the offences for which the defendant is sought to be extradited are not extraditable offences. Reference was made to **exhibit A to the affidavit of Murk E. Coyne** in support of the extradition request and Form 1 (both annexed to the Applicants request/originating process and that none of the offences therein contained are listed as extraditable offences by virtue of **Article 3 of the Extradition Agreement/treaty** between Nigeria and the United States of America. Further reference was made to **paragraph 6 (i), (ii), (iii) of the Respondent's counter affidavit** wherein it was deposed to that the offences were not extraditable offences.

The Learned Senior Counsel contended further that the offences ranging from conspiracy, money laundering and theft are not covered by the extradition agreement/treaty between Nigeria and the United States of America. He submitted that the contracting parties having limited themselves to particular terms, the Court cannot make new contract for them. Reliance was placed on the Supreme Court **Idoniboye-Obu Vs NNPC (2003) 1 SC pt.1 p.40 at 75** wherein the Court held thus:

“it is trite law that Parties are bound by the four walls of the contract and the only duty of the court is to strictly interpret the document that gives rise to the contractual relationship. The law is trite regarding time bindingness of terms of agreement on the parties. Where parties enter into an agreement in writing, they are bound by time terms thereof. This Court and indeed many other Court will not allow anything to be read into such agreement, terms on which the parties were not in agreement or were *ad idem*.”

He contended that the Courts in interpreting contracts/agreements employ the literal rule in the construction of the contract documents: Reliance was placed on **SEC Vs Kasunmu (2009) 10 NWLR pt. 1150 p. 509 at 537** wherein Court held thus:

“This principle is based on the Latin phrase “*expressio unius est exclusio alterius*”, that the expression of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication with regard the same issue.”

It was also the Learned Senior Counsel's contention that the extradition agreement/treaty expressly limits extraditable offences to: “Murder, manslaughter, drug administration or use of instruments with intent to procure miscarriage in women, rape, unlawful carnal knowledge, indecent assault;

kidnapping or false imprisonment, child stealing, abduction, procuration, bigamy, malicious wounding or inflicting grievous bodily harm, threats, perjury, arson, burglary or housekeeping, fraud (committed by a bailee, banker, agent, factor, trustee, director, member or public officer of any Company) or fraudulent conversion (committed by the above named persons) obtaining money by false pretences, counterfeiting or money altering or possession of coin counterfeiting machinery, forgery, offences against bankruptcy, bribery, acts endangering the, safety of travellers, drug trafficking, malicious injury to property, piracy by law of Nations and revolt or conspiracy to revolt, wrongful sinking of vessel at sea and dealing in slaves”.

He contended that none of the offences, for which the Respondent is sought to be extradited is among those listed above and that time Court by inference include same. Reliance was placed on **the Provision of item 17 of Article 3 of the extradition Agreement/treaty of the 22/12/1931**, contending that time offence of fraud or fraudulent conversion is limited to particular scope of people of which the Respondent is not, He urged 'the Court to hold same and to refuse the order for the extradition of the Respondent. Reliance was placed on **Buhari Vs Yusuf (2003) 6 SC pt.11 p. 156 at 168** thus:

“The Principle is well settled that in the construction of statutory provisions, where a statute mentions specific things or persons, the intention is that those not mentioned are not to be included. This is the *expressio unius est exclusion alterius* rule, meaning that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have been included by implication.”

It was also part of the Learned Senior Counsel’s submission that Respondent’s relationship with the Affiliated Computer Service (ACS) employers is that of master and servant and that the Respondent was neither a bailee, banker, agent, factor, trustee, director, member as envisaged by **item17 of an Article 3 of the Extradition Act** and the Court ought not to infer or extend same to include the alleged offences for which the Respondent is sought extradited. Reliance was placed on **AG Ondo State Vs AG Ekiti State (2001) 9-10 SC 116 at 153-154** Supreme Court held thus:

“this is in accord with the accepted principle expressed in the latin maxim *expressio est exclusio alterius or expressum facit cessare tacitum*. The two related principles mean firstly that to state

a thing expressly ends the possibility that something inconsistent with it is implied. Secondly, “to express one thing is implied to exclude another” which is an aspect of the latter. This principle of construction is applied where a statutory preposition might have covered a number of matters but in fact mentions only some of them unless those mentioned are mentioned only as examples, or *ex abundante cautela*, or for some other sufficient reason, the rest are taken to be excluded from the preposition.”

Furthermore, that in **Ogbunyiya Vs Okudo (1979) 6 - 9 SC 24 at 35** Supreme Court held thus:

“One of the cardinal rules of construction of written instruments is that the words of a written instrument must in general be taken in their ordinary sense notwithstanding the fact any such construction may not appear to carry out the purpose which it might otherwise be supposed was intended by the maker or makers of the instrument. The rule is that in construing all written instruments the grammatical and ordinary sense of the words should be adhered to... An expression provision in an instrument excludes any stipulation which would otherwise be implied with regard to the same subject-matter-*expression facit cessare taciturn.*”

He contended that the failure of the Applicant to exhibit a copy of the treaty/extradition agreement between Nigeria and the United States of America is detrimental to the discretion it sought from the Court. Reliance was placed on **Ogunsola Vs Usman (2008) FWLR pt.180 p.1465 at 1478**. Hence the concealment of same casts doubts on the validity of its extradition request; urging the Court to invoke the Provisions of **Section 149(d) Evidence Act** to hold that offences for which the request is made are no extraditable offence. Further reliance was placed on **Uzoegwu Vs Ifekandu (2001) 7NWLR pt. 741 p. 49 at 74** wherein the court held thus:

“The said land Committee Register which is the best evidence of the allocation of the land to the 21 Respondent was not pleaded. No reason was given for failing to tender such important document on which the 2nd Respondent founds his root of title the Court will be entitled to draw the conclusion that the contents of the register will be against the 2nd Respondent if tendered. This is a situation where the provisions of Section 149(1) of the

Evidence Act will come into play.”

Also Ochin V Ekpechi (2000) 5 NWLR pt. 656 p. 225 at 240 and Article 11 of the Extradition Agreement/Treaty. The Learned Senior Counsel drawing the attention of the Court to **paragraphs 4(iii) and 6(i) - (vii) of the Respondent’s** counter affidavit submitted that not only has the Respondent been detention for more than 2 months but that he has indeed been in detention for about 6 months since his apprehension. He urged the Court to apply the Provisions of **Article 11 to discharge** the Respondent, urging the Court also to dismiss the application. Reliance was placed on **Sections 136 and 138 of the Evidence Act Cap E14 LFN 2004.**

He also urged the Court to construe **Article 11 of the Extradition Agreement/treaty *contra-proferentis*** beneficially in favour of the Respondent since it is one which sought to limit the liberty of the Respondent. Reliance was placed on **PDP Vs INEC (1999) 7 SC pt.11 p.30 at 49-50.**

“To this end the established practise of this Court is where the constitutional right in particular and indeed any right in general of a citizen is threatened, orientated, it is for the Court to be creative in its decision in order to ensure that it preserves and protects the right by providing remedy for the citizen.”

Further reliance was placed on **Nwosu Vs Imo State Environmental Sanitation Authority. (1990) 4SC p. 71 at 99** wherein the Supreme Court stated thus on applicability on *contra-proferentis* rule:

“Certain principles guide the Court in such an exercise. There should be any doubt, gap, duplicity or ambiguity as to the meaning of the words used in the enactment, it should be resolved in favour of the person who would be liable to the penalty or a deprivation of his right. If there is a reasonable construction which will avoid the penalty in any particular case, the Court will adopt that construction if there is any doubt as to whether the person to be penalised or to suffer a loss of the right comes fairly and squarely within the plain words of the enactment, he should have the benefit of that doubt.”

Contending that the extradition proceedings was a breach of the constitutional right of the Respondent and ought to be dismissed.

Furthermore, that the TOC Convention has not been domesticated as law in Nigeria and that its adoption was not enough. Reliance was placed on the Supreme Court in **Health Practitioners & 2 Ors. Vs Medical and Health Workers & Ors. (2008) 1 S.C. (Pt11) p. 1 at 36-37**. In so far as the H O Convention has not been enacted into law by the National Assembly, it has no force of Law in Nigeria and it cannot possibly apply.

See also **Abacha Vs Fawehinmi (2000) 4 S. C. (Pt II) 1, (2000) 6 NWLR Pt 660 p. 228 at 288-287**, where Ogundare JSC (of blessed memory, had this to say:

“Suffice to say that an international treaty entered into by the government of Nigeria does not become binding enacted into law by the National Assembly, see 12(i) of the 1979 Constitution which provides... As can be seen from the above, the Learned Justice took the pains of expounding on the necessity of such international treaty or convention to be domesticated before it can be invoked and applied to cases in Nigeria. That is in fact what the learned trial Judge should have done, rather than accept arid grant the relief hook, line and sinker.”

The Learned Senior Advocate further contended that the Applicant has not discharged the burden of proof on it for the exercise of the discretion sought, urging the Court to dismiss the application,

Learned Counsel Hassan M. S. Esq. of Counsel replying on Points of Law relying on the Applicant’s thirteen paragraph reply affidavit of the 28/9/2011 submitted that contrary to the Respondent’s contention, that the written address of the Applicant’s Counsel was signed, hence the cases relied upon by Counsel are not relevant to the instant case. Furthermore, that the offences for which the Respondent is sought to be extradited are extraditable offences. Reliance was placed of **items 1 7 and 18 (3) of the Extradition (United States of America) Order 1967** which items he submitted provide follows:

Items 17

“Fraud by a bailee, hanker, agent, trustee, director, member or public officer of any company or fraudulent conversion”

Items 18

“Obtaining money, valuable security, or goods by false pretences, receiving any money valuable security or other property knowing the same to have been stolen or unlawfully obtained.”

Counsel contended that the offences mentioned in both items are disjunctive and not conjunctive and that the offences in **item 18** are not limited to the offences mentioned in **item 17**. Reliance was further placed on the wordings of **Section 18 (3) of the Interpretation Act Cap 123 LFN 2014** which provide thus:

“The word ‘or’ and the word ‘other’ shall, in any enactment, be construed disjunctively and not as implying similarity.”

He submitted that the offences for which the Respondent is sought to be extradited falls within the offences listed in **Item 18 of Article 3**. Reliance was placed on **George Udezor Vs FRN (2007) 15 NWLR pt. 1058 p.499 at 515 to 516 paras H-C** wherein the Court listed the various laws governing extradition between the United States of America and Nigeria. Further reliance was placed on the unreported case of: **In the Matter of Extradition Act Law of the Federation of Nigeria Vs Oluremi Adebayo Suit. No FHC/L/228/08 of 8/4/2009** by Hon. Justice I. N.auta (as he then was). Learned Counsel contended that the cases of **Idoriboye-Obu Vs NNPC** supra, **S.E.C Vs Kasumu** supra, **Buhari Vs Yusuf** supra, are not relevant to this case, same not dealing in Extradition treaties; urging the Court to so hold. He submitted that contrary to the contention of the Respondent’s Counsel, that it is not the requirement of the **Extradition Act E25 LEN 2004**, that the Applicant must place or exhibit before the Court the Extradition Treaty and that the Court is enjoined to take judicial Notice under **Section 74(1)(a) Evidence Act Cap E14 LFN 2004** of all laws or enactments and any subsidiary legislation having the force of law in Nigeria; hence the civil cases cited by Counsel to the Respondent on this issue is not relevant to the Extradition application before the Court.

The Learned Counsel further submitted that the offences for which the Respondent is charged with in the United States of America are also covered by the TOC Convention which Convention has been domesticated in the Nigerian Laws since Nigeria became signatory to it in year 2000. They include the EFCC Act 2004, the ICPC Act 2003, the NAPTIP Act. He urged the Court to grant the Extradition application and Order the surrender of the Respondent to the United States of America to face trial on the indictments against him.

I have carefully considered the affidavit evidence of the two parties together with the exhibits and the respective addresses of Counsel to both parties in their written and oral submissions. To my mind the main issues in the application advanced by both parties in their respective submissions are as follows:

- (1) Whether there exists an enforceable treaty between the United States of America and Nigeria on extradition of erring citizens.
- (2) Where there exists a treaty, whether the offences for which the Respondent is sought to be extradited are extraditable offences.

The answer to the first issue can very easily be found in the provisions of **Section 1 (3) of the Extradition Act** which Law applies, to United States of America subject to the **Legal Notice No. 33 of 1967**; which Notice as stated earlier was properly/legally made within the Provisions of **Section 10(1) of the Constitution (Suspension and Modification Decree No. 1 of 1966)**. It is pertinent to note that the **Decree No.1** was the *grund norm* on the suspension of the 1963 constitution by the then Federal Military Government of Nigeria. The Decree has as stated earlier in this ruling given powers for the delegation of powers conferred on the Head of the Federal Military Government in person, of the Supreme Military Council on the Secretary to the Federal Military Government. **The Legal Notice No. 33 of 1967** was indeed made by the Acting Secretary to the Military Government at the time.

It is also obvious from the provisions of **Section 1 of the Legal Notice No. 33 of 1967** and **Schedule 1 of the Extradition Act**, which provisions are secured by **Section 22 of the Extradition Act Cap E25 LFN 2004** and **Section 315 of the 1999 Constitution** that there is an existing treaty between the Nigerian Government and the United States of America. I therefore have no doubt in my mind that the **Legal Notice No. 33 of 1967** having been properly made within the Provisions of the Law at the time was a valid and enforceable law before the provisions of the 1999 constitution. It is therefore a law which qualifies as an existing law within the provisions of **Section 315 of the 1999 Constitution**. To this end, it did not need to be domesticated within the meaning of **Section 12 of the 1999 Constitution** as it was already in existence before the 1999 Constitution. I therefore hold in answer to issue one above that there was an enforceable treaty between Nigeria and the United States of America which treaty is embodied in **Decree No. 33 of 1967 before the 1999 Constitution**.

This treaty having been secured by the Constitution as an existing law and by the Provisions of **Section 22 of the Extradition Act Cup E25 LFN 2004** is therefore a valid and enforceable law/treaty.

On the second issue of whether or not the offences listed in Exhibit A of the application for the extradition of the Respondent are extraditable offences within the meaning of **Article 3 of Decree No. 33 of 1967**.

The Applicant has contended that the offences covered in the indictment against the Respondent in Exhibit A are covered by **Items 17 and 18 of Article 3** which items provide thus:

17 Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of a company or fraudulent conversion.

18 Obtaining money, valuable, security or goods by false pretences, receiving any money, valuable security or other property, knowing the same to have been stolen or unlawfully obtained.”

On a critical examination of the indictment in Exhibit A, I observe that they include as follows:

1. **Count 1:** Conspiracy to commit mail fraud in violation of 18 United States Code (USC) 1349.
2. **Counts 2-9:** Mail fraud in violation of 18 (USC) 1341 and 2.
3. **Count 10:** Conspiracy to commit money laundering, in violation of 18 U.S 1956 (a) (1.) (B) (1) and 2.
4. **Counts 23 - 29:** Theft from a retirement fund, in violation of 18 USC 664 and 2.
5. **Counts 30- 36:** Aggravated identity theft, in violation of 18 USC 1028A and 2.

The above listed offences are said to attract imprisonment as stated at **page 35** of the bundle of documents forming part of the application in **item 20** thus:

20: “As seen in Exhibit A, the superseding indictment charges with 36 separate offences, (a) Conspiracy to commit mail fraud in violation of 18 USC Count 1 carries a maximum penalty of 20 years’ imprisonment.

- (b) Mail fraud, in violation of 18 USC 1341 (Count 2 through 9)
Each count of ‘which carries a maximum penalty of 20 years’ imprisonment.
- (c) Conspiracy to commit money laundering contrary to 18 USC 1956 (a) (1) (B) (i) and in violation of 18 USC 1956 (h), Count 10 which carries a maximum penalty of 20 years’ imprisonment.
- (d) Money laundering contrary to 18 USC 1956 (a) (1) (B) (1) (Counts 11 through 22) each count of which carries a maximum penalty of ‘20 years’ imprisonment.
- (e) Theft from 401(k) plan in violation of 18 USC 664 (Counts 23 through 29) each count of which carries a maximum penalty of 15 years’ imprisonment and (1) Aggravated identity theft, in violation of 18 USC 102 A (Count 30 through 36). each count of which carries a mandatory consecutive sentence of 2 years’ imprisonment (although the sentencing Court has discretion to impose only one of those sentences consecutively and impose others concurrently in whole or in part with the consecutive sentence). The superseding indictment also includes a Notice that proceeds of the scheme are subject to for future as illegal proceeds of the crime pursuant to 18 USC 982 (i).”

From the above, it is obvious that the offences attract penalties in the Nigerian Laws within the Provisions of the Extradition Act.

Furthermore, the indictments as stated contrary to the contention of the Learned Senior Advocate have corresponding offences in Nigerian Law which offences are contained in the Criminal Code, the EFCC Act and even the Miscellaneous Offences Act Cap 410 of the LFN 2004 and the Advance Fee Fraud and other Fraud Related Offences Act LFN 2004 amongst others. It can never be argued that they are offences that are unknown to the Nigerian Law nor are they by our penal laws trivial in Nature. It is however, pertinent to state that the Respondent has not refuted the commission of the offences charged nor that he was the fugitive criminal referred to but only argues that there are no enforceable laws warranting his surrender to the United States of America as a fugitive criminal.

He has also not challenged any of the documents filed on behalf of the United States Government for his surrender to them to face his trial. Hence, in answer to issue 2 above, I hold that the offences for which the Respondent is sought to be extradited to the USA are extraditable offences within the meaning of the Extradition treaty between Nigeria and the USA.

This Court will take judicial notice of the seal of the officers who authenticated the extradition documents as provided by **Sections 17 (2) (3) of the Extradition Act E25 LFN 2004** and to give effect to them. Furthermore, that the medium of communication between Nigeria and other countries of the world is through its foreign Affairs Ministry hence, the Diplomatic Note **No. 2011 - 574** of the 11 of May, 2011 to the Ministry of Foreign Affairs is to that extent legally in order. It is noteworthy that Respondent is not on trial for any offence in this country.

I hold that the Extradition treaty between Nigeria and the United States of America as embodied in the **Legal Notice No. 33 of 1967** and known as **Extradition (United States of America) Order 1967** is valid and enforceable in law, hence, the application for the surrender of the Respondent as a fugitive criminal under **Section 5 of the Extradition Act Cap E25 LFN 2004** is legal and properly made under the **1967 Act and the Extradition Act LFN 2004, George Udeozor Vs FRN (2007)** supra.

I find as a fact that proper procedure for the surrender of this fugitive has been adopted by both the United States of American Government and the Attorney General of the Federation. The affidavit evidence of the Respondent has also not controverted any of the averments in the Applicant's affidavit evidence as regards the bundle of documents attached thereto for the request made by the United States Government.

On the whole, I am satisfied that all the conditions precedent to the extradition request of the Respondent, Rasheed Abayomi Mustapha to the United States of America have been met.

This Court therefore commits the said Mr. Rasheed Abayomi Mustapha to prison custody for extradition to the United States of America as a fugitive.

The fugitive is also ordered to await the order of the Hon. Attorney General of the Federation for his surrender to the United States of America after the expiration of fifteen days hereof.

A. R. MOHAMMED
JUDGE

CASE 7

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY, THE 27TH DAY OF OCTOBER, 2014
BEFORE HIS LORDSHIP, THE HON. JUSTICE G. O. KOLAWOLE
JUDGE**

CHARGE NO: FHC/ABJ/CR/180/2014

BETWEEN:

ATTORNEY-GENENERAL OF THE FEDERATION.....APPLICANT

AND

JEFFREY OKAFOR.....RESPONDENT

Respondent is present in Court.

T.A. Al-Makura, Esq. (Principal State Counsel, Federal Ministry of Justice at the Central Authority) with him are P.U. Akutah, Esq. (Principal State Counsel) and N.A. Modibbo, Esq. (Senior State Counsel) for the Applicant.

G.O. Okoro, Esq. for the Respondent.

Al-Makura: We have an extradition application dated 29/9/14 and filed on 30/9/14.

Okoro: We didn't file any Counter-Affidavit, because we are not opposing the application.

Al- Makura: In view of the response of the Respondent, I want to review the facts so that the Court can make an order. I refer to pages A1-B7

Attached to the application is an Affidavit deposed to by Nana Abdulkadir Modibbo. I rely on all the paragraphs of the affidavit and on all the exhibits marked "A"; "B" and "C". I refer to pages C1- C6 of the documents contained in the booklet.

Case is Re-called:

Respondent is present in Court.

Same appearances earlier recorded.

APPLICANTS' APPLICATION CONTINUED:

Al-Makura: I refer to Vol. 1 of the supporting documents. I refer to pages 1-8 of Vol.1 of the documents produced.

I also refer to page 10 of the Vol.1 of the documents. I also refer to pages 51, 52 of Vol.1 of the documents. I also refer to pages 103 - 107. We rely on all these pages for the purposes of the extradition proceedings.

All other documents which are not mentioned within volumes 1, 2, 3 and 4 are only relevant in the Respondent's trial in the U.K. which shows that he will be given a fair trial in that jurisdiction as he has been served with all necessary documents for his information.

It is the wish of the Respondent to return to the U.K. for his trial and the Hon. Attorney-General of the Federation has placed enough documents before this Court for the extradition of the Respondent as a suspect.

I urge the Court to order that the Respondent be extradited back to the U.K. to face his trial in accordance with Extradition Act. That is all.

RULING

I have listened to the oral submissions of the Applicant's Counsel, T.A. Al-Makura, Esq. in respect of an application filed by the Hon. Attorney-General of the Federation dated 29/9/14 wherein the U.K. has applied to the Central Authority in Nigeria for the extradition of the Respondent who was alleged to have committed offences of attempted murder and murder whilst he was residing in the U.K.

The Respondent's Counsel, G.O. Okoro, Esq. having read the processes, informed the Court that he will not be opposed to the application of the Hon. Attorney-General of the Federation which was supported by a 3 paragraphed Affidavit and a host of documentary exhibits.

When I read through these documents produced by the authorities in the U.K. to support the request made to the Central Authority in Nigeria, I have no doubt that the request was not frivolous but based on *prime facie* evidence of

a thorough investigation conducted into the incident in which the Respondent appears prima facie to be no doubt involved as a suspect.

Reading through the submissions made by the Applicant and the documentary exhibits produced, I have no doubt that the Respondent will be accorded fair trial if extradited to the U.K. to face his trial in relation to the indictments which formed the basis of the application made to the Central Authority.

The application is granted as prayed. The Applicant shall in conjunction with the British High Commission in Nigeria, within 14 days hereof, make all necessary arrangements for the Respondent to be extradited to the U.K. and to be received in London by the prescribed authorities for the purposes of his trial on the indictments which formed the basis of the application filed by the Hon. Attorney-General of the Federation dated 29/9/14.

This shall be the Ruling of this Court. It is granted as prayed.

G. O. KOLAWOLE
JUDGE

CASE 8

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY, THE 28TH DAY OF AUGUST, 2013
BEFORE HIS LORDSHIP
HON. JUSTICE A. R. MOHAMMED (JUDGE)**

**SUIT NO.
FHC/ABJ/CR/132/2013**

BETWEEN:

ATTORNEY-GENERAL OF THE FEDERATIONAPPLICANT

AND

**LAWAL OLANIYI BABAFEMI A. K. A. “ABDULLAHI”,
“AYATOLLAH MUSTAPHER” (BABAFEMI)RESPONDENT**

PRACTICE AND PROCEDURE

Court will grant extradition order once all conditions are fulfilled, even where the person sought to be extradited does not challenge the application

PROCEEDINGS

Respondent present and understands English.

M.S. Hassan Esq. Assistant Director, Federal Ministry of justice with A. T Almakura Esq. (PSC), P. U. Akuta Esq. (PSC), C. S. Nnanna (Miss) Esq. (SSC) and N. A. Modibbo Esq. (SSC) for the Applicant. A. O. Olori-Aje Esq. with S. O. Yahaya Esq. for the Respondents.

Hassan Esq.- We have an application dated 22/7/13 and filed on 23/7/13 for the extradition of the Respondent. We are ready to move the application.

Olori-Aje Esq.- We were served with the application of the Applicant. It is the decision of the Respondent not to contest the application.

Court: -The Court would like to hear the position stated by the Respondent’s counsel from the Respondent himself.

Respondent: - I concede to the proceedings and the Court shall make the order for my extradition,

Court:-In the circumstances, Applicant's counsel may proceed to move the application.

Hassan Esq:-The Applicant's application for the extradition of the Respondent is dated 22/7/13 but filed on 23/7/13. The application was signed by the Hon. Attorney General of the Federation himself in accordance with the requirements of the Extradition Act. The application is contained in pages 1 - 8 of our processes.

In support of the application is an affidavit dated 16/7/13 and filed on the same date. The affidavit was deposed to by Akutah Pius, a Principal State Counsel. The affidavit is contained in pages 9 - 14 of our processes. The affidavit contained three paragraphs and two exhibits. We rely on all the paragraphs of the affidavit including the exhibits which are marked CAU1 and CAU2 respectively. The affidavit contained the following documents.

1. Original Copies of the letter of certification received with seal of the United States, Department of State and the letter dated 28/3/13 and signed by the Secretary of State Mr. John F. Kerry. The letter is contained in page 27 of our application.
2. Letter of Certification with seal of the United States, Department of Justice and it is dated 27/3/13. The letter was signed by the Attorney General of the United States Mr. Eric Holder. H. Jnr. The letter is contained in page 28 of our application.
3. Letter of Certification dated 27/3/13 signed by an Associate Director in the name of Mr. Jeffery M. Olson, office of the International Affairs, United States and is contained in page 29 of our application.
4. An affidavit in support of the Request for extradition of the Respondent deposed to by Hilary Jager, Assistant United States Attorney in the District Court of New York. The affidavit is dated 25/3/13 and is contained in pages 30 - 50 of the Court process that is, our application.
5. A Certified True Copy of the indictment against the Respondent in the District Court of New York, United States. The indictment is dated 21/2/13 and it is contained in pages 53 - 57 of our application.

6. The Certified True Copy of the Arrest Warrant against the Respondent issued by the United States District Court of the Eastern District of New York and it is contained in page 59 of our application.

7. Extract of the Relevant Law or Statute of the United States that provides for the offences and punishment against the Respondent in the United States to which the Respondent is indicted is contained on pages 61 - 67 of our application.

We rely on all the document mentioned above for the purpose of extradition of the Respondent to the United States of America to face his trial. We also filed a written address in support of our application. The written address is dated 31/7/13 and filed on the same day. We hereby adopt our written address as our argument in this case. We urge the Court to grant our request for the extradition of the Respondent.

Finally, we urge the Court to invoke the provision of Section 10(1) of the Extradition Act Cap E25 LFN 2004 for the purpose of surrender of the Respondent to the United States of America.

Olori-Aje Esq: - As much as the Respondent is not contesting the application of the Applicant, we pray humbly that the Court place on record the fact that the Respondent has been in the custody of the State Security Service for over twenty-four calendar months.

Secondly, the issue of co-operation by the Respondent to the Local Authorities in Nigeria.

Thirdly, the Respondent is not contesting the application for his extradition to save the time of the Court, and the resources of the State unnecessarily. We pray the Court to reflect on all these issues in the order of the Court.

JUDGMENT

I have listened carefully to the argument of the learned counsel from the office of the Honourable Attorney-General of the Federation of Nigeria on the Application/Request for the extradition of the Respondent - LAWAL OLANIYI BABAFEMI aka — “ABDULLAHI AYATOLLAH MUSTAPHER” (BABAFEMI). The Application/Request is dated 22nd July,

2013 but filed in the Registry of this Court on 23rd day July, 2013. I have also read the necessary and relevant documents attached to the extradition Request which emanated from the Honourable Attorney General of the Federation of Nigeria. I have particularly read the Affidavit of Akutah Pius Ukeyima, a Principal State Counsel in the office of the Honourable Attorney General of the Federation of Nigeria.

The Respondent - LAWAL OLANIYI BABAFEMI aka - ABDULLAHI AYATOLLAH MUSTAPHER (BABAFEMI) is not contesting or denying these proceedings, which are meant to extradite him to the United States of America. The Respondent's Solicitor only urged the Court to take into account the fact that the Respondent had been in the custody of the State Security Services for over twenty-four calendar months. That the Respondent had co-operated with the local Authorities in Nigeria.

Now, since there is no form of any objection by the Respondent to the application for his extradition, this Court is satisfied that the Application/Request of the Honourable Attorney-General of the Federation for the extradition of the Respondent to the United States of America is proper and in accordance with the Extradition Act Cap E25 Laws of the Federation of Nigeria, 2004. I therefore make the following Orders:

1. An Order is hereby made that the Respondent in this case - LAWAL OLANIYI BABAFEMI aka, "ABDULLAHI" "AYATOLLAH MUSTAPHER" (BABAFEMI) be extradited to the States of America to face the indictments against him.
2. It is also hereby ordered that the Respondent — LAWAL OLANIYI BABAFEMI aka, "ABDULLAHI", "AYATOLLAH MUSTAPHER" (BABAFEMI) shall be surrendered to the officials of the United States of America not later than Fifteen days from the date of the Orders of this Court.
3. The Respondent shall remain in the custody of the State Security Service of the Federation of Nigeria pending his surrender and eventual extradition to the United States of America.
4. This is the decision of the Court in this matter.

A. R. MOHAMMED
JUDGE

CASE 9

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY THE 6TH DAY OF MARCH, 2013
BEFORE HIS LORDSHIP
HON. JUSTICE A. R. MOHAMMED (JUDGE)**

CHARGE NO: FHC/ABJ/CR/28/2013

BETWEEN: -

ATTORNEY-GENERAL OF THE FEDERATION APPLICANT

AND

UCHE OKAFOR PRINCERESPONDENT

PRACTICE AND PROCEDURE

Willingness of person sought to be extradited considered,

Respondent present.

M. S. Hassan Esq. Asst. Director (Federal Ministry of Justice) with Lawal Are Abimbola, Esq. Asst. Chief State Counsel, Obiora Uju Mrs. Asst. Chief State Counsel, Akuta P. U. Senior State Counsel, Nnana Chika, Esq. State Counsel and D.J. Isah, Esq. State Counsel.

Court: - Does the Respondent have a lawyer?

Respondent: - I have a lawyer, but he is not around. But it was late for me to inform him because I was in detention.

Court: - Does the Respondent want adjournment till his lawyer is around?

Respondent: - I can proceed with the matter myself.

Hassan Esq.: The application for a request for extradition of the Respondent dated 13/2/13 and filed on 14/2/13 had been served on the Respondent on 15/2/13. Our written address dated 28/2/13 and filed on 1/3/13 was served on the Respondent on the same 1/3/13.

Court: - I still wish to remind the Respondent that he is not bound to proceed with this matter today except his lawyer is around. Further, that the Court can oblige the Respondent with an adjournment of this case until his lawyer is able to come to Court.

Respondent: - I wish to go on with the case. I have been in detention in Nigeria for four months now. I have a family (a wife and daughter in Finland). I was the one who presented myself at the Finland Embassy, Abuja. Since then, have been in custody with the Interpol. The Finland Embassy has said that this is the only way I can go back, because I have been trying to go back since the last one year. The Embassy of Finland has refused to release my passport. It was even at my request that the Extradition proceedings commenced. I urge the Court to hear the proceedings today.

Court: - In the circumstances, the Court has no option but to proceed to hearing of the Extradition proceedings. Under our Constitution, a Respondent is entitled to be represented by a lawyer of his choice. However, when the said Respondent insists on conducting the proceedings himself, the Court must allow him to do so. This is the scenario that has played out in this matter. The learned Counsel for the Attorney General of the Federation may proceed with this matter.

Hassan, Esq.- The Applicant's Application for the Extradition of UCHE OKAFOR PRINCE is dated 13th February, 2013 and filed on 14 February, 2013. The application was signed by the Honourable Attorney-General of the Federation in accordance with the requirement of the Extradition Act of Nigeria. In support of the application for Extradition is an affidavit dated 13th February, 2013 and filed on the same day. The affidavit was deposed by Obianuju Obiorah, Assistant Chief State Counsel from the office of the Honourable Attorney-General of the Federation. The affidavit contained 6 six paragraphs with three exhibits marked CAU1, CAU2 and CAU3. We rely on all the paragraphs of the affidavit and the exhibits for the purpose of this application. The affidavit contained the following documents.

1. Note Verbal No. 0030/13 from the Embassy of the Republic of Finland with seal dated 31st of January, 2013.
2. The original copy of the Letter of Extradition Request for the extradition of Uche Okafor Prince from the Federal Ministry of Justice, International Judicial Administration dated 9th January, 2013 signed by the Minister of Justice of Finland with seal.

3. Original copy of the Court process in Finland translated into English of the Court of Appeal, Helsinki, Finland.
4. Original copy of the Court process in Finland also translated into English of the Court of Appeal, Helsinki, Finland, indicating the Defendant as Uche Okafor Prince. This document indicates the offences imputed, the date of the offence in Finland, and the penalties imposed against Uche Okafor Prince in Finland, and it is sealed.
5. Original copy of the judgment delivered by the District Court of Helsinki, Finland, dated 27th May, 2010 with seal of the Court.
6. Original copy of the decision of the Court of Appeal of Helsinki, Finland dated 23 June, 2011, which indicted the Respondent now standing in this Court, as Uche Okafor Prince.
7. The Extract of the Criminal Code of Finland governing the offences and punishment against Uche Okafor Prince from the Ministry of Justice, Finland, with seal exhibited as exhibit CAU3.

The above mentioned documents show that the fugitive had a fair trial. He was convicted by the District Court and the Court of Appeal affirmed the conviction. The Respondent is entitled to further appeal to the Supreme Court of Finland which he has not done. Finally, we filed a written address dated 28/2/13. I seek leave to amend the date on the heading of the written address from 29th February, 2013 to 13 February, 2013. We adopt our written address as our argument in this case. We urge the Court to grant our application for the Extradition of Uche Okafor Prince, to serve his sentence in Finland, as requested. We also urge that the Court should adopt the provisions of Section 10 of the Extradition Act, Cap E25 Laws of the Federation of Nigeria, 2004.

to the effect that the fugitive should not be surrendered until after 15 days from the date of judgment.

RESPONDENT (UCHE OKAFOR PRINCE)-

I am not against my extradition back to Finland. There was a Court proceeding against me first at the District Court of Helsinki, Finland, which discharged me on two charges, but convicted me on the third charge. We all made an Appeal to the Appeal Court, (because it was a group case). The Appeal Court Helsinki, Finland, however restored all the three charges, and convicted us on them. After the Appeal, there was a sentence of three and half years passed on me by the Appeal Court, Thereafter, I was supposed to go

and serve the sentence, but the sentence was suspended by the prison Authorities that is how I came to Nigeria for the burial of my grandmother. Immediately, I came to Nigeria, I made appointment with the Embassy of Finland. I should state that after the Court of Appeal sentence in Finland, I had one month to stay in Finland before coming to Nigeria. One month after coming back to Nigeria, I was at the Embassy of Finland for a visa back to Finland, and they interviewed me. After two weeks of the interview, the Embassy denied me visa. The decision was from the Foreign Ministry of Finland and it was communicated to me by the Embassy, that since I was convicted in Finland, I should stay in Nigeria for some time. That was how I kept going to the Finland Embassy since 2011, I even went to the Supreme Court of Finland on the conviction, and the Supreme Court of Finland asked the Appeal Court to look into the matter again. When the case came up at the Appeal Court, went to the Finland Embassy to ask for visa to enable me go back for the case, but the Embassy once again refused. However, a video conference was arraigned at Southern Sun Hotel, Lagos, by the Finland Embassy with the Court of Appeal Helsinki. I complained that I should be at the Court of Appeal Helsinki physically for the case. The Finland Embassy then decided that the only way I will go back to Finland is by extradition proceedings, and that is how these whole proceedings started. I was invited by the Finland Embassy in November, 2012 and till then I have been in detention with the Interpol. The Finland Embassy made a request to the Ministry of Justice, Finland who in turn made a request for my extradition to the Attorney General of Nigeria. Finally, I wish to plead with this Court that I want to go back to Finland to complete my sentence there.

Hassan, Esq: - I apply that the Respondent be remanded in police custody pending his extradition.

JUDGEMENT

Having read the request by the Honourable Attorney-General of the Federal Republic of Nigeria, for the extradition of the Respondent - UCHE OKAFOR PRINCE, to the Republic of Finland. Having read the affidavit in support of the said Request together with the Exhibits attached. Having listened to the Respondent - UCHE OKAFOR PRINCE, confirming that there is a conviction of Court of Law in Finland against him, and his desire and willingness to return to Finland to serve the sentence, am satisfied that the

proceedings herein brought by the Honourable Attorney-General of the Federal Republic of Nigeria, are proper and ought to be granted.

I therefore make the following orders:

1. An order is hereby made for the Extradition of UCHE OKAFOR PRINCE to the Republic of Finland, to serve the sentence imposed by the Courts in Finland.
2. It is also directed that the Respondent - UCHE OKAFOR PRINCE is to be surrendered for extradition only after fifteen days (15) from the date of this judgment in accordance with Section 10 of the Extradition Act Chapter E25 Laws of the Federation of Nigeria, 2004.
3. Meanwhile, the Respondent - UCHE OKAFOR PRINCE shall be kept in the custody of the Nigeria Police, Asokoro, Police Division, Abuja pending his surrender to the Finland Embassy for extradition to Finland.

A. R. MOHAMMED
JUDGE

CASE 10

**IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT IKOYI, LAGOS STATE
ON FRIDAY THE 1ST DAY OF FEBRUARY 2013
BEFORE HON, JUSTICE I, N, BUBA
JUDGE**

SUIT NO, FHC/L/16^C/2013

BETWEEN

ATTORNEY-GENERAL OF THE FEDERALTION.....APPLICANT

AND

**OLAYINKA JOHNSON (AKA BIG BROTHER), (AKA RAFIU)
KOFOWOROLA), (AKA GBOLAHAN OPEYEMI AKINOLA)
RESPONDENT**

JUDGMENT

In this extradition process brought pursuant to the Extradition Act, Cap E25, Laws of the Federation of Nigeria 2004, the Honourable Attorney-General of the Federation and Minister of Justice, Mohammed Bello Adoke (SAN) on the 1st day of January 2013 by an order under his hand, signified to the Honourable Court that a request was made to him by a Diplomatic Representative of the Embassy of the United State of America, for the surrender of OLAYINKA JOHNSON (aka Big Brother), (aka Rafiu Kofoworola), (Aka Gbolahan Opeyemi Akinola) who has been indicted in case No. 1:09-cr-00281-RWR, Document 88 filed in the US District Court for the District of Colombia on 23 March 2010, for the following offences of: conspiracy to distribute and process with intent to distribute 1 kilogram or more of Heroin, in violation of Article 21, United States Code, Sections 846, 841 (a)(i) and 841 (b)(1) (A)U and unlawful use of communication facility, namely the telephone to facilitate the conspiracy to distribute and possess with intent to distribute Heroin, in violation of Article 21, United States Code, Sections 843 (b), Title 21, United States Code, Section 843 (ci) (1).

In support of the application is a three-paragraph affidavit sworn to by AKUTAH PIUS UKEYIMA, Senior State Counsel, Central Authority Unit, Federal Ministry of Justice, Abuja with the following attachments:

1. Original Certificate with Seal of the United States Department of State, signed by the Secretary of State, HILLARY RODHAM CLINTON dated 7th December 2012 and subscribe by the Assistant Authentication Officer of the said Department.
2. Original Certificate document with Seal of the United States Department of Justice, dated 6th December 2012, signed by the Associate Director, office of International Affairs, Criminal Division, Department of Justice, Washington DC and duly commissioned and qualified in the presence of ERIC H. HOLDER Jr. Attorney- General of United State whose signature is also appended.
3. Original Certificate document signed and executed by JEFFREY W. COLE Acting Association Director, Office of International Affairs, Criminal Division, Department of Justice, United State of America 6th December 2012.
4. Original copy of Affidavit in Support of request for Extradition of OLAYINKA JOHNSON aka BIG BROTHER aka RAFIU KOFOWOROLA, aka GBOLAHAN OPEYEMI AKINTOLA sworn and deposed by JOHN K. HAN, Assistant United State Attorney and Subscribed before a United States District Court, for the District of Colombia, on the 4th day December 2012 and attached with the following exhibits:

(a) Exhibit A:

A true copy of the indictment issued against OLAYINKA JOHNSON aka BIG BROTHER, aka RAFIU KOFOWOROLA, JOHNSON aka GBOLAHAN OPEYEMI AKINTOLA in the United States District Court, for the District of Colombia in case No. 1:09-cr-00281-RWR, Document 88 and filed on 23rd March 2010, for the offences of: (1) Count 1- Conspiracy to distribute and process with intend to distribute 1 kilogram or more of Heroin, in violation of Title 21, United State Code, Sections 846-841 (a) (1) and 841 (b) (1) (A) (i); (2) Counts 8,13,14 and 15- Unlawful use of communication facility, namely ‘thetelephone’ to facilitate the conspiracy to distribute and process with intent to distribute Heroin, in violation of Title 21,United State Code,

Section 843 (b) signed under seal by ‘A True Bill’, Foreperson, Attorney of the United States for the District of Colombia stamped by the US District and Bankruptcy Courts for the District of Colombia and attested, certified by ANGEL D. CAESAR, Deputy Clerk of the Court.

(b) Exhibit B:

A certified true copy of a Warrant of Arrest dated 2nd November 2009 was issued under the hand of Magistrate JUDGE DEBORAH A ROBINSON and signed by NANCY MAYE-WHITTINGTON, Deputy Clerk of the Court, certified and sealed by Angela D. Caesar, Deputy Clerk of the Court.

(c) Exhibit C:

True copies of the United States of America’s Relevant Statutes and Laws relating to the offences for which OLAYINKA JOHNSON is indicted and charged.

(d) Exhibit D:

A computer printed photograph of OLAYINKA JOHNSON.

(e) Exhibit E:

A photograph image and signature of OLAYINKA JOHNSON taken on 18 December 2007.

(f) Exhibit F:

A printed copy of Driver’s License No. K16472 170119 of OLAYINKA JOHNSON also known as (aka) RAFTU KOFOWOROLA, (aka) GBOLAHAN OPEYEMI AKINTOLA.

(g) Exhibit G:

A Diplomatic Note No. 2012-1443 dated 19th December 2012 from the United State Embassy, Abuja forwarding Extradition request to my office through the Honourable Minister of foreign Affairs being the Diplomatic channels of the Federal Republic of Nigeria.

All these documents are attached to the application and marked as Exhibit ‘CAU1’. The above state of facts captured by learned counsel to the Applicant Mr. M.S. Hassan, an Assistant Director and Head Central Unit International Cooperation in Criminal Matters of the Federal Ministry of Justice represents the true state of the instant extradition application before this Court. The Court shall revert to the relevant facts to the extradition later in this judgment.

Upon service, the Respondent filed a Notice of Preliminary Objection to the extradition process. The Preliminary Objection and the application were taken together at the resumed hearing of the case on the 23rd day of January 2013. The grounds for the Preliminary Objection are to wit:

- a) The Applicant, acting through his agent, is a contemnor of the Lagos State High Court.
- b) There is a valid and subsisting order for the production of the Respondent issued by the Lagos State High Court (Coram: Oluwayemi J.) which the Applicant has chosen not to obey.
- c) The Applicant by the instant request is seeking to turn the judiciary into the Tower of Babel.
- d) The Applicants request amounts to an abuse of court process.
- e) The Applicant has not brought the instant request with clean hands.
- f) There is no extradition Treaty between Nigeria and the United States upon which the request may be based.

The two issues identified by learned counsel to the Respondent/Applicant in the Notice of Preliminary Objection are to wit:

- In view of contemptuous state of the Applicant vide his agent, whether this Honourable Court ought to entertain the request of the Applicant.
- Whether there is in force in Nigeria an extradition treaty between the Government of the Federal Republic of Nigeria and the Government of the United States of America.
- Whether the Applicant's request ought to be granted at all.

From the issues, it was obvious that a decision on the issues will inevitably touch the merits of the application especially issue 3 of the issues in the Preliminary Objection.

At the resumed hearing of the case on 23 January 2013, Mr. K. Adegoke learned counsel to the Respondent/Applicant and Mr. M. S. Hassan made concessions on the Preliminary Objection and the main application for extradition to be heard together and also for leave to the Applicant to use the Counter Affidavit to the Preliminary Objection of January 2013 that was withdrawn to be used having regards to the facts in substance, the Preliminary Objection of 22 January 2013 is virtually the same with the Preliminary Objection of 18 January 2013 that was withdrawn and struck out.

In sum at the oral hearing, Mr. K. Adegoke submitted that reliance was placed on the Preliminary Objection dated 22 January 2013. The 18-paragraph Affidavit in Support and the Exhibit attached and the Written Address; the Court was urged to grant the Preliminary Objection and should refuse the extradition request filed by the Attorney-General. For the main application, it was also agreed that a Counter Affidavit of 15 paragraphs dated 18th January 2013 together with the exhibits attached and the address in support thereof be used by the Applicant. Reliance was placed on all the paragraphs and the address, that there is no extradition treaty in force. All the authorities relied on are on the one of 1967 which has not been ratified. The Court was referred to the Ruling of Abutu J. in the case of AG, Federation Vs Abiodun M. Bakare Suit No. FHC/L/333c/2006 (unreported) of 29th June 2007 and Ebozie Vs FRN (2007) 15 NWLR (Pt 1058) 499, that the Court of Appeal said it was common ground. There is no sufficient evidence for extradition. The documents at page 16 are an unsigned document which this Court should discountenance. The authority must show that it complied with the statute. The Court was referred to the case of Federal Civil Service Commission Vs Laoye (1989) 20 (Pt II) NSCC 101 at 115. The Court was urged to decline the extradition of the Respondent. Finally, the Respondent relied on section 35(1) of the Constitution of the Federal Republic of Nigeria, and Section 8(6) of the Extradition Act itself.

Mr. Hassan, learned counsel, in response submitted that the Applicant filed a Counter Affidavit to the Preliminary Objection dated 22nd January 2013 and filed on the same date with Exhibit 'CAU1' of 10 paragraphs. Reliance was placed on all the averments and the exhibit. There is also a Written Address dated 22 January 2013. Same was adopted, the Court was urged to discountenance the Respondent's objection. That the extradition matter was filed after the Ruling of the Lagos State High Court. That the Attorney-General is not aware of the abuse if any by the National Drug Law Enforcement Agency (NDLEA). It is submitted that the Legal Notice No. 33 of 1967 amended the Extradition Decree No. 87 of 1967 by Section 2(c) of the Legal Notice. In addition, it is submitted that the Legal Notice forms part of the Extradition Act. The Court was referred to the First Schedule to the Extradition Act Cap E25. The Legal Notice and the Extradition Act of 2004 is an existing law. It is submitted that the Decree of 1967 is part of the Extradition Act. The Constitution recognizes the laws. Section 12 of the

Constitution of the Federal Republic of Nigeria, of 1999 recognize all existing laws and even the Vienna Convention of 1961 are in existence. That in the case of AG, Federation Vs Abiodun Bakare, (supra) the facts are different and is not relevant. The case had to do with financial crimes. The request in this case is possession of drugs.

It is submitted that there is TOC Convention. The Court was urged to discountenance the submission. The Court was also referred to the case of George Odozie Vs FRN (supra) and AG, Federation Vs Abiodun Bakare cannot be relied upon. The Court of Appeal stated the laws to be considered and the Court was urged to discountenance the submission. On the main application which is addressed to the Chief Judge as contained on pages 1 - 6 of the application; and the second page of the application by the Honourable Attorney-General pp 7 - 8 of the application.

In support of the application, there is an affidavit dated 10th January 2013 of 3 paragraphs. Reliance was placed on all the paragraphs of the affidavit pp 12 - 15 of the application. The exhibits comply with the requirements of Cap E25 Laws of the Federation of Nigeria 2004. The Court was also referred to pp 16 - 18 of the Diplomatic Note. The original Certificate is filed and the argument dated 22th January 2013 and filed on 23 January 2013, same was adopted. The Court was urged to hold that due process was followed and the condition precedent is complied with.

Learned counsel then adopted the arguments in the Preliminary Objection in the main case and also sought the leave of Court to use the Counter Affidavit of the Applicant dated 23th day of January 2013 and filed on the same dated to respond to the Counter Affidavit of the Respondent of 18th January 2013. Finally, it is submitted that Diplomatic Note bear the seal and duly executed and is at page 118. The essence is to show the request came before diplomatic channels. It is argued that the detention of the Respondent since 7th November 2012 and reference to page 25, the document speaks for itself. The Court was urged to hold that the requirement of the Act had been complied with and the Court was urged to grant the request in respect of the Respondent. The condition precedent had been made and the case of FCSC Vs Laoye (supra) and the case of Fawehinmi Vs Abacha (2000) 4 SC (Pt 11) 1 at 20 are not relevant. It has to do with procedure.

Learned counsel to the Respondent Mr. Adegoke submitted, on the Legal Notice No. 33 that an Act of the National Assembly cannot be amended by a Legal Notice, it takes an iron to sharpen an iron. It is an Act that can amend an Act. The Constitution requires the National Assembly to do that. It is a power delegated to the National Assembly, just as was done by the African Charter. The argument on an existing law will not avail the Applicant. On the Edozie's case, the Court was urged to discountenance the submission of the Applicant that it will be inconsistent with section 3 15(3) of the Constitution of the Federal Republic of Nigeria which vests the Court with the power to declare null any provision.

Let me take the liberty to state outright that this Court took time to read all the processes before it. The cases cited and relied upon. First, this Court is of the considered opinion that the Respondent/Applicant in the Preliminary Objection misconceived the point when it argued that the Applicant is a contemnor. The orders of the Lagos State High Court exhibit RK1. The judgment of D. O. Oluwayemi J. is very clear in that the Applicant approached the Lagos State High Court for the enforcement of his fundamental right and in the Fundamental Right Enforcement Proceedings the Court found that the NDLEA cannot keep the Respondent in incarceration for 70 days without taking him to court and ordered for the Respondent's conditional release that is, bail in the sum of ₦250,000 to two members of his family as sureties and another independent Surety with a sum of 2million Naira or a landed property in Victoria Island or Ikoyi. The title document must be certified by the Deputy Chief Registrar through Land Registry. The Surety must produce photocopy of 3 years recent Tax Clearance.

Therefore, it is clear the Respondent was not released or ordered to be released unconditionally, it is therefore, not correct to submit and argue as it is being argued that, extradition process cannot take place against the Respondent. The purpose of release of the Respondent/Applicant conditionally to Sureties is to enable him to appear whenever needed or wanted and now that the extradition process has commence, the Respondent cannot hold unto the orders of the Lagos State High Court in Fundamental Right Enforcement Proceeding. The fundamental right proceeding is not absolute. The liberty of a citizen can be interfered with for the purpose of extradition.

On the second issue as to whether there is a treaty in force in Nigeria on extradition between the Government of the Federal Republic of Nigeria and the Government of the United States of America. The Respondent/Applicant in the Preliminary Objection laboured to submit and referred the Court to the only persuasive decision of Abutu J. (as he then was) in the case of Suit No. FHC/L/333/2006 Attorney-General of the Federation Vs Abiodun Michael Bakare delivered on June 29, 2007. To that submission, there are equally persuasive decisions of this Court in the cases of Suit No. FHC/L/218/2011 Attorney-General of the Federation Vs Rasheed Abayomi Mustapha (unreported) judgment delivered by Justice P. I. Ajoku of the Federal High Court, Lagos 30th January 2012; Suit No. FHC/L/1^C/201 Attorney-General of the Federation Vs Emmanuel Ekhaton (unreported) judgment delivered by justice B. F. M. Nyako of the Federal High Court, Lagos on 26 July 2011; suit No. FHC/L/CS/228/2008: In the Matter of Extradition, Hon. Attorney-General of the Federation Vs Oluremi Adebayo (unreported) judgment delivered by justice A. N. Auta of the Federal High Court, Lagos on 8th April 2009; Suit No. FHC/L/335C/2011; In the Matter of Extradition, Hon. Attorney-General of the Federation Vs Godwin Nzeocha (unreported) Judgment delivered by Justice J. T. Tsoho of the Federal High Court, Lagos on 28th May 2012; All ably cited and relied upon by Mr. Hassan, learned counsel to the Applicant/Respondent to the Preliminary Objection. What is more learned counsel also referred this Court to a binding decision of the Court of Appeal in the case of George Udeozor Vs FRN (2007) 15 NWLR (Pt 1058) 499 at 313 - 316 paragraphs H-C.

The Court of Appeal in that case at page 513 - 516 paragraphs H-C stated that:

“In order to fully comprehend and adequately address this appeal, there seems to be a consensus between the parties that there is an extradition agreement between the two countries, The Extradition (United States of America) Order of 1967 published in the Special Gazette No. 23 Vol. 54 of 13th April 1967 is cited as the requisite legislation.”

Other relevant statutes cited by both the learned counsel for the parties are as follows:

- a) Extradition Act, Cap 125, Laws of the Federation of Nigeria 1990 now Cap E25, Laws of the Federation of Nigeria 2004.

- b) Evidence Act, Cap 112, Laws of the Federation of Nigeria 1990 now Cap E14, Laws of the Federation of Nigeria 2004.
- c) The Criminal Procedure Act.
- d) Legal Notice No. 33 of 1967.
- e) The Immigration Act, Cap 171, Laws of the Federation of Nigeria 1990.

Above is the Constitution of the Federal Republic of Nigeria 1999. See also the decision of Galadima JCA (as he then was) in the case of Orhiunu VS FRN (2005) 1 NWLR (Pt 906) 39 at 55 paragraph H and 56 - 57 where the law was pronounced as follows:

In Attorney-General, Abia State Vs Attorney-General, Federation (2002) 6 NWLR (Pt 763) page 264, the Supreme Court of Nigeria, referring to Section 1(1) and 1(2) of the 1999 Constitution has emphasized and reiterated the hierarchy of our laws thus:

“The Constitution is what is called the *grundnom* and the fundamental law of the land. All other legislations in the land take their hierarchy from the provisions of the Constitution. By the provisions of the Constitution, the laws made by the National Assembly comes next to the Constitution, followed by those made by the House of Assembly of a State. By virtue of Section 1(1) of the Constitution, the provisions of the Constitution take precedence over any law enacted by the National Assembly even though the National Assembly has the power to amend the Constitution itself”.

Careful examination of the Extradition Act Cap 125 will help ascertain its hierarchical provisions as enunciated by the Supreme Court in the case of AG, Abia State’s case supra. Section 4(2) of the 1999 Constitution provided that:

“The National Assembly shall have power to make laws for the peace order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution”.

However, item 27 of the said Part 1 of the Second Schedule listed ‘Extradition’ as a subject which National Assembly could legislate upon. That being the case, the Extradition Act which came into operation on 31 January 1967 is protected by section 315(1) which provide that:

“Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be:

a) An Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws”.

Sub- section 3 of this section of the Constitution went a bit further to state that:

“Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provisions of any other law, that is to say:

- a) Any other existing law
- b) A law of a House of Assembly
- c) An Act of the National Assembly
- d) Any provision of this Constitution”.

On the strength of the provisions of section 4(2) and 315(1) and (3) above, it is not in doubt that the Extradition Act Cap 125 of the Laws of the Federation 1990, being an existing law, deemed to have been made by the National Assembly shall continue to rate next to the Constitution in terms of precedence. Thus, the argument of the learned counsel for the appellant that there is need for the legislature to cure what he called ‘deficiency’ is a clear misconception of the legal position of this issue. See the case of Federal Civil Service Commission Vs Laoye (1989) 2 NWLR Pt 106) 652 at 676, where the Supreme Court held that the Civil Service Rules though made long before the 1979 Constitution but must say that extent be subservient to the 1979 Constitution. I must say that the learned Senior Advocate with due respect did not give due attention to section 315 of the 1999 Constitution which is *in pari materia* with section 274 of the 1979 Constitution which talks about ‘existing law’.

Therefore, the provision of the Extradition Law has on coming into force of the 1999 Constitution started to have effect with such ‘modification’ as may be necessary to bring them into conformity with the provisions of section 251

of the 1999 Constitution. It is trite law that where the Constitution, as in this case has given a jurisdiction, it cannot be lightly divested. Where it is intended to be divested of the jurisdiction that has been assigned to it by the Constitution, it must be done so by clear express and unambiguous words and by a competent amendment of the Constitution, not by any other method. See *Nwonu Vs Administrator-General Bendel State* (1991) 2 NWLR (Pt173) 342.

Consequently, the provisions of Section 251 of the 1999 Constitution having been solemnly ordained by ‘the people of the Federal Republic of Nigeria’, not by the National Assembly, wherein it expressly conferred exclusive jurisdiction on the Federal High Court on matters of extradition, in the exercise their sovereign powers, cannot therefore be limited otherwise than by the same Constitution”.

Consequently, this Court on the stated authorities today has no doubt that the Respondent/Applicant in the Preliminary Objection misconceived the issues of the treaty between Nigeria and the United States. All the submissions that the Legal Notice cannot amend an Act does not accord with the law as it stands today in which the Courts made far-reaching pronouncement. The Legal Notice is clear. It provides that:

“Whereas the Extradition Treaty concluded between the United States of America and Great Britain and signed at London, on 22 December 1931 for the surrender of fugitive offenders, has been recognized as binding on Nigeria subject to the modifications of specified in Schedule thereof”.

Now therefore, in exercise of the powers conferred by section 1 of the Extradition Decree 1966 and of all other powers enabling it in that behalf the, the Federal Executive Council hereby makes the following orders:

1. This order may be cited as the Extradition (United States of America) Order 1967, and shall apply throughout Nigeria.
2. The Extradition Decree 1966 shall apply to the United States of America for the purpose of giving effect to the Extradition Treaty set out in Schedule 2 of this Order which, subject to the modifications specified in Schedule 1 below, is binding on Nigeria.

Accordingly, in Schedule 1 of that Decree there shall be inserted the following entry – 2. The United States of America: L.N. 33 of 1967”.

Therefore, the submission that “only an iron can sharpen an iron” is dismissed with a wave of the hand. Indeed, “a stone can sharpen a cutlass” which is an iron, if the Court can delve into African proverbs. This issue too is misconceived.

It does appear to the Court also that the resolution of the third issue in the Preliminary Objection will entail the Court inextricably dabbling into the merits of the application. To that extent, it is most convenient point in this judgment to hold that the Preliminary Objection is misconceived, lacking in merits, same be and is hereby dismissed. On the merits of the application, the facts in the affidavit are clear, the arguments of Mr. Hassan to the effect that: Section 21(1) (a) of the Extradition Act, Cap E25, Laws of the Federation of Nigeria, 2004 defines Fugitive Criminal as any person accused of an extradition offence committed within the jurisdiction of a country other than Nigeria. In an application of this nature all that is required of the Applicant is provided by Section 17(1)(a) & (1), (3)(a) & (b), (4) of the Extradition Act, Cap E25 Laws of the Federation of Nigeria, 2004 which provides as follows:

1. “In any proceedings under this Act, any of the following documents if duly authenticated shall be received in evidence without further proof, namely:
 - a) any warrant issued in a country other than Nigeria.
 - b) any deposition or statement on oath, or affirmation taken in any such country or a copy of such deposition or statement”.
2. “The requirements of this subsection are as follows:
 - a) a warrant must purport to be signed by a Judge, Magistrate or Officer of the country in which it was issued.
 - b) a document such as is mentioned in subsection (1)(b) of this Section must purport to be certified under the hand of a judge, Magistrate or Officer of the country in which it was taken to be the original or a copy, as the case may be of the document in question”.
3. “For the purpose of this Act, Judicial Notice shall be taken of the official seals of Ministers of State of countries other than Nigeria”.

Sections 3, 5, 6 and 9 of the Extradition Act, Cap E25, Laws of the Federation of Nigeria 2004 are also relevant in this application. Section 3 of the Act provides for restrictions on surrender of fugitives, section 5 provides for liability of fugitive to surrender. Section 6 of the Act provides for request for surrender and power of the Attorney-General of the Federation thereto while section 9 of the Act provides for the procedure to be adopted by the Court on issues to be considered by the Court before the committal of the fugitive. The Magistrate shall subject to subsection (5) of the Section, commit the fugitive to prison to await the order of the Attorney General of the Federation for his surrender.

The power to commit the fugitive to prison to await the Order of the Attorney-General of the Federation for his surrender is also vested on the Federal High Court as provided under Section 251(1)(i) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

It is contended that the requirements for extradition of a fugitive as provided above put together as regards this type of application are:

- a) That there is a request for the surrender of the fugitive.
- b) That the fugitive is accused of extradition offences in a country other than Nigeria.
- c) That there is a warrant of arrest issued outside Nigeria authorizing the arrest of the fugitive.
- c) That the warrant of arrest was issued in a country to which the Extradition Act applies.
- e) That the warrant of arrest is duly authenticated and same relate to the fugitive.
- f) That the offences for which the fugitive is accused of are extraditable offences.
- g) That the evidences produced will according to the law in Nigeria, justify the committal of the fugitive for trial if the offences were committed in Nigeria, and
- h) That the surrender of the fugitive is not precluded by the provisions of the Extradition Act and in particular Section 3(1) - (7) of the Act.

Section 9(3) of the Extradition Act, Cap E25, Laws of the Federation of Nigeria, 2004 in particular provides:

- (3) “In the case of a fugitive criminal accused of an offence claimed to be an extradition offence, if there is produced to the Magistrate a warrant of arrest issued outside Nigeria authorizing the arrest of the fugitive and the Magistrate is satisfied:

That the warrant was issued in a country to which this Act apply, is duly authenticated, and relates to the prisoner.

That the offence for which the fugitive is accused of is an extradition offence in relation to the country.

That the evidence produced would according to the law of Nigeria, justify the committal of the prisoner for trial if the offence of which he is accused had been committed in Nigeria and

That the surrender of the fugitive is not precluded by this Act (and in particular by any of subsections (1) - (6) of Section 3 thereof) and, where the country requesting the surrender of the fugitive is one to which this Act applies by virtue of an order under Section 1 of this Act, is also not prohibited by the terms of the extradition agreement as recited or embodied in the order”.

It is submitted further that all the requirements have been complied with in this application. The Applicant has placed more than the needed evidence before this Court to warrant the grant of this application.

The Applicant has signified to the Court that a request has been made to him by a Diplomatic representative of the Embassy of United States of America, for the surrender of the Respondent. It is submitted that since Section 6 provides for a request for surrender of a fugitive criminal by the Attorney-General of the Federation in writing without stating how it should be worded, if the Attorney-General gets to know of a fugitive needed in an extraditable country and that is communicated in writing, it is his duty to take the right steps in ensuring the due process is followed in the extradition proceedings.

It is therefore submitted that the Applicant got to know that the Respondent was a fugitive criminal and was needed by the United States of America only on 4th January 2013 via a letter from the Nigeria’s Foreign Affairs Ministry.

Anything that would have happened before 4th January 2013 did not involve the Applicant, this is the more reason why this application was brought and timeously filed on 10th January 2013 after the official request for the

Extradition of the Respondent from Nigeria was made. It is also submitted that the Respondent is accused of extradition offences in the United States of America and certified copy of indictment issued against the Respondent in the United States District Court, for the District of Colombia in case No. 1:09-cr-00281-RWR, Document 88 and filed on 23rd March 2010, signed by a United States Attorney is dully placed before this Honourable Court.

That also placed before this Court is a Warrant of Arrest dated 2th November 2009 and issued under the hand of Magistrate Judge DEBORAH A. ROBINSON and signed by NANCY MAYER-WHITTINGTON, Deputy Clerk of the Court, certified and sealed by ANGELA D. CAESAR, America subject to their Treaty with the United Kingdom which is made applicable to Nigeria on 24th day of June 1935 and incorporated into the Nigeria's Extradition Act, Cap E25, Laws of the Federation of Nigeria 2004. The Warrant is therefore duly authenticated and it relates to the Respondent.

Furthermore, an original copy of Affidavit in Support of the request for the Extradition of OLAYINKA JOHNSON aka BIG BROTHER, aka RAFIU KOFOWOROLA, aka GBOLAHAN OPEYEMI AKINTOLA sworn and deposed to by JOHN K. HAN, Assistant United States Attorney, sworn to and subscribed before a United States Magistrate Judge, United States District Court, for the District of Colombia on the 4th day of December 2012 is also placed before this Honourable Court for due consideration.

- i) The offences for which the Respondent is charged are extradition offences, if the said offences were committed in Nigeria, the evidence produced will according to the law of Nigeria, justify the committal of the fugitive. For example, conspiracy to distribute and possess with intent to distribute 1 kilogram or more of Heroin in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(A)(i) and unlawful use of communication facility, namely 'the telephone' to facilitate the conspiracy to distribute and possess with intent to distribute Heroin, in violation of Title 21, United States Code, Sections 843(b and Title 21, United States Code, Sections 843(d)(1).
- ii) All these offences can be equated with conspiracy under Section 16 of the Criminal Code Act, Cap C38 and the offences under Sections 11 and 19 of the National Drug Law Enforcement Agency Act, Cap N30 of the Laws of the Federation of Nigeria 2004.

- iii) These offences are extradition offences as they are also provided for by item 24 of Article 3 of the Extradition (United States of America) Order, 1967 that is, Legal Notice No. 33 of 1967 and Article 3 item 24 of the Extradition Treaty between the United States of America and United Kingdom of 22nd December 1931 made applicable to Nigeria on 24th June 1933 and continued in force between Nigeria and the United States of America.
- iv) The offences for which the fugitive is charged are also covered by Article 3 of the United Nations Convention Against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances, done at Vienna on 20th December 1988 ("1988 Vienna Convention"). Both Nigeria and the United States are parties to the 1988 Vienna Convention. In accordance with Article 6 of the 1988 Vienna Convention, each of the offences shall be deemed to be included as extraditable offences in any Extradition Treaty existing between the parties.
- v) It is submitted further that, the 1988 Vienna Convention is a legal instrument by virtue of Section 3 15(4) (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and therefore it is an existing law.
- vi) It is submitted further that the TOC Convention gave birth to the Economic and Financial Crimes Commission (Establishment) (EFCC) Act, 2004 the Corrupt Practices and Other Related Offences (ICPC) Act, 2003, National Agency for Prohibition of Trafficking in Persons Act etc. It is submitted that Nigeria became signatory to the TOC Convention on 13th December, 2000. The Court was urged to hold that the TOC Convention is domesticated as a law in Nigeria.
- vii) The offences are also covered by Articles 3 and 5 of the United Nations Convention Against Transnational Organized Crime ("TOC Convention") adopted on the 15th November 2000. Both Nigeria and the United States are parties to the TOC Convention, each of the offences it covers shall be deemed to be included as extraditable offences in any extradition Treaty existing between the parties.
- viii) Both Nigeria and United States of America are signatories and accordingly Ratified, Accepted, Approved, Accessed and acceded to both Conventions.
- ix) It is also submitted that the Legal Notice 33 of 1967 and Article 3 Item 24 of the Extradition Treaty between the United States of

America and the United Kingdom of 221 December, 1931 made applicable to Nigeria on 24th June 32 1935 and continued in force between Nigeria and the United States of America are all existing laws under Section 313(4) (b) of the 1999 Constitution of the Federal Republic of Nigeria (amended).

- x) The Legal Notice 33 of 1967 amended the Extradition Decree No. 1 of 1966 and formed part of the Extradition Act, Cap E23, Laws of the Federation of Nigeria 2004. We refer to the First Schedule {Section 1(5)}.

It is submitted that the request for the surrender of the Respondent is not precluded by the provision of the Extradition Act and in particular Section 3(1) - (7) of the Act. The Respondent has also not denied the Commission of the offences and in any case, they are not here to prove his guilt as there is no charge against him in Nigeria.

The relevant documents needed in proof of this extradition application together with other documents that are not even statutorily mandatory were all certified by Letter of Certification, with Seal of the United States Department of State under the hand and name of the Secretary of State, HILLARY RODHAM CLINTON subscribed by the Assistant Authentication Officer of the Department and also attached is an Original Certificate Document with seal of the United States Department of Justice dated 6th December 2012 signed by the Associated Director, Office of International Affairs, Criminal Division, Department of Justice, Washington DC and duly commissioned and qualified in the presence of ERIC H. HOLDER Jr, Attorney-General of the United States whose signature is also appended.

The Applicant submits therefore that since all the relevant documents are duly authenticated, they should be received in evidence without further proof as stipulated by Section 17 of the Extradition Act.

The Applicant also submits that sufficient materials have been placed before the Court to warrant the surrender of the Respondent to the United States of America as such, nothing should be imported in the statutes to preclude the Respondent's surrender if such is not stipulated by the Extradition Act.

In conclusion, it is submitted that:

Since the Applicant has placed all the necessary materials before the Court, weighty enough to grant the surrender sought, the Court was urged to exercise its discretion in favour of the Applicant and grant the surrender sought and commit the Respondent to prison custody to await the order of the Hon. Attorney-General of the Federation and Minister of Justice of his surrender to the United States of America.

In all these legal submissions, what did the Respondent say in his Counter Affidavit and arguments? The Counter Affidavit of Mr. Olarenwaju Abegunrin, a counsel in the law firm of M. A. Banire & Associates in the 15-paragraph Counter Affidavit said nothing about the facts in the application. Indeed, the Respondent did not even make a feeble attempt to counter the Applicant's deposition. So, also in the address, the Respondent again only labored to submit on the issues that had been dealt with in the Preliminary Objection. I need not repeat them. Suffice it to say that in the matter of extradition, the courts will always not carelessly surrender citizens and non-citizens alike unless the Court is satisfied on the facts and the position of the law. Is it safe to do so bearing in mind that the Court is not trying the Respondent? From the facts of this application, the Applicant has more than satisfied the Court. This Court answers the third question that was earlier posed by the Respondent in the Preliminary Objection that is, whether the Applicant's request ought to be granted at all and the sole issues frames by the Applicant in the main to wit:

Whether the Applicant has placed sufficient evidence before the Honourable court to justify all the precondition for the grant of the order sought in the affirmative.

The court holds that the application has merit, it succeeds and is granted. The Attorney-General has followed the procedure. The Court therefore commits the Respondent Olayinka Johnson aka Big Brother, aka Rafiu Kofoworola, aka Gbolahan Opeyemi Akintola to prison for extradition to the United State of America as a fugitive to face trial for the crime alleged. The fugitive shall be committed to await his extradition to United Sate of America within thirty (30) days of this order to face the trial for the offences allegedly committed as stated earlier. This is the judgement of the Court.

Judgement read and delivered in open Court.

Parties: Respondent in Court

Appearances:

Mr. Akutah Pius Ukeyima for the Applicant,
Senior State Counsel, Federal Ministry of Justice.

Mr. Tayo Olatunbosun with him are Messrs. Olanrewaju Abegunrin and
Olamide Ajibola (Miss) for the Respondent.

CASE 11

**IN THE COURT OF APPEAL
BENIN CITY JUDICIAL DIVISION
ON MONDAY, THE 6TH DAY OF JUNE, 2011**

SUIT NO: CA/B/61C/2010

**BEFORE THEIR LORDSHIPS
AMIRU SANUSI JUSTICE, COURT OF APPEAL
OYEBISI FOLAYEMI OMOLEYE JUSTICE, COURT OF APPEAL
CHIOMA EGONDU NWOSU-IHEME JUSTICE, COURT OF APPEAL**

BETWEEN

- 1. JAMES ONANEFE IBORI**
- 2. UDOAMAKA OKORONKWO (NEE ONUIGBO)**
- 3. CHIEDU EBIE**
- 4. MER ENGINEERING NIGERIA LIMITED**
- 5. BAINENOX LIMITED**
- 6. SAGICON NIGERIA LIMITEDAPPELLANTS**

AND

FEDERAL REPUBLIC OF NIGERIA RESPONDENTS

PRACTICE AND PROCEDURE

*Stay of proceedings pending extradition proceedings in another jurisdiction:
Conditions to be considered*

AMIRU SANUSI, J.C.A. (Delivering the Lead Ruling): This is a Motion on Notice dated and filed on the 23rd day of November, 2010, bought pursuant to order 7 Rule 1 and under the inherent powers of this court, wherein the applicant is seeking the grant of the under mentioned five prayers: -

1. AN ORDER staying all proceedings in this appeal pending.
(a) The hearing and determination of the Extradition proceedings instituted against the 1st Respondent/Applicant by the Crown Prosecution Service of the United Kingdom at the behest of and in collaboration with and/or

cooperation of the Appellant and upon the return of 1st Respondent to Nigeria; and

(b) The hearing and determination of Appellant's Appeal No. SC/136/2009, FRN V. IBORI & ORS currently pending before the Supreme Court of Nigeria.

2. AN ORDER setting aside the consent granted by the Appellant contained in letters of the Honourable Attorney-General and Minister of Justice of the Federation dated 20th May, 2010 respectively to the Crown Prosecution Service and/or The British High Commissioner and/or The British Home Secretary to use evidence gathered in Nigeria and contained in the record of proceedings in this appeal for the purpose of initiating and/or instituting criminal proceedings against the 1st Respondent/Applicant in the United Kingdom or any part of the world.

3. AN ORDER that the Appellant shall secure the return of all evidence sent by the Appellant herein to the United Kingdom for the purposes of initiating and/or instituting criminal proceedings against the 1st Respondent/Applicant.

4. AN ORDER that the Appellant shall forthwith intervene in the extradition proceedings instituted by the Crown Prosecution Service of the United Kingdom and secure the return of the 1st Respondent to Nigeria to enable him properly defend this appeal.

5. AN ORDER that the Appellant shall promptly file a request with the Government of the United Arab Emirates for the return of the 1st Respondent/Applicant to Nigeria to enable him properly defend to enable him this appeal."

There are six grounds supplied by the applicant upon which the application was brought which is also adumbrated below:

a) That the appellant cannot proceed with this appeal having on the 11th and 20th May 2010 respectively granted consent to the Crown Prosecution Service of the United Kingdom to use the same evidence contained in the record of proceedings in this matter to institute criminal proceedings against the 1st Respondent in the United Kingdom.

b) That based upon (1) above the Crown Prosecution service of The United Kingdom working in collaboration with the Appellant filed in extradition

request in respect of 1st Respondent with the authorities of the United Arab Emirates resulting in the incarceration of the 1st Respondent pending final determination of the extradition proceedings.

c) That the Appellant cannot proceed with this appeal while actively aiding and supporting extradition proceedings aimed at sending the 1st Respondent to the United Kingdom for criminal trial based upon the same evidence contained in the record of proceedings in this matter.

d) That the 1st Respondent/Applicant being currently incarcerated in the United Arab Emirates cannot properly defend this appeal and properly brief counsel to represent him in this appeal.

e) That the Appellant has filed an appeal to the Supreme Court of Nigerian against the decision of the Court of Appeal Kaduna Division delivered in this matter transferring the matter from the Federal High Court Kaduna Judicial Division for hearing and determination before the Federal High Court, Asaba Judicial Division.

f) That to proceed with this appeal when 1st Respondent is incarcerated in a foreign Country at the instance of the Appellant would occasion a grave miscarriage of justice on 1st Respondent and is an abuse of the processes of this Honourable Court.

The motion is supported by a seven paragraph Affidavit-Annexed to the application also are three exhibits marked or identified as Exhibits J1, J2 and J3. Upon being served with the applicant's application, the Respondent/Appellant responded by filing a counter affidavit of nineteen paragraphs on 2/3/2011. It however did not annex any exhibit to it.

When arguing his application before us on 9th of March 2011, Mr. A. A. Alegeh SAN of learned Senior Counsel for the applicant submitted that there is a pending appeal before the Supreme Court and that the appeal is to fortify the jurisdiction of the court. He also submitted that they also appealed to the Supreme Court on the proper venue of trial of the applicant. He further submitted that the counter affidavit filed by the Appellant/ 1st Respondent did not counter any of the averment in his supporting affidavit. The learned senior advocate then moved in terms of his application after of course, referring

us to the three exhibits he annexed to his application identified and marked Exhibits J1, J2 and J3.

Replying to the learned applicant's senior counsel's submission, Mr. I. Ibrahim SAN for the respondent drew this court's attention to his 19 paragraph counter affidavit and the averments on which he relied. He explained that their main appeal is against the decision of the Asaba High Court quashing the charges they framed against the applicant and presented same to that court. He said the crux of the appeal is whether there was prima facie evidence linking the accused, (now applicant,) to the offences charged. He remarked that all the documents in respect of that appeal were in the Record of Appeal as he stated in their counter affidavit.

The learned silk for the respondent, then referred us to paragraphs 3(VIII), (XVII) of the supporting affidavit to the motion wherein, it was averred that the Nigerian Government forwarded documents in the appeal to the United Kingdom and also that there was a pending appeal in the Supreme Court and the applicant's arrest in Dubai stopped him from prosecuting the appeal. In response to those averments, the respondent's senior counsel submitted that on the alleged interwovoring charges such charges were not before this court hence this court cannot speculate. Also about the averment that the Federal Government forwarded the document to the United Kingdom as per Exhibit J2 annexed to the applicant's motion, the learned silk referred this court to Paragraph 13 wherein it was stated that they submitted all the documents to the Bank he listed which were sent to the UK and which said banks were not the Banks to which the charges relate. He added that the only Bank listed in Exhibit J2 is Guarantee Trust Bank, but even then the charge is related to the Delta State Government and NOT the applicant's personal Bank account.

With regard to the issue of the pending appeal, the respondent's counsel referred to Paragraph 18 of his counter affidavit where they argued that it relates to venue while the present or instant appeal merely relates to whether there is prima facie case to require the accused to explain on the conduct of his defence to the appeal while he is in Dubai, or the UK. It was further submitted on behalf of the respondent, that there was nothing before this court about his alleged incarceration. He then added that no special circumstances were shown to warrant the grant of the first prayer. Then with regard to Prayers 2-5 together with reliefs 2 and 3 seeking courts order to set aside the consent given by the Hon. Attorney General of the Federation to use the

documents and also about reliefs 4 and 5 seeking an order stopping the appellant from embarking on extradition proceedings to Dubai, and the invitation of this court to invoke the provisions of Section 15 of the Court of Appeal Act 2004 and under Order 4 of Court of Appeal Rules of 2007, in that regard, the learned senior advocate argued that those provisions could only be invoked by this court on issues or facts that are placed before it. He said that since the reliefs sought by the applicant do not arise from this appeal, this court cannot grant them pursuant to those provisions of the laws. See *Inajoku V. Adeleke* (2007) 11 NWLR (Pt 1025) 423 at 613 to 614 H-B. The learned counsel in another submission argued that that appellate jurisdiction of this court is governed by the provisions of Section 240 of the 1999 Constitution and it was further argued that reliefs 2-5 do not arise from this appeal or relate to the subject matter of this appeal now before it. See the case of *Ehuwa V. OSIEC* (2006) 18 NWLR (Pt 1012) 544 at 570 E-H.

In final submission, Mr. I. Ibrahim, SAN of learned senior counsel for the Respondent referred this court to Exhibits J1, J2 and J3 annexed to and in support of the application and observed that the said documents/exhibits are public document within the meaning of Section 109 of the Evidence Act of 1990. He then submitted that being public documents, Sections 113 (i), (ii) and (iii) of the Evidence Act require that they ought to be certified before this court can act or rely on them, adding that, they had not been so certified. While urging this court to discard the said exhibits and to reject them, he finally urged this court to refuse the application and dismiss it for being meritless. Perhaps it will not be out of place at this stage, if I set out below, made on behalf of the applicant in his some of the relevant averments supporting affidavit on which he is relying on the present application and also the respondent's response to them in his counter affidavit. This will go a long way in appreciating and expatiating the circumstance leading to the filing of the application and it will also help this court in deciding whether to grant the application or not. Some of these relevant averments in the supporting affidavit include the followings: -

PARAGRAPHS

“3(1)

- (ii) That the 1st Respondent was arrested on the 12th of December, 2007 in Abuja by the Applicant and charge on the 1st December 2007 along with 4 others before the Federal High Court, Kaduna Division in CHARGE No. FHC/KD81C/2007 FRN v. IBORI & ORS on a 103 count charge.

The 1st Respondent pleaded 'Not Guilty' to these charges after which, he was remanded in prison custody at the Kaduna prison, Kaduna.

- (iii) That on the 11th of January 2008, the Appellant filed amended charges and increased the counts from 103 counts to 129 Counts. The 2nd Respondent's plea was re-taken and he again pleaded 'Not Guilty' to these charges.
- (iv) That the Appellant again further amended the charges on the 12th March, 2008 and increased the Counts from 129 counts to 170 counts.
- (v) That the 1st Respondent spent a total of sixty-two (62) days in prison custody on the basis of these charges before he was granted bail. He suffered serious medical complications while in Prison custody and on one occasion had to be airlifted by Prison Authorities to the National Hospital, Abuja. The 1st Respondent is still suffering the ill effects of the long stay in prison custody without proper medical facilities and attention.
- (vi) That the 1st Respondent's appeal challenging the jurisdiction of the Federal High Court, Kaduna Division on grounds of forum shopping was successful and the matter was transferred to the Federal High Court, Asaba where it was renumbered Suit No. FHC/ASB/1C/09.
- (vii) That the Appellant filed an appeal against the decision of the Court of Appeal, Kaduna Division transferring the suit to the Federal High Court, Asaba Division. The appeal has been entered for hearing at the Supreme Court as Appeal NO.SC.136/2009. The Appellant herein has already filed his Appellant's brief of argument in respect of the appeal at the Supreme Court.
- (viii) That the 1st Respondent filed an application to quash the charges against him and after taking arguments, the lower court delivered a considered Ruling quashing all the 170 counts filed by the Appellant against him.
- (ix) That the Appellant being dissatisfied with the decision of the Federal High Court promptly filed this appeal against the decision of the lower court quashing the 170 count charges against me.
- (x) The Appellant/Respondent has forwarded all the documents and witness statements earlier intended to be used by the prosecution at the Federal High Court, Asaba to the Crown Prosecution Service and Metropolitan Police in the United Kingdom and given consent for their use in instituting criminal proceedings against me in the United Kingdom.
- (xi) That the Appellant/Respondent is presently working and collaborating with the Crown Prosecution Service and Metropolitan Police in the United Kingdom to extradite me to the United Kingdom to face fresh criminal

charges in the United Kingdom using the same evidence contained in the record of proceedings in this matter.

- (xii) That the 1st Respondent is presently incarcerated in the United Arab Emirates pending the hearing and determination of the extradition proceedings initiated by the Crown Prosecution Service on the basis of the consent granted by the Appellant to use the evidence to initiate criminal proceedings against me in the United Kingdom.
- (xiii) That the criminal charges, the purpose for which the extradition in is being sought are alleged offences which are all arising from the same allegations of corruption and money laundering during the 1st Respondent's tenure as Governor and are inextricably interwoven with the 170 count charge already quashed by the lower court and against which the Appellant has appealed.
- (xiv) That the documents so far sent to the United Kingdom as stated in Sub-Paragraph (xiii) herein consist of all the documents contained in the Record of Appeal to be relied on by the Appellant in this Honourable Court for the determination of this appeal. Now shown to me and marked EXHIBITS J1, J2 and J3 are copies of a letter dated 11th May, 2010, an Annexure containing a list of all the documents sent to the United Kingdom and a letter dated 20th May, 2010 written by the Attorney General of the Federation.
- (xv) That the facts contained in Sub-paragraphs x, xi, xii, xiii and xiv have all been expressly admitted by the Appellant through MRS. FARIDA WAZIRI, the well-respected Chairman of the Economic and Financial Crimes Commission and these admissions have been widely reported in print and media.
- (xvi) That the criminal proceedings being instituted by the Metropolitan Police in the United Kingdom with the active assistance of the Appellant against the 1st Respondent is on a parallel plain with this present appeal. The subject matter of the criminal charges being proffered against 1st Respondent in the United Kingdom is the same as the same subject matter already decided by the Federal High court, Asaba Division.
- (xvii) That since 1st Respondent's departure from office as Executive Governor of Delta State in May, 2007, the 1st Respondent has been constantly harassed, intimidated and unnecessarily victimized by the Appellant which is clearly 'dancing to the tune' of 1st Respondent's political detractors as his said political detractors have found an able tool in the Appellant.

- (xviii) That due to 1st Respondent's incarceration in Dubai, United Arab Emirates he is unable to access funds to meet his financial obligations to his lawyers to enable them file his Respondent's brief in this matter. That all his cheque books for his accounts from where he can make payments to his Lawyers are in Nigeria."

In his reply to the above averments and the annexed documents to the supporting affidavit, the respondent also made the under mentioned averments in its counter affidavit as below: -

PARAGRAPHS

5. "That the 1st Respondent/Applicant alongside the 2nd-6th Respondent were arraigned before the Federal High Court, Kaduna on a 170 count alleging them various offences relating to Money Laundering, Bribery and Non-disclosure of assets contrary to Section 14(1) and 16 Money Laundering (Prohibition) Act, 2003/2004 and Section 27(3)(a) of the EFCC (Establishment) Act, 2004.
6. That the accused persons objected to being tried in Kaduna, Kaduna State, predicated their objection on the provisions of Section 45(a) of the Federal High Court Act. The Court of Appeal, Kaduna Division allowed the accused persons' appeal against the Ruling of the trial Federal High Court, Kaduna that it had venue-jurisdiction.
7. That consequent upon that decision of the Court of Appeal, the case was transferred to the Federal High Court, Asaba before whom the accused persons (except the 2nd Respondent who was standing trial in London) were arraigned.
8. That before their pleas were taken, the Accused Persons applied for all the 170 Counts to be quashed and this was upheld and the said and the said counts were quashed.
9. That it is against this decision quashing all the counts that the Appellant has appealed to this Hon. Honourable Court.
10. That the appeal before this Honourable Court relates to whether:
 - (1) trial before the Federal High Court is by information accompanied by proofs of Evidence and not by way of summary trial pursuant to F12 LFN, 2004; and
 - (2) assuming trial is by information, whether the proofs of Evidence that accompanied the 170 counts in the instant case disclosed prima facie case linking the Accused persons to the offences alleged against them.
11. That the Appellant has already filed its Brief of Argument.

12. That in respect of the said appeal, that is, the instant appeal, the documents and processes necessary for the determination of the appeal are already before the Honourable Court and they include:
 - (1) the 170 counts;
 - (2) the proofs of Evidence;
 - (3) the Motion on Notice to quash the said Counts;
 - (4) the written addresses by counsel to both parties.
 - (5) the proceedings in court wherein both counsel adopted their Written Addresses;
 - (6) the Ruling of the trial court; and
 - (7) the Notice of Appeal.
13. That at the trial court:
 - (1) Counts 1-3 relate to 1st Respondent's personal account at Guarantee Trust Bank.
 - (2) Counts 4-23 relate to the Account of Professor AGBE UTUAMA's private Law Firm, Prime Chambers at Zenith Bank, Asaba.
 - (3) Counts 35-49 relate to transfer of sums of money from the Delta State Government Account in Oceanic Bank Plc to the Zenith Bank account of SILHOUETTE TRAVELS & TOURS LIMITED (2nd Respondent's company).
 - (4) Counts 50 relate to transfer of sums of money from the Delta State Government Account in Oceanic Bank Plc to the Standard Trust Bank account of HOUSE PROJECT & INVESTMENT LIMITED owned by 1st Respondent/Applicant's Personal Assistant, BIMPE POGOSON.
 - (5) Counts 51-65 relate to transfer of various sums from the Delta State Government Account in Oceanic Bank to the personal account of the 2nd Accused Person in the same Bank.
 - (6) Count 66 alleges cash payment of 15,000 US Dollars by the 1st Respondent/Applicant to officials of the EFCC to influence investigation. Same is in the custody of the Central Bank of Nigeria.
 - (7) Counts 67-106 relate to withdrawals of cash from Oceanic Bank Delta State Government Account and lodgements into the United Bank for Africa Plc. Account of the 5th Accused Person to which the 3rd Accused Person was the sole signatory.
 - (8) Counts 107 -122 relates to 1st Respondent/Applicant's account at Barclay's Bank Plc, London held in the name of the 4th Accused.
 - (9) Counts 123-134 relate to non-disclosure, by the 1st Respondent/Applicant of his assets in the United Kingdom.

- (10) Counts 135- 147 relate to transfers of various sums of money from the London HSBC Bank Account of the 2nd Accused person to the Barclay's Bank account of the 1st Respondent/Applicant.
- (11) Counts 148- 167 rerate to various sums of money withdrawn from the Delta State Government account in oceanic Bank and lodged, in cash, in the 2nd accused person's personal account in the same Bank.
- (12) Counts 168- 170 relate to withdrawal of various sums of money from the Delta State Government account in oceanic Bank and lodgement of same, in cash, into the account of the 6th Accused in Oceanic Bank.
- 17. That the Appellant has no hand in the Dubai/London case involving the 1st Respondent/Applicant or any of the Accused persons.
- 18. That appeal No. SC. 136/2009 is not in relation to the quashing of the 170 counts but venue of arraignment and trial of the accused persons

It is pertinent to note that the applicant did not file any Reply to the counter affidavit and had therefore not countered the averments contained in the counter affidavit as highlighted or set out above. From the affidavit evidence presented before me, it is clear and beyond any dispute too, that the gravamen of the appeal which the applicant prayed me to stay proceedings on, basically relates to quashing by the lower court (i.e. the Federal High Court, Asaba) of all the counts charge filed by the EFCC against the applicant. It is also not in dispute that Brief of argument was filed by the appellant after the records of appeal were compiled, transmitted and served on the parties. The learned senior counsel for the respondent painstakingly listed in his counter affidavit the identity, particulars and nature of the 170 charges and such piece of affidavit evidence had not been controverted by the applicant. I am convinced therefore, that Appeal No. SC 136/2009 pending before the Supreme Court copiously referred to by the applicant, does not and indeed had no bearing or relevance whatsoever to the instant appeal before this court which proceedings the applicant wants me to stay.

It therefore does not amount to any abuse of court process as the two appeals are distinct and totally unrelated, especially if one appreciates the fact that the appeal pending before the apex court is on venue jurisdiction of trial of the applicant and not on the subject matter of trial of the applicant or about which court that had jurisdiction to try him of the offence charged. It therefore deals

purely with where and which court had jurisdiction while this instant appeal, as I said *supra*, arose from the lower court's decision quashing the 170 count charges filed against the applicant at Asaba Federal High Court and on whether there is a *prima facie* evidence linking the applicant with alleged offences in the charges framed.

The applicant in his supporting affidavit averred in paragraphs 3(vii) to (XVII) that the respondent herein, had forwarded all the documents in the appeal to the United Kingdom and that there is a pending appeal in the Supreme Court. He also stated that his arrest in Dubai had prevented him from prosecuting this appeal pending in the Supreme Court. With due deference to the learned counsel for the applicant, these points raised in the paragraphs in the supporting affidavit under reference above are totally unrelated to the subject matter of the appeal before us now and therefore to delve on such matter at this stage, is to embark on an exercise on matter not before us and if we do so it will amount to acting within the realm of conjecture which this court is precluded by law from doing. Again, our attention has been drawn to purported Exhibit J2 annexed to the applicant's application wherein some banks listed were allegedly sent to the United Kingdom preparatory to the applicant's prosecution by the Crown Prosecution service and Metropolitan Police in the United Kingdom. The respondent herein however debunked such averments in paragraph 13 of its counter affidavit, wherein it copiously listed all the banks to which the 170 charges relate. Comparing the banks listed in the purported Exhibit J2, with the Banks listed in Paragraph 13 subparagraphs (1) to (12), I am left with no iota of doubt, that the banks listed in Paragraph 13 of the counter affidavit (except one) which were sent to the United Kingdom are different from those banks to which the charges relate at all. In actual fact, only the Guarantee Trust Bank Plc is related to one of the charges, which even then, the charge relates to Delta State Government account and certainly not the applicant's personal account.

Another issue raised in the applicant's application is his alleged incarceration in Dubai and his difficulty in prosecuting his appeal while in prison custody in Dubai. This issue in my view is also not before this court and does not also relate to the appeal before us. We also have been urged by the applicant's learned counsel, to invoke the provisions of Section 15 of the Court of Appeal Act 2004 to order the appellant i.e. the respondent herein to stop the extradition proceedings to Dubai. I have stated earlier that the issue of extradition is not before us as it is not a subject matter before us.

The opening phrase of Section 15 of the Court of Appeal Act commences with the following sentence: - “The Court of Appeal may, from time to time make any order necessary determining the real question in controversy in the appeal”. To my mind, the use of the word “real” means “actual” or “true” while the use of the word “question” in the provisions refers to ‘the actual issue involved in the appeal.’ This therefore presupposes that before the provisions of Section 15 of the Act can be invoked, the issue, point or subject matter, must be in controversy or is an issue before this court. To put it in another way, the question in controversy must be a ground or one of the grounds of appeal before it. Undoubtedly, section 15 of the Court of Appeal Act 2004 had given this court wide powers or jurisdiction over the entire proceedings in the appeal before it, similar or equal to the powers given to the trial court. However, that notwithstanding, this court must invoke such powers most sparingly. Such power must therefore be exercised only in a situation where the justice of the case actually demands doing so. Indeed, before invoking such owners, some fundamental conditions that exist **MUST** be met or satisfied. These conditions include the followings: -

- (a) Necessary materials must be made available for the court to consider and adjudicate in the matter.
- (b) The length of time between the disposal of the action at the trial court and the hearing of the appeal must be taken into consideration, and
- (c) The interest of justice in eliminating further or unnecessary delay in the disposal of the appeal and the hardship the parties may suffer if the order is not granted. See *Jadesemi V. Okotie-Eboh* (1986) 1 NWLR (pt 16) 264, *University of Lagos v. Olaniyan* (1985) 1 NWLR (Pt 1) 156 *Yusufu V. Obasanjo* (2003) 16, NWLR (Pt 847) 554; *Adeyemi V. YRS Ike Olwna & Sons Ltd* (1993) 8 NWLR (Pt 309) 27; *Inakoju V. Adeteke* (supra). In the instant case, the conditions set out above have not been met as would warrant or justify this court to invoke the provisions of the Section 15 of the court of Appeal Act and/or order 4 of this court’s Rules of 2007 to stop the extradition proceedings or to grant reliefs Nos. 2, 3, 4 and 5 supra as they all relate to issues not in controversy before this court. I therefore decline to grant any of them since as I posited earlier, none of the conditions set out above had been met or satisfied by the applicant.

I will now come back to the first relief sought which pertains to grant of stay of Proceedings in this appeal pending the hearing and determination of extradition proceedings against the applicant. It is trite law, that application for stay of proceedings can only be granted where special and exceptional

circumstances exist see *IGP V. Fayose* (2007) 9 NWLR (pt 1039) 263; *Okem Ent. (Nig) Ltd V. NDIC* (2003) 5 NWLR (pt 814) 495. There is no doubt that courts have discretion to grant or refuse an order for stay of proceedings even though such discretionary powers must be exercised both judicially and judiciously too. Similarly, the exercise of such discretionary power must be prompted by the peculiar circumstances of each given case in which all factors for and against the grant of stay of proceedings must be carefully and meticulously weighed. For purpose of emphasis, to avail an applicant with grant of prayer for stay of proceedings, such applicant must show special and exceptional circumstances. In the instant, case the evidence adduced by the applicant did not disclose any special or exceptional circumstance as could warrant him to be obliged with an order for stay as sought. There is no sufficient material supplied by him to justify the grant of the first relief (for stay of proceedings.)

The learned applicant counsel heavily relied on the three annexure to his supporting affidavit and to buttress his case for the grant of the said reliefs sought. The three annexures which he called evidence are Exhibits J1, J2 and J3. These exhibits are letters allegedly written by the Honourable Attorney General of the Federation to Home Secretary to the Government of the United Kingdom dated 11/5/2010 document containing evidence to the British High Commissioner in Nigeria dated 20/5/2010 respectively. Having emanated from or issued or written by the Attorney General of the Federation, a public officer per se, these documents are public document. A public document is a document made or issued by a public officer for the purpose of the public making use of it and being able to refer to it especially where there is judicial or quasi-judicial duty to inquire. In fact, under the provisions of Section 109 of the Evidence Act of 1990 as amended, they are described as documents forming the acts or records of the acts of the sovereign authority, official bodies and tribunals, public officers, legislative judicial and executive, whether of Nigeria or elsewhere and public records kept in Nigeria of private documents. See the cases of *Lambert V. Nigerian Navy* (2006) 7 NWLR (pt 980) 524; *Bayo V. Jidole* (2004) 8 NWLR (Pt 876) 544; *Alatahe V. Asin* (1999) 5 NWLR (pt 601) 32. By the provisions of Section 97 (1) (e) (f) and (2) (c) of the same Evidence Act, only certified true copy of a public document is allowed in evidence; See *Witt & Busch Ltd. V. Goodwill & Trust Ind. Ltd.* (2004) 8 NWLR (pt. 874) 179. From the look of Exhibits J1, J2 and J3, annexed to the applicant's application, none of these documents was certified at all. They are therefore, for reason of non-certification not

Admissible in evidence. By relying on those documents to justify his application therefore, he can be said to have relied on an inadmissible evidence. The resultant effect of all that I have said above is that the applicant failed to show special and exceptional circumstances for the grant of order of stay of proceeding as prayed in Prayer one of this application. As I said supra, this court cannot grant the second to fifth prayers for reasons I advanced earlier in this ruling. Thus, on the whole, I adjudge the present application as meritless and is therefore refused and I accordingly dismiss it.

OYEBISI FOLAYEMI OMOLEYE, J.C.A: I had the privilege of reading in draft the ruling just delivered by my learned brother, Amiru Sanusi, JCA. I agree for the reasons contained therein that this application is devoid of merit and I accordingly dismiss it. I make no order for costs.

CHIOMA NWOSU-IHEME (PH. D) J.C.A: The draft of the Ruling delivered by my learned brother AMIRU SANUSI JCA was carefully read by me. His Lordship has ably considered and rightly resolved the issues for determination in this ruling. The views expressed therein are in harmony with mine and I agree that for all the reasons given in the ruling, the application is unmeritorious and should fail. Accordingly, I join in dismissing the application.

Appearances

A. A. Alegeh, SAN with O. Igbinonmwanhia and A.O. Aimiuwu. For Appellants

I. Ibrahim, SAN with Kayode Oni and Miss Linda Agidi. For Respondents

CASE 12

**IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON TUESDAY THE 24TH DAY OF APRIL, 2012
BEFORE THE HONOURABLE
JUSTICE I. T. TSOHO
JUDGE**

CHARGE NO: FHC/L/465C/1 1

**IN THE MATTER OF EXTRADITION ACT
[CAP E25] LAWS OF THE FEDERATION OF NIGERIA, 2004**

BETWEEN:

ATTORNEY-GENERAL OF THE FEDERATIONAPPLICANT

AND

DION KENDRICK LEERESPONDENT

JUDGMENT

This is a matter of an application to the Chief Judge of the Federal High Court by the Hon. Attorney-General of the Federation and Minister of Justice. It is dated 5/12/2011 but filed on 15/12/2011 and seeks the extradition of Dion Kendrick Lee to the United Kingdom, pursuant to the Extradition Act, [CAP. E25] LFN 2004.

The application is supported by an affidavit of 3 paragraphs, deposed to by Akutah Pius Ukeylma, a Senior State Counsel in the Department of Public Prosecution in the Chambers of the Hon. Attorney-General and Minister of Justice. Annexed thereto are bundles of documents.

Also filed in support of the application is a written submission dated 3/4/2012 but filed on 5/4/2012.

Before today, the Respondent has been represented by Counsel who indicated an intention to oppose the application for extradition. The matter was fixed today for hearing of the application. However, Learned Counsel for the Respondent who has not yet filed any reaction to the application did not appear in the proceedings but wrote a letter requesting for an adjournment.

By a twist of events the Respondent intimated this Court of his resolve not to contest the application for his extradition, saying that he is prepared to go back to the United Kingdom to face his trial. Based on the premise that the matter affects the Respondent very personally and that he has all this while been in detention, the Court accepted the Respondent's decision. Following this, M.S. Hassan, Esq. of Learned Counsel for the Applicant proceeded to review the application. He stated their reliance on the affidavit in support and all the several documents attached thereto, and also adopted their written submission. He highlighted salient areas of the application.

Particular note has been taken of pages 27-31 of the application, which contain the statement of offences, with which the Respondent would be charged and in respect of which he would face trial in England if extradited.

Also noted are pages 45-46 which contain investigation conducted on the identity of the Respondent and his finger prints by Martin Kane, a Detective Inspector of Lancashire Constabulary Serious and Organized Crime Unit. Equally noted are Pages 183 and 231 which contain the photograph of the Respondent as well as pages 185-186, which reflect his finger prints. All these taken together show a serious indictment of the Respondent. It constitutes a *prima facie* case that the Respondent is genuinely required in the United Kingdom to face trial for alleged offences against him. There is thus good basis for seeking the extradition of the Respondent. Based on the materials presented by the Applicant in support of the application for extradition coupled with the Respondent's resolve not to contest same, the application is bound to succeed.

The said application is hereby granted. In consequence, it is ordered that the Respondent be extradited from Nigeria after 15 days to the United Kingdom to offences alleged against him.

I. T. TSOHO, JUDGE

Applicant Absent.

Respondent Present.

M.S. Hassan Esq. Asst. Director Federal Ministry of Justice,
for the Applicant.

CASE 13

**IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT LAGOS
ON TUESDAY THE 26TH DAY OF JULY, 2011
BEFORE THE HONOURABLE
JUSTICE B. F. M. NYAKO
JUDGE**

SUIT NO: FHC/L/1C/2011

**IN THE MATTER OF THE EXTRADITION ACT
(CAP. E25) LAWS OF THE FEDERATION OF NIGERIA, 2004**

BETWEEN:

**ATTORNEY GENERAL OF THE FEDERATION.....
APPLICANT**

AND

EMMANUEL EKHATORRESPONDENT

Parties in Court.

Counsel:

M.S. Hassan (ADL) FMJ for the prosecution.

E. Esezobor with C.V. Igwe for the Accused.

JUDGEMENT

This judgment is combined with ruling of the various motions filed by the Accused/Applicant.

It is a request forwarded by the Honourable Attorney-General of the Federation seeking for the extradition of the Accused/Applicant to the United State of America upon the request of the said USA government vide their letter of request both reproduced below:

IN THE MATTER OF THE EXTRADITION ACT (CAP. E25) LAWS OF
THE FEDERATION OF NIGERIA, 2004
SECOND SCHEDULE

FORM 1

TO: THE CHIEF JUDGE, FEDERAL HIGH COURT, LAGOS.

WHEREAS, in pursuance of the Extradition Act, a request has been made to Nigeria by Diplomatic Representative of the Embassy of the United States of America, Abuja, for the surrender of EMMANUEL EKHATOR who is being indicted in the U.S District Court for the Middle District of Pennsylvania, Criminal No. 10-244, filed on 1st day of September, 2010 before Judge KANE for the offences of:

- Count 1:** Conspiracy to Violate the Laws of the United States, in violation of Title 18, United States Code, Section 371, namely mail fraud, in violation of Title 18, United States Code, Section 1341, wire fraud, in violation of Title 18, United States Code, Section 1343, and money laundering, in violation of Title 18, United States Code, Section 1956, which carries a maximum penalty of 5 years' imprisonment;
- Count 2:** Through Six (6) Mail fraud, in violation of Title 18, United States Code, Section 1341 and Title 18, United States Code, Section 2, with each count punishable by a maximum penalty of 20 years' imprisonment;
- Count 3:** Through Sixteen: Wire fraud, in violation of Title 18, United State Code, Section 1343, with each count punishable by a maximum penalty of 20 years' imprisonment.

The applicable United States statute of limitations does not bar prosecution of the offences for which extradition is requested.

Now I, MOHAMMED BELLO ADOKE, SAN, The Attorney-General of the Federation and Minister of Justice, by this Order, under my hand, signify to you that this request has been made and require you to deal with the ease in accordance with the provisions of the Extradition Act, Cap E25. LFN 2004.

In support of the Order, I attached an affidavit together with the Exhibits thereto, deposed to by AKUTAH PIUS UKEYIMA, Nigerian, Male,

Christian, Senior State Counsel, Prosecutions, Federal Ministry of Justice, Abuja containing the following documents:

- i. Original Certificate with Seal of the United States Department of State, signed by the Secretary of State, HILLARY RODHAM CLINTON dated 13th October, 2010, and subscribed by the Assistant Authentication Officer of the said Department.
- ii. Original Certification document with Seal of the United States Department of Justice dated 13th October, 2010 by the Associate Director, Office of International Affairs, Criminal Division, Department of Justice U.S.A, DAVID P. WARNER and duly commissioned and qualified in the presences of ERIC H. HOLDER, Jr. Attorney-General of the United States, whose signature is also appended.
- iii. Original copy of certification signed and executed by DAVID P. WARNER on the 12th October, 2010.
- iv. Original copy of affidavit in support of request for Extradition of EMMANUEL EKHATOR sworn, and deposed to by CHRISTY H. FAWCETT, Assistant U.S Attorney, sworn and subscribed before MARTIN

C. CARLSON, U.S Magistrate Judge, Harrisburg, Pennsylvania in the Middle District of Pennsylvania, on the 7th day of October, 2010 and attached with the following Exhibits:

EXHIBIT “A”: Certified True Copy of the Indictment issued against EMMANUEL EKHATOR who is being indicted in the United States District Court for the Middle District of Pennsylvania, Case No.:10-CR-244 and filed on the 1st September, 2010 for the offences of:

- (1) Count 1: Conspiracy to commit mail fraud, wire fraud, and money laundering, in violation of 18 United States Code (U.S.C) 371;
- (2) Count 2-6: Mail fraud, in violation of 18 U.S.C. 1341 and 2; and
- (3) Counts 7-16: Wire fraud, in violation of 18 U.S.C 1343 and 2, “A TRUE BILL” signed by MICHAEL PAULUSH, Grand Jury Foreperson ‘and endorsed by PETER J. SMITH, U.S Attorney on the 1St October 2010.

EXHIBIT “B”: Copy of Warrant of Arrest issued by the US District Court for the Middle District of Pennsylvania, certified and endorsed by the Clerk, MARY E. D’ANDREA and signed by the issuing

officer and Deputy Clerk, RASHELLE COLEMAN on the 7th day of October, 2010.

EXHIBIT “C”: Certified copy of United States of America Laws governing the offences and punishments for which the suspect is charged.

EXHIBITS “D” & “E”: Photograph and fingerprints describing EMMANUEL EKHATOR as a citizen of Nigeria and Canada, born on 1st November, 1970. A black male approximately 183 centimetres tall, weighing approximately 84 kilograms, with black hair and brown eye, provided by law enforcement authorities and signed by the suspect on 2001/11/12 at 23:43.

CERTIFICATION

I, David P. Warner, Associate Director, Office of International Affairs, United States Department of Justice, United States of America, do hereby ‘certify that attached hereto is the original affidavit, with attachments, of Assistant United States Attorney Christy H. Fawcett, of the Middle District of Pennsylvania, which was sworn to before United States Magistrate Judge Martin C. Carison, on October 7, 2010, and which is offered in support of the request for the extradition of **Emmanuel Ekhatore** from Nigeria.

True copies of these documents are maintained in the official files of the United States Department of Justice in Washington, D.C.

The letter of the Honourable Attorney-General of the Federation is accompanied by an affidavit with documents annexed and a written address.

The letter of request from the U.S.A State Department is also accompanied with documents including the alleged indictment and counts of charges to be proceeded against the Accused upon his being extradited.

The Accused/Applicant filed a counter affidavit to the request for extradition with exhibits and a written address. He also filed a motion seeking as follows: with exhibits and a written address.

1. **A DECLARATION** that by virtue of **ARTICLE 7 of the Extradition Treaty, 1931 between the United States of America and Great Britain (applicable to The Federal Republic of Nigeria)** and **Section 3(7) of The Extradition Act, CAP E25, Laws of the Federation of Nigeria, 2004**, The

Defendant/Applicant cannot be extradited for the purpose of being brought to trial in any form whatsoever in the territory of The United States of America.

2. **A DECLARATION** that by virtue of **Section 3(5) The Extradition Act, CAP E25, Laws of The Federation of Nigeria, 2004**, The Defendant/Applicant cannot be extradited for the purpose of being brought to trial in any form whatsoever in the territory of The United States of America.
3. **A DECLARATION** that by the virtue of **ARTICLE 9 of The Extradition Treaty, 1931 between The United States of America and Great Britain (applicable to The Federal Republic of Nigeria)**, The Respondents cannot arrest, re-arrest and/or detain The Defendant/Applicant for the purpose of extraditing The Defendant/Applicant to The United States of America.
4. (i) **A DECLARATION** that The Defendant/Applicant's continuous detention by The EFCC since the 27th day of August, 2010 without formally arraigning The Defendant/Applicant before a Court of Competent Jurisdiction in Nigeria is illegal and unconstitutional.

AND/OR IN THE ALTERNATIVE TO 3(i) ABOVE:

- (ii) **A DECLARATION** that The Defendant/Applicant's continuous detention by The EFCC since the **27th day of August, 2010** for purposes of extraditing The Defendant/Applicant to the United States of America is illegal and unconstitutional as it violates the Applicant's Fundamental Right as guaranteed under **Section 35 (3) of The Constitution of the Federal Republic of Nigeria, 1999**.
5. **AN ORDER** of this Honourable Court discharging The Defendant/Applicant of the alleged offences of Mail Fraud, Wire Fraud, Advance Fee Fraud, Money Laundering, Conspiracy and/or any other alleged offence whatsoever and howsoever proffered by The EFCC and The Federal Bureau of Investigation and directing The Respondents to unconditionally release The Defendant/Applicant forthwith from custody.
6. **AN ORDER** of this Honourable Court dismissing this Request for Extradition Proceedings against The Defendant/Applicant.
7. **AN ORDER of PERPETUAL INJUNCTION** restraining The Respondents either jointly or severally, by themselves or through their officers, agents, privies and assigns from arresting or re-arresting, harassing, intimidating or detaining and/or attempting to arrest, re-arrest,

harass and/or intimidate The Defendant/Applicant for purpose of extraditing The Defendant/Applicant to the United States of America.

8. **AN ORDER of PEPERTUAL INJUNCTION** restraining the Respondents either jointly or severally, by themselves or through their officers, agents, privies and assigns from granting any Request for Extradition of The Defendant/Applicant to the United States of America.
- AND FOR SUCH FURTHER ORDERS** as this Honourable Court may deem fit to make in the circumstances of the case.

I shall deal with the originating processes as they subsume the reliefs being sought by the motion on notice.

Learned Senior Counsel in their written address admits that the U.S.A has an extradition agreement with Nigeria. He further submitted that he concedes to this and the powers of the Honourable Attorney-General of the Federation. That however, this power must be exercised in accordance with the law.

That the letter of request of the Honourable Attorney General of the Federation to the Chief Judge of the Federal High Court inter alia referred to the affidavit of Akutah Pius Ukeyima that what was filed is the affidavit of Ahmed Tanimu Almakura. That the Honourable Attorney-General of the Federation cannot be said not to know whose affidavit he intended to rely upon. That this discrepancy vitiates the letter of request and as such the originating processes are incompetent and should be struck out and set aside.

Also that the alleged offences as cited by the Honourable Attorney-General of the Federation in his letter of request are different from the alleged offences for which the U.S.A intends to charge the Applicant. That in such a situation, extradition will be refused. To my mind these are the issues that call for determination.

I have seen and read the letter of the Honourable Attorney-General of the Federation reproduced above. It is true that the Attorney General mentioned one person as the deponent to an affidavit that he was annexing to the letter and that the affidavit annexed is that of another. Both persons are senior legal officers in the Chambers of the Honourable Attorney General of the Federation.

The Learned Counsel from the office of the Honourable Attorney-General of the Federation has addressed the Court to the effect that both officers are from the office of the Honourable Attorney General of the Federation even though he named one, the other was also so directed by the Honourable Attorney-General of the Federation. This is very tardy to say the least. The officers of the Honourable Attorney General of the Federation had all the time and opportunity in the world to correct their processes but took it for granted. It does not show thoroughness in discharge of their duties. It reflects them in bad light in the eyes of the public.

Be that as it may, does it affect the validity of the processes? I opine that the only person who can challenge the affidavit of Almakura is the Honourable Attorney-General of the Federation who has accepted as an affidavit from his Chambers despite the difference in deponent. This can only be treated as an irregularity. It is not a requirement of the Extradition Act nor the Rule of Court. It does not void the processes. I so find and hold.

On the 2nd issue of the alleged offences for which extradition is sought, this Court can only work and rely upon duly authenticated documents as provided by Section 17 of the Act. What the Honourable Attorney-General of the Federation has written is what is contained in the affidavit in support of extradition request. It is what the Honourable Attorney-General of the Federation has premised his request to the Court upon and what the Court will rely upon. Whatever the Accused/Applicant alleges is not what the law envisages it has no place in the proceeding as it is not the authenticated document from the relevant government agencies. This will only call for before the trial Court.

On the proceeding before the Magistrate, I have observed that it is a proceeding for the purpose of remand. It cannot be said to be proceedings as provided by Section 3 by the Act to act as an exception and a ground for refusal to extradite.

This brings me to the continued detention of the Accused/Applicant in excess of the statutory period as provided by the law. The Honourable Attorney-General of the Federation has not furnished the Court with cogent, concrete or convincing reasons as to why the extradition Applicant was not taken even

before the Magistrate and the Applicant kept in custody for such a long period of time. This is not acceptable.

On the whole, I find that the relief sought by the motion on notice fail and are refund and consequently struck out. The request for extradition is granted. The Accused/Applicant is hereby awarded compensation for unlawful detention in the sum of N3M. I so order.

Court: The Accused Applicant to remain in EFCC custody pending extradition within the next 15 days.

B. F. M. NYAKO
JUDGE

CASE 14

**IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON MONDAY THE 28TH DAY OF MAY, 2012
BEFORE THE HONORABLE JUSTICE J.T. TSOHO
JUDGE**

CHARGE NO. FHC/L/335C/2011

BETWEEN

ATTORNEY GENERAL OF THE FEDERATION.....APPLICANT

AND

GODWIN CHIEDO NZEOCHA.....RESPONDENT

JUDGMENT

The Honourable Attorney-General of the Federation and Minister of Justice by an application to the Chief Judge of the Federal High Court dated 24th August, 2011 but filed on 5th September, 2011 sought the extradition of Godwin Chiedo Nzeocha to the United States of America for trial in respect of alleged indictments. The application is pursuant to the Extradition Act, Cap. E25, Laws the Federation of Nigeria, 2004. The said application is couched as follows:

**“IN THE MATTER OF THE EXTRADITION ACT (CAP. E25) LAWS
OF THE FEDERATION OF NIGERIA 2004
SECOND SCHEDULE
FORM 1**

TO: THE CHIEF JUDGE, FEDERAL HIGH COURT, LAGOS

WHEREAS, in pursuance of the Extradition Act, a request has been made to Nigeria by Diplomatic Representative of the Embassy of the United States of America, Abuja, for the surrender of **GODWIN CHIEDO NZEOCHA**

who has been indicted in the U.S District Court for the Southern District of Texas, Houston Division filed on 25th March, 2010 for the following offences:

1. Count 1: Conspiracy to commit health care fraud, in violation of Title 18, United States Code, Section 1349, carrying penalty on conviction of a fine of up to US\$250,000, or imprisonment of not more than ten (10) years, or both; supervised release of not more than three (3) years; and a special assessment of US\$100.00 for each convicted offence;
 2. Count 2: Indictment with health care fraud in violation of Title 18, United States Code, Section 1347, carrying penalty on conviction of a fine of up to US\$250,000, or imprisonment of ten (10) years, or both; supervised release of not more than three (3) years; and a special assessment of US\$100.00 for each convicted offence;
 3. Count 3: Indictment with mail fraud, in violation of Title 18, United States Code, Section 1341, carrying penalty on conviction of a fine of up to US\$250,000, or imprisonment of not more than ten (10) years, or both; supervised release of not more than three (3) years; and a special assessment of US\$100.00 for each convicted offence; and
 4. Count 4: Indictment with engaging in monetary transactions in property derived from specified unlawful activity, in violation of Title 18, United States Code, Section 1957, carrying penalty on conviction of a fine of up to US\$250,000, or alternatively, the Court may impose a fine of not more than twice the amount of the criminally derived property involved in the transaction or imprisonment of not more than ten (10) years, or both, supervised release of not more than three (3) years, and a special assessment.
2. The statute of limitations applicable to the offences charged in each count is Title 18, United States Code, Section 3293, which allows prosecution to commence within ten (10) years after a financial institutions fraud offence is committed.
 3. **NOW I, MOHAMMED BELLO ADOKE, SAN**, The Attorney-General of the Federation and Minister of Justice, by this Order, under my hand, signify to you that this request has been made and require you to deal with the case in accordance with the provisions of the Extradition Act, Cap E25, LFN 2004.
 4. In support of the Order, I attach an affidavit together with the Exhibits thereto, deposed to by AKUTAI-I PIUS UKEYIMA, Senior State Counsel, Department of Public Prosecutions, containing the following documents: -

- i. Original copy of a letter of Certification, with Seal of the United States Department of State dated 6th August, 2010, and the name Secretary of State, HILLARY RODHAM CLINTON subscribed by the Assistant Authentication Officer of the said Department.
- ii. Original copy of a letter of Certification, with Seal of the United States Department of Justice dated 5th August, 2010 signed by Associate Director, Office of International Affairs, Criminal Division, Department of Justice U.S.A., DAVID P. WARNER and duly commissioned and qualified in the presence of ERIC H. HOLDER, Jr. Attorney-General of the United States.
- iii. Original copy of affidavit in support of request for Extradition of GODWIN CHIEDO NZEOCHA deposed to by JULIE MARGARET REDLINGER, Special Assistant U.S. Attorney, sworn and subscribed before NANCY K. JOHNSON, U.S. Magistrate Judge, Southern District of Texas, on the 9th day of July, 2010 and attached with the following Exhibits:

A. EXHIBIT A:

A certified true copy of Superseding indictment case No.H-09-426S, filed 25th March, 2010 in the United States District Court, for the Southern District of Texas, Houston Division, signed by A True Bill, JOSE ANGEL MORENO, stamped and dated 25th day of March, 2010, Attested, certified and sealed by DAVID J. BDLEY on the same day.

B. EXHIBIT B:

A certified true copy of the Bench Warrant for the arrest of GODWIN CHIEDO NZEOCHA, Case No. H-09-426S (SEALED) issued by the United States Court and signed by FRANCES H. STACY, a Magistrate Judge sitting in the Southern District of Texas, Houston Division, attested, certified and sealed by DAVID J. BRADLEY, Clerk of Court dated 25th day of March, 2010.

C. EXHIBIT C:

A certified true copy of the United States of America Laws or Relevant Statutes that provides for the offences and punishment to which GOD WINCHIEDO NZEOCHA is indicted.

D. EXHIBIT D:

Original copy of affidavit in support of request for Extradition of GODWIN CHIEDO NZEOCHA deposed to by KEVIN D. LAMMONS, Special Agent, Federal Bureau of Investigation (FBI), sworn and subscribed before NANCY K. JOHNSON, U.S. Magistrate Judge, Southern District of Texas, on the 9th day of July, 210 and attached with Exhibit A. below:

E. EXHIBIT E:

Photograph representation identity of GODWIN CHIEDO NZEOCHA.

Given under my hand this 24th day of August, 2011

MOHAMMED BELLO ADOKE SAN

**Honourable Attorney-General of the Federation and
Minister of Justice”**

The application for the extradition of the Respondent is supported by a 3 paragraph affidavit deposed to by one Akutah Pius Ukeyimna, a Senior State Counsel in the Chambers of the Honourable Attorney-General of the Federation and Minister of Justice (the Applicant). Attached to the application are several documents relating to the alleged offences against the Respondent, which are together referred to as Exhibit ‘A’.

The Applicant also filled a Further and Better Affidavit sworn to on 18th November, 2011 by Akutah Pius Ukeyima in support of the request for extradition proceedings as well as the Applicant’s Reply Affidavit sworn to on 29th November, 2011 by Afanda Emmanuel Bashir, an Assistant Detective Superintendent and one of the Investigating Officers with the Economic and Financial Crimes Commission (EFCC) Lagos. Annexed to it is Exhibit FMOJ2.

Also filed in support of the Applicant's application is a written address dated 12th October, 2011. Learned Counsel for the Applicant, M. S. Hassan, Esq. relied on the affidavit evidence and adopted the written address as part of their argument in this matter.

The Respondent in opposition filed a counter-affidavit of 13 paragraphs deposed to on 17th October, 2011 by George Ohioma, a Legal Practitioner in the Law Firm of the Respondent's Counsel. There is accompanying this, a written address dated and filed on 17th October, 2011. Also filed by the Respondent is a Further and Better Counter-Affidavit sworn to by Olusola Olagoke, a Legal Practitioner in the Law Firm of the Respondent's Counsel, on 30th November, 2011 in response to the Applicant's Reply Affidavit. Attached to it is an enrolled order of the Federal High Court, Owerri Judicial Division (Exhibit A). Victor Opara Esq., the Learned Leading Counsel for the Respondent stated reliance on all averments in the affidavits and adopted the written address as their argument in opposition to the application.

Upon due consideration of the submissions of Learned Counsel to the parties along with affidavit evidence placed before this Court, I identify three main issues for determination in this application. These are;

1. Whether the Applicant's application is competent before this Court?
2. Whether the offences alleged against the Respondent are returnable.
3. Whether the documents attached to the Applicant's application are competent?

Pertaining to issue 1, Opara Esq. submitted that Extradition Legislations are construed strictly because the liberty of the subject of a sovereign state is involved and also that the Courts, particularly Nigerian Courts are not dumping grounds for frivolous applications. He argued that this application is brought pursuant to the Extradition Act, Cap.E25 and Section 6 thereof makes it clear that the application be taken before a Magistrate and Section 21 defines who a Magistrate is.

He also contended that before the Extradition Act can qualify as an existing law under Section 315 of the Constitution of Nigeria 1999 (as amended.) it must comply with Section 315 (2) of the Constitution. That before it can qualify, there must be a contextual constitutional modification pursuant to Section 315(2) of the Constitution which provides that this must be done by the "appropriate authority" to bring it into conformity with the Constitution. He emphasized that the power of contextual modification is

given to only three people, namely: The President, Governor or any person assigned by them. Reference to Section 315(4) of the Constitution.

Opara Esq. submitted that as of present, the Extradition Act has not been amended to bring such application before a High Court Judge. He pointed out that Section 12 of the Extradition Act shows that it was conscious of the difference between a Magistrate and a High Court Judge. He observed that the Applicant attached Exhibit FMOJ2 as an attempt to go to the Magistrate's Court but that therein, the application was made to the Chairman of the EFCC, which is inconceivable. He urged the Court to discountenance that document because on its face, it is unknown to the Extradition Act.

He further contended that in the cases relied upon by Learned Counsel for the Applicant, the applications for extradition were not challenged as is done in this instant case and that makes the difference.

On the alleged incompetence of this Court to entertain this application, Hassan Esq. submitted in reply that the jurisdiction vested in the Magistrate under Sections 6 and 9 of the Extradition Act is not exclusive. That Section 12 of the Act also vests jurisdiction in the Federal High Court to try such matter. He further referred to Section 251(1) of the Constitution of Nigeria 1999 as vesting exclusive jurisdiction in this Court to try extradition matters and submitted that the jurisdiction is therefore concurrent between this Court and the Magistrate's Court.

May I first state that it is erroneous to give the impression that Section 12 of the Extradition Act, Cap. E25 confers jurisdiction on the High Court to try extradition matter, as it does not relate to trial. Rather, the Section empowers the High Court of the territory in which the fugitive criminal is, to discharge the fugitive if not removed from Nigeria within a specified time. However, Section 251(1)(i) of the Constitution of the Federal Republic of Nigeria 1999 vests exclusive jurisdiction in the Federal High Court in extradition matters. It provides as follows:

251. — (1) notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal

High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters (relating to)

- i. citizenship, naturalisation and aliens, deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration from Nigeria. Passports and visas.”

It is obvious from the opening lines of Section 251 (1) that it does not permit of any contrary provision contained even in the Constitution itself. Therefore, it is incongruous to imagine that the Constitution which vests the Federal High Court with exclusive jurisdiction will turn around to divest it of jurisdiction in respect of the same subject matter of extradition. It is particularly so when the Extradition Act is an existing law, which by virtue of Section 315 (1) of the Constitution shall “subject to the provisions of this Constitution, shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution.” in the light of this, I hold the humble opinion that the Extradition Act is subordinated to the direct provisions of the Constitution, with or without modifications of the Extradition Act. It will thus amount to an absurdity to interpret a subordinate legislation as capable of ousting the jurisdiction that is constitutionally conferred. It is therefore my respectful view that the worst in this situation is to hold that both the Federal Court and the Magistrate’s Court shall have and exercise concurrent jurisdiction in respect of Extradition matters. Even the Learned Counsel for the Respondent seems to have unwittingly shared the same view when he stated at page 4 paragraph 3.14 of the written address dated October, 2011 as follows:

“Thus, we will be right to say that as it relates to extradition, certain tasks are to be performed by the Magistrate Court and other tasks by the High Court. This is without prejudice to the jurisdiction of the Federal High Court as provided for by the 1999 Constitution of the Federal Republic of Nigeria.”

My resolution of Issue 1 therefore is that this application for the extradition the Respondent is proper before this court and the Court is competent to entertain same.

Next is the issue whether the offences alleged against the Respondent are returnable. In this regard, Opara Esq. of Learned Counsel for the Respondent

submitted in their written address dated 17th October, 2011 that by virtue Section 20(1) of the Extradition Act, Cap. E25, LFN 2004, a fugitive criminal may only be returned for a returnable offence. He stated that before a person can be extradited, the offence must be one punishable under the Nigerian Law. He pointed out that the offences for which the Respondent would be arraigned for, are conspiracy to commit Health care fraud, Mail fraud among other offences. He argued that the listed offences are unknown to Nigerian criminal jurisprudence and are not analogous to offences. It is submitted that the offences with which the Respondent would be charged with, no being returnable offences, the Applicant has not fulfilled vital condition precedent to the exercise of this Court's jurisdiction.

Replying to this, Hassan Esq. referred to Section 21(1) of the Extradition Act 2004 and pages 22 - 53 of the application to the effect that there is existing indictment of the Respondent, hence he is "a fugitive criminal". Also referred to is the case of **GEORGE UDEOZOR VS. FRN (2007)15 NWRL (PT. 1058) 499 AT 522, Para H**. Further references are made to Article Items 17 and 18 of the Extradition (United States of America) Legal No.33 of 1967; Page 29 of the process which reflects the Counts of conspiracy Pages 37 - 43 of the application which contains indictment of obtaining money by false pretence amounting to \$33 Million and Count 44 which alleges money laundering, which is a returnable offence. There is also reference to Extradition Treaty between the United States and the United Kingdom of December 22, 1931, made applicable to Nigeria on June 24, 1935 and enforceable in Nigeria.

Section 20(2) of the Extradition Act Cap. E25, LFN 2004 define returnable offence as follows:

"(2) For the purposes of this Act, a returnable offence is an offence however described which is punishable by imprisonment for two years a greater penalty both in Nigeria as well as the Commonwealth Country seeking his surrender."

In the instant matter, the allegations against the Respondent are elaborately stated in the Affidavit in Support of Extradition, deposed to by Julie Mandela Redlinger Assistant United State Attorney, sworn to on 30th June, 2011 before a United States Magistrate Judge, of Southern District of Texas. The indictment borders on several counts of conspiracy, fraud (health care and

mail fraud, obtaining money by means of false and fraudulent pretences, representation and promises. The penalty for health care fraud is stated to be a fine of up to US\$250,000, or imprisonment of not more than ten (10) years, or both. And the penalty for conviction conspiracy is a fine of up to US\$250,000 or imprisonment of not more than years or both.

In the circumstances, I am in agreement with Learned Counsel for the Application that the offences of conspiracy and various forms of fraud, exist both in United States and Nigeria and that if the offences were committed in Nigeria the Respondent would be tried and committed in Nigeria under Nigerian laws am satisfied that those are extradition offences and the classification of alleged fraudulent activities of the Respondent in my humble view does not erase the ingredients of the core offence of fraud. I therefore hold that the offences alleged against the Respondent are returnable offences.

The last issue for consideration is whether the documents attached to the Applicant's application are competent; In this respect, Opara, Esq. observed the several documents accompanied the affidavit in support of the request for the extradition of the Respondent, which bundle of documents is marked Exhibit A.

He contended that upon the receipt of the request in Nigeria by the Attorney General of the Federation of Nigeria, the said documents became public documents within the context of the definition of public document in Section 102 of the Evidence Act, 2011. That it being so, for the documents to be recognized by the Court as being properly before it, they ought to be certified in accordance with Nigerian Law, particularly as stipulated in Section 104(1) of the Evidence Act. Cited in support are the cases of **FAWEHINMI VS. I. G. & 2 ORS. (2000)7 NWLR (Pt. 665) 481 at 525, Paras C -E; OKOH Vs IGWESI (2005) ALL FWLR (Pt. 264) 891 Para G — B.**

Learned Counsel for the Respondent submitted that failure of the Applicant to certify the documents renders them inadmissible and urged that the document (Exhibit A) be discountenanced.

In his reply, Hassan Esq. Learned Counsel for the Applicant submits that some of the documents before the Court are original ones while those that are

copies are certified by the United States. He argued that by virtue of Section 17 of the Extradition Act, they are to be received without further proof, if certified by the appropriate authority. He further submitted that the provision of the Evidence Act is inapplicable as this is not a trial in a strict sense and urged this Court to hold that the documents have been duly authenticated and need no further proof.

Apart from that, Hassan Esq. objected to the Respondent's Further and Better Counter-Affidavit. The ground for this he stated to be that no new issues were raised in the Applicant's Reply to warrant a Further and Better Counter Affidavit as there must be an end to litigation. He pointed out that Exhibit FM02 annexed to their Reply was obtained prior to the Extradition proceedings and has nothing to do with the proceedings.

Furthermore, in reply to the Respondent's written submissions in paragraph 1. 1. 2 contained on page 2 thereof in support of the Further and Better Affidavit, Hassan Esq, relied on Section 174 of the 1999 Constitution as to the powers and functions of the Attorney-General. He submitted that the EFCC is a Parastatal under the Attorney-General's Office and it can act with directives of the Attorney-General of the Federation.

The reply of Hassan, Esq. with reliance on Section 174 of the Constitution, to my mind, was actually overtaken, having regard to the resolution of Issue 1 in this application that this Court can entertain it. Therefore, no further statement is deemed necessary in that respect. As concerns the Respondent's Further and Better Counter-Affidavit however, it is my respectful view that it has no nexus with the Applicant's Further and Better Affidavit or the Reply Affidavit. There is no recital or averment to the effect that it is in reaction to any issue raised by the Applicant in any affidavit. Thus the Further and Better Counter-Affidavit has simply introduced another unsolicited dimension to the matter. It does not seem to me that the reported arraignment of the Respondent before the Owerri Judicial Division of the Federal High Court by the EFCC has the potential to estop the extradition proceedings.

Regarding the documents accompanying the Applicant's application, my observation that there has been certification by Jeffrey M. Olson, Ass Director, Office of International Affairs, Criminal Division, Department

Justice, United States of America. This is to the effect that there is in support the request for extradition of the Respondent original affidavit, with attachments sworn to by Assistant United States Attorney Julie Margaret Redlinger of Southern District of Texas, sworn before United States Magistrate George C. Hanks, Jr, on June 30, 2011. While the Affidavit in Support Extradition sworn by Redlinger is original, the attachments thereto, such as the Grand Jury Charges (Exhibit A) and the Order for Issuance of Bench Warrant (Exhibit B) are duly authenticated or certified. This satisfied the provision Section 17 of the Extradition Act, Cap. E25, LEN 2004, Indeed Section 1 of the Act provides thus:

“(1)In any proceedings under this Act, any of the following document if duly authenticated, shall be received in evidence without further proof namely-

- (a). Any warrant issued in a Country other than Nigeria;
- (b). Any deposition or statement on oath or affirmation taken in any such country, or a copy of any such deposition or statement;
- (c). any certificate of conviction issued in any such country.” It is noted that the Respondent’s grouse is not that documents attached not been certified at all, but that whereas they were certified in the United States, they have not been certified in accordance with Nigerian Evidence Act. I hold the respectful view however that the certification of the documents other than the original ones is in compliance with the provisions of Section 17 of Extradition Act and no further proof is needed for their receipt in evidence. The contention of Opara, Esq. to the contrary is discountenanced.

On the whole, I hold the humble opinion that the contentions and submissions of Learned Counsel for the Respondent have dwelt essentially on technicality and have mostly turned out to be self-defeating. I find no merit in the Respondent’s objection to the application for extradition and I overruled the objection.

I am satisfied that the Applicant herein has met all the requirements and followed the proper procedure in presenting this application. Accordingly, it hereby ordered that the Respondent Godwin Chiedo Nzeocha be extradited the United States of America within one month of this Order, to face trial offences allegedly committed there.

J.T. TSOHO
JUDGE

Applicant absent.

Respondent present.

M. S. Hassan Esq., Head of Central Authority Unit, International Cooperation in Criminal Matters, Office of the AG. of the Federation, appearing with Adeyemi (Miss), State Counsel.

Victor Opara Esq. with Iruonaghe Sylvester Esq. the Respondent

CASE 15

**IN THE COURT OF APPEAL
LAGOS JUDICIAL DIVISION
ON TUESDAY, THE 30TH DAY OF MARCH, 2010**

Suit No: CA/L/129/2001

**BEFORE THEIR LORDSHIPS
RAPHAEL CHIIWE AGBO JUSTICE, COURT OF APPEAL
IBRAHIM MOHAMMAD MUSA SAULAWA JUSTICE, COURT OF
APPEAL
REGINA OBIAGELI NWODO JUSTICE, COURT OF APPEAL**

BETWEEN

**1. PROFESSOR M.B. AJAKAIYE
2. MR. DAVID OLUFEMI ADELANAAPPELLANTS**

AND

FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT

PRACTICE AND PROCEDURE

Writ of Habeas Corpus – can be used to obtain a judicial review of the regularity of an extradition process.

HON. JUSTICE I. M. M. SAULAWA, J.C.A

(Delivering the Leading Judgment): This is an appeal against the ruling of the Federal High Court, Lagos Judicial Division which was delivered on 27th November, 2000 by D. O. Abutu, J in charge No FHC/L/ FBCR/17/99, regarding the parties herein. The facts and circumstances surrounding the appeal could be briefly stated as follows:-The 1st Appellant was the erstwhile Managing Director of the Nigerian Agricultural and Cooperative Bank Limited (NACB) and Chairman of the Board of Nigerian Agricultural & Cooperative Bank Consultancy and Finance Company Limited (NACB-CFC). The 2nd Appellant was the General Manager of NACB-CFC. The Appellants and two others were sometime in 1994 arrested and investigated for various offences committed against the Failed Banks (Recovery of Debts) And Financial Malpractices in Banks, Decree No 18 of 1994. However,

in the course of their detention, the Appellants and others filed an application in suit No M/492/98 upon the prerogative writ of Habeas corpus Ad subjiciendum at the Lagos High Court. They were accordingly released by the said court, but neither discharged nor acquitted.

The two Appellants were later arraigned before the Federal High Court, Lagos, on a 7 counts charge, No FHC/L/FBCR/17/99, thus: -

COUNT 1

That you Professor Michael Babatunde Ajakaiye (m) being the Managing Director of the Nigerian Agricultural & Cooperative Bank Limited (NACB) and Chairman of the Board of Nigerian Agricultural & Co-operative Bank Consultancy and Finance Limited (NACB-CFC), Alhaji Muhammed Gidado Bakari (m) being the Executive Director Finance of NACB and a member of the Board of NACB-CFC, David Olufemi Adelana (m) being the General-Manager of NACB-CFC and Alhaji Garuba Bature (m) being a Civil Servant with the Kaduna State Urban Property Development Authority (KASUPDA) between the 2nd day of December, 1991 and 18th day of February, 1993 at Kaduna within the jurisdiction of the Tribunal conspired together to engage in illegal acts to wit: granting unauthorized and unsecured loans to Alhaji Garuba Bature and thereby committed an offence contrary to Section 96 and punishable under Section 97 of the Penal Code Cap 89 Laws of the Northern Nigeria 1963 read together with Section 3(1)(d) of the Failed Banks (Recovery of Debts) Decree No. 18 of 1994 (as amended).

COUNT 2

That you, Professor Michael Babatunde Ajakaiye (m) being the Managing Director of the Nigeria Agricultural & Cooperative Bank Limited (NACB) and Chairman of the Board of Directors of the Nigerian Agricultural & Co-operative Bank Consultancy and Finance Limited (NACB-DFC) Alhaji Muhammed Gidado Bakare (m) being the Executive Director of Finance of the NACB and a member of the Board of Directors of NACB-CFC, David Olufemi Adelana (m) being the General-Manager of NACB-CFC between the 2nd day of December, 1991 and 25th day of May, 1993 at Kaduna within the jurisdiction of the Tribunal granted or connected with the grant of unauthorized and unsecured loans to Alhaji Garuba Bature to the tune of N148,854,557.60 (one hundred and forty eight million, eight hundred and fifty four thousand, five hundred and fifty seven Naira, sixty kobo only) interest inclusive in contravention of the Central Bank of Nigeria Monetary Policy Guidelines and Directives, contrary to Section 58(2)(a) and punishable

under Section 58(3) of the Banks and other Financial Institutions Decree No. 25 of 1991 (as amended) read in conjunction with Section 3(1)(d) of Decree 18 of 1994 (as amended).

COUNT 3

That you David Olufemi Adelana (m) between 1991 and 1993 at NACB-CFC Limited, Kaduna within the jurisdiction of the Tribunal being the General Manager of NACB-CFC Limited granted a loan of N2,626,756.26 (two million, six hundred and twenty six thousand, seven hundred and fifty six Naira, twenty six Kobo only) interest inclusive to Regal Quality Limited, a company in which you have a personal interest without disclosing it to Board of Directors of NACB-CFC in breach of the Central Bank of Nigeria Monetary Policy Guidelines and Directives, contrary to Section 58(2)(a) and punishable under Section 58(3) of the Banks and other Financial Institutions Decree No. 25 of 1991 (as amended) and read together with section 3(1)(d) of Decree No. 18 of 1994 (as amended).

COUNT 4

That you David Olufemi Adelana (m) being the General Manager of NACB-CFC Limited on or about the 16th day of May, 1993 at NACB-CFC Office, Kaduna within the jurisdiction of the Tribunal with intent to defraud forged a resolution purporting that it to be a resolution adopted by the Board of Directors of NACB-CFC Limited and thereby committed an offence contrary to Section 362 and punishable under Section 364 of the Penal Code Cap 89 Laws of Northern Nigeria 1963 read in conjunction with Section 3(1)(d) of Decree 18 of 1994 (as amended).

COUNT 5

That you David Olufemi Adelana (m) being the General Manager of NACB-CFC Limited, Kaduna on or about the 16th day of May, 1993 at Kaduna within the jurisdiction of the Tribunal fraudulently presented a forged Board resolution of NACB-CFC Limited to Trade Bank Plc as a genuine resolution adopted by the Board of NACB-CFC Limited and used the resolution to obtain the sum of N5,000,000.00 (five million Naira only) from Trade bank Plc and thereby committed an offence punishable under Section 366 of the Penal Code Cap 89 Laws of Northern Nigeria 1963 read together with Section 3(1)(d) of Decree 18 of 1994.

COUNT 6

That you David Olufemi Adelana (m) being the General Manager of NACB-CFC Limited between January, 1992 and December, 1994 at Kaduna within the jurisdiction of the Tribunal dishonestly misappropriated the sum of N51,009,027.50 (fifty one million, nine thousand and twenty seven Naira, fifty kobo only) being part of the repayment made by the Federal Government to NACB in respect of loans syndicated by the bank for the construction of the Middle/Lower Ogun Kampe and Swashi Dams and thereby committed an offence contrary to Section 311 and punishable under Section 312 of the Penal Code Laws of Northern Nigeria 1963 read in together with Section 3(1)(d) of Decree 18 of 1994.

COUNT 7

That you Alhaji Garuba Bature being a Civil Servant with the Kaduna State Urban Property Development Authority between 2nd day of December, 1991 and 18th day of February, 1993 at Kaduna within the jurisdiction of the Tribunal with intent to cheat, fraudulently induced the Managing Director of NACB, Professor Michael Babatunde Ajakaiye, the Executive Director of NACB Alhaji Muhammed Gidado Bakori, David Olufemi Adelana General Manager NACB-CFC to grant you loans to the tune of N148,854,557.60 (one hundred and forty eight million, eight hundred and fifty four thousand, five hundred and fifty seven Naira and sixty kobo only) interest inclusive by falsely represented yourself to them that you are obtaining the loan on behalf of or as agent of the Kaduna State Government and thereby committed an offence punishable under Section 235 of the Penal Code Cap 89 Laws of Northern Nigeria, 1963 read in conjunction with Section 3(1)(d) of the Decree 18 of 1984.”

The 7 Count charge in question was accompanied by a summary of evidence and list of witnesses, which are contained at pages 5 - 7 of the Record. It is evident from the Record (pages 8 & 9), that when the case was first mentioned on 21st July, 1999 and later on 3rd August, 1999 in the lower court, only the 4th Accused, Alhaji Garba Bature appeared in court. The rest of the 1st to 3rd Accused were said to have been at large, thereby warranting the lower court to order thus:-

“It is hereby ordered that a bench warrant be issued for the arrest of the Accused persons to compel their attendance in this court on the 3rd of August, 1999 to which this matters (sic) stands adjourned for mention.” However, on the 30th August, 1999, a motion on notice dated 27th August,

1999, was filed in the lower court by one Ozioko Walter Esq of Dickson D. I. Osuala & Co. seeking the following reliefs:-

- (1) An order setting aside the proceedings of this Honourable court conducted on Tuesday, the 3rd day of August, 1999, and actions (s) (sic) taken there under.
- (2) An order setting aside the order for the arrest of the Applicant arising from the proceedings of this Honourable court dated 3rd August, 1999.
- (3) An order setting aside charge No.FHC/L/FBCR/17/99 against the Applicant and the proceedings conducted there under.

OR IN THE ALTERNATIVE

- (4) An order striking out the name of the Applicant in charge No FHC/L/FBCR/17/99. And for such further or other orders as the Honourable court may deem fit to make in the circumstances.”

The said motion was predicated on a total of eleven grounds, a 7 paragraphed affidavit of urgency and an 18 paragraphed affidavit, respectively. A notice of appeal, dated 10th December, 1998 and a ruling of the Lagos State High Court, dated 7th January, 1999, were also attached to the affidavit as exhibits. The motion proceeded to hearing, at the conclusion of which the lower court delivered a ruling on 2nd November, 1999, wherein the learned trial Judge, Abutu, J; (as he then was) held, inter alia, thus: -

“On the whole I am of the firm view that the charge is competent and that the prosecutor is competent to institute the proceeding. The motions are therefore hereby dismissed.”

Not unnaturally, dissatisfied with the above ruling, the 1st and 2nd Appellants filed the notice of appeal thereof, dated 2nd June, 2003, in the lower court’s registry on 4th June, 2003. The notice of appeal in question was predicated on a total of 8 original grounds of appeal, specifically seeking the following relief: -

“(1) An Order striking out charge No FHC/FBCR /17/99 and restoring the decision of the Lagos High Court (Coram OLUGBANI, J;) dated 7th January, 1999.”

On 22nd May, 2003, the Appellants filed a motion on notice seeking an order for an extension of time within which to file the notice of appeal against the ruling of the lower court in charge No FHC/L/FBCR/17/99, dated 2nd

November, 1999. The application was duly granted by this court on 26th May, 2003.

Parties filed and served their respective briefs of argument. The Appellants' brief was filed on 8th December, 2005, but deemed properly filed and served on 21st May, 2007. The Respondent's brief, on the other hand, was filed on 26th October, 2006, but deemed properly filed and served on 26th April, 2009. In the course of writing this judgment, I have observed that a notice of preliminary objection was filed on 25th June, 2007 by the Respondent's counsel, in the person of one S. K. Atteh. However, the notice is neither supported by any reasonable ground, nor incorporated in the Respondent's brief. What is more, the Respondent did not seek the leave of the court to move same at the hearing of the appeal.

Thus, the purported notice of preliminary objection is incompetent and deemed abandoned. Consequently, it's hereby struck out. The Appellants have raised, in the brief thereof, two issues for determination, viz:

“3.1 ... Whether there was 6 valid criminal charge or process commenced before the lower court from which legal consequences can flow?

3.2 ...Whether a person set at forge on a writ of habeas corpus ad subjiciendum can again be re-arrested and prosecuted on the same cause or matter?” On the other hand, two issues have equally been formulated in the Respondent's brief, to wit:-

“3.1 ... Whether there was a valid criminal charge or process commenced before the lower court from which legal consequences can flow OR whether the prosecutor who signed the charge has power to institute the criminal proceedings against the Appellants before the lower court.

3.2 ... Whether a person set at large on a writ of habeas corpus ad subjiciendum can again be re-arrested and prosecuted on the same cause or matter OR whether having regard to the Order of Olugbami, J; releasing the Appellants un conditionally a Habeas corpus application the Appellants have been acquitted and are therefore not liable to be arrested and prosecuted for the offence charged before the lower court.” I have appraised the nature and circumstances of this case, the submissions of the learned counsel contained in the respective briefs of argument thereof of *vis-à-vis* the record of appeal as a whole. There is every good reason for me to appreciate, and accordingly hold, that the two issues raised in each of the two briefs of the respective learned counsel are not in any way mutually exclusive. Thus, I

have deemed it most appropriate to determine this upon the basis of the two raised in the Appellants' brief, which I believe are more concise than those raised in the Respondent's brief. However, I have deemed it expedient that the determination of issue No. 2 should precede that of No. 1. That being the case, therefore, the two issues are hereby renumbered in the reverse order i.e. issue No. 2 now becomes No.1, while issue 2 is now No.1, accordingly.

ON ISSUE NO.1:

Issue No.1, as alluded to above, raises the question of whether a person set at large on a writ of Habeas corpus Ad subjiciendum can be re-arrested and prosecuted on the same cause or matter. I have accorded an ample consideration upon the submissions of the learned counsel contained in the respective briefs thereof. Most undoubtedly, the term HABEAS CORPUS is a Latin Maxim, which simply means "that you have the body". As a prerogative writ, it is employed to bring a person before a court of law, most frequently that the party's imprisonment, detention or incarceration is not illegal.

The writ may also be used to obtain a judicial review of (i) the regularity of the extradition process; (ii) the right to or amount of bail; or (iii) the jurisdiction of a court that has imposed a criminal sentence. Also termed writ of habeas corpus; Great writ. See Black's Law Dictionary, Eighth edition, 2004 at page 728; SECRETARY OF STATE FOR HOME AFFAIRS VS. OBRIEN (1923) AC 15 p. 603 at 609.

It is rather instructive, that the notorious case of R. VS. JOHN WILKES (1770) 4 BURR. 2527 at 2563, aptly serves as a good illustration of the efficacy of the prerogative writ of habeas corpus. As it were, John Wilkes had been arrested and detained by the authority of the Secretary of State. He was not charged before any court of law. At the instance of the prisoner, the court issued a writ of habeas corpus and thereby ordered that he be produced at once to inquire whether his detention was lawful or not. The principle had since then been applied by the courts in England in a plethora of cases. The House of Lords was reported to have applied that principle in the case of R. VS. HOME SECRETARY, EX-PARTE KHAWAJA; (1983) 1 ALL ER 765. In that case, the HOUSE OF LORDS affirmed the dictum of Lord Denning, MR (of blessed memory) propounded in the case of R. VS. GOVERNOR OF PENTONVILLE PRISON, EX PARTE AZAM, (1974) AC 18 at 32, wherein the foremost common law erudite jurist postulated thus:

"If a man can make a prima facie case that he is not an illegal entrant, he is entitled to a writ of habeas corpus as of right: See Greene Vs. Home Secretary

(1942) AC 284, 302 by Lord Wright. The court has no discretion to refuse it. Unlike certiorari or mandamus, a writ of habeas corpus is of right to everyone who is unlawfully detained. If a prima facie case is shown that a man is unlawfully detained, it is for the one who detains him to make a return justifying it. It is a trite and well established general principle of law, that a person released on a prerogative writ of habeas corpus is neither discharged, nor acquitted of the offence for which he was detained, because he has not been formally charged and tried in court of law under the due process of law. Thus, contrary to the contention of the learned counsel of the Appellants, a person released from detention in consequence of a writ of habeas corpus can be rearrested on criminal process, and arraigned before a competent court of law upon a criminal charge. See HALBURY'S LAW OF ENGLAND, it edition vol. II paragraph 1504 at 797 thus:

“1504 RE-ARREST AFTER DISCHARGE “A person who has been discharged from illegal custody on habeas corpus cannot be again imprisoned or committed for or in respect of the same offence: but he is not privileged from being immediately re-arrested on criminal process in relation to some matter other than that in respect of which he has been discharged, although he is privileged from re-arrest on civil process whilst returning to his place of abode from the discharging him. There is therefore, no wound for discharging from custody under a second valid warrant merely because the prisoner has been previously discharged on habeas corpus for an unlawful imprisonment.”

I think it's apt to also allude to the well set out provisions of the Habeas corpus Law, CAP 58, Laws of Lagos State, 1994. Most especially, section 7 of that law is to the following effect:

“7. No prisoner delivered or set at large upon any writ of habeas corpus shall at any time be again committed or imprisoned for the same offence by any person. Whatsoever other than by the legal order and process of such court See RE: DOUGLAS (1842) 3 UB 825; R. VS. GOVERNOR OF BRIXTION PRISON, EX PARTE STALLMANN (1912) 3 KB 424; R. VS. SECRETARY OF STATE FOR HOME AFFAIRS, EX PARTE BUDD (1942) 2 KB 14; (1942) 1 ALL ER 373 CA. wherein he may be bound by recognizance to appear or other court having jurisdiction in the cause, and if any person shall, contrary to this law, unknowingly recommit or imprison or knowingly procure or cause to be recommitted or imprisoned for the same offence or pretended offence any prisoner delivered or set at large as aforesaid, or knowingly and or assist therein, he shall forfeit to the prisoner or person aggrieved, notwithstanding colourable pretence or variation in the

warrant of commitment, the sum of thousand Naira to be recovered by an action as for debt in any court of competent jurisdiction.” See also section 5 of the Habeas Corpus Act, 1679 to statute of general application) which similarly provides, inter alia, that any person who unknowingly recommit a discharged prisoner in consequence of a writ of habeas corpus shall be liable, to a penalty of 500 pounds sterling payable to the aggrieved party. Thus, in view of the above postulations, it’s rather obvious that a suspected person set at large upon a prerogative writ of habeas corpus ad subjiciendum can be re-arrested and prosecuted on the same cause or matter in a court of competent jurisdiction. The answer to issue No. 1 is undoubtedly in the affirmative, and same is hereby resolved in favour of the Respondent.

ON ISSUES NO.2:

The submission of the Appellants’ learned counsel, Dr. Dickson D. I. Osuala, on issue No.2 is to the effect, inter alia, that as on 27th August, 1999, when the objection to the criminal charge was raised in the court below, the Constitution in force was the Constitution of the Federal Republic of Nigeria 1999. However, when the charge (dated 3rd March, 1999) was filed, the Constitution in force was that of 1979. Reference was made to section 160(1), (2) & (3) of the 1979 Constitution (which is in *pari materia* with section 174(1), (2) & (3) of the 1999 Constitution) which confers the power of public prosecution on the Attorney- General of the Federation.

It was submitted that the charge was filed on 3rd March, 1999 pursuant to the provisions of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No 18 of 1994. See section 24(2) (b) & (b) of the Decree. A question was posed as to whether the prosecutor was competent to initiate the criminal proceeding against the Appellants when he is not from the Attorney General’s office? That question was said to have been answered in the affirmative by the learned trial judge at page 7 of the ruling (pages 58 - 59 of the Record). It was argued, that the ruling is unsupportable because:

- (i) Seidu Kazeem Atteh Esq is a police officer and not a law officer, and not (therefore) competent to initiate and prosecute the Appellants at the lower court. See OSAHON VS FRN (20003) 16 (pt. 845) 89 at 94 to 95 ratios 1 & 4.
- (ii) That the ruling was reached per incuriam, without adequate consideration of section 24(2) (b) of Decree No. 18, 1994 and Decree No. 62 of 1999. No evidence of compliance with section 24 (2) (b).

That, it's not controvertible that the charge as formulated is at variance with the express provisions of section 24 (2) (b). The charge is in valid, null and void and no legal consequences can flow (from) or (b) founded upon it. As the Decree No 62 of 1999 came into force on 28th May, 1999, the "TWENTY-ONE DAYS" commanded in section 4(1) of the Failed Banks Decree No. 18 of 1994 had allegedly elapsed.

Consequently, the defunct Zone VI of the Failed Banks Tribunal had lost jurisdiction before coming in to force of Decree No 62. There was no valid charge on which the lower court could have found authority to adjudicate. See Supreme Court's decision in SC/31/1997; MISCELLANEOUS OFFENCES TRIBUNAL & ANOR VS. NWAMMIRI EKPE OKOROAFOR (2001) 12 SCM 165 per Ejiwunmi, JSC (of blessed memory); MADUKOLU VS. NKEMDILIM 2 SC; NLR 341; SKEN CONSULT & ANOR VS. SECONDY UKEY (1981) 1 SC 15.

It was contended, that the appeal ought to succeed having regard to the Respondent's reckless disregard of the 1999 Constitution. See OLU OF WARRI VS. PERGBEYI (1994) 4 NWLR (pt. 339) 416 at 437 paras. D - E; 438 - 439 paras. G - A; C; AG BENDEL STATE VS. AG FEDERATION (1982) 3 NCLR 1 at 10; MIL. GOV. OF ONDO STATE VS. ADEWUMI (1988) 3 NWLR (pt. 82) 280; GOV. OF KADUNA STATE VS. KAGOMA (1982) 3 NCLR 1032 at 1044.

It was further argued, that the provisions of Decree No 18 of 1994 are in conflict with Articles of the African Charter on Human and peoples' rights (Ratification and Enforcement) Act, Cap 10, Laws of the Federation 1990 See ABACHA VS. FAWEHINMI (2000) NWLR (pt.660) 228 at 251 ratio 8.

That, there was no valid charge or process before the lower court to warrant the said court assuming jurisdiction to try the Appellants. See AG. FED. VS. GUARDIAN NEWSPAPERS LTD (1999) 9 NWLR (pt. 618) 187 at 233 para D; MADUKOZU VS. NKEMDILIM (1962) 2 SC NLR 341; SKEN CONSULT VS UKEY (1981) 1 SC; ADEOYE VS. STATE (1999) 6 NWLR (pt. 60S) 74 at 87 paras. E - G; EYORO KOROMO VS. THE STATE (1979) NSCC 61; NDAEYO VS. OGUNAYA (1977) 1 SC 11.

On the whole, it was submitted that the appropriate forum for the determination of the matter is the Kaduna State High Court, and not the Federal High Court Lagos or anywhere in the country, as both count charges are outside the jurisdiction of the lower court. We have been urged to accordingly allow the appeal on this issue (not grounds). The Respondents'

learned counsel C. O. Aduroja Esq; submits, inter alia, on issue No. 2 that the provision of section 160(1) of the 1979 Constitution recognizes the fact that any other authority or person can equally institute criminal proceedings against any person before any court of law in Nigeria. That, by virtue of section 23 of the police Act 1990, where the Attorney General has not exercised his powers under section 160 (1) of the 1979 Constitution, the police officers are (therefore) empowered to conduct the prosecution of any person (including the Appellants) before any court of law. See *OLUSEMO VS. COP* (1998) 11 NWLR (pt. S7S) S47, per Kalgo, JCA (as he then was).

It was likewise submitted, that sections 4(1) and 24(2) (b) of Decree No. 18 of 1994 were deleted by the Tribunals (certain consequential Amendments, ETC.) Decree No 62 of 1999. That, assuming that the said provisions are still relevant to this case, the Appellants are not competent to question whether or not the authority of the central Bank of Nigeria or the NDIC requested or authorized any other legal practitioner to prosecute the Appellants.

It was contended, that the fact that S.K. Atteh, the police prosecutor was a lawyer is not in dispute, as he was so addressed at pages 11, 19, 28, 43, 56, and 68 of the Record. That the question of who has the locus standi to institute criminal prosecution under section 24(2) of Decree No 18 of 1994 does not arise in view of the fact, that section has been repealed or deleted by Decree No 62 of 1999. See *STATE VS. AIBANGBEE* (1988) 3 NWLR (pt. 84) 548 at 578 - 579 per Eso, JSC. *ADEKANYE VS. FRN* (2005) 15 NWLR (pt. 949) 433 at 438 paras. B - C. per Onnoghen, JCA (as he then was).

Most especially, the court has been urged upon to adopt the decisions in *ADEKANYE VS FRN* (supra) and that of *STATE VS. AIBANGBEE* (supra). It was further submitted, that, the police Act, 1990, being an existing law within the provisions of section 274 of the 1979 Constitution, it's a law (equally) recognized by the 1999 Constitution. That, by virtue of section 214(b) of the 1999 Constitution, the members of the (Nigeria) Police Force are enjoined to exercise such powers and duties as may be conferred upon them by law. The powers conferred on the Attorney General under the Constitution to prosecute any person is allegedly not exclusive. Such powers can be exercised by the police, where the Attorney General fails to initiate criminal proceedings. The learned counsel also contended, that the case of *SAHON VS. FRN* (2003) 16 NWLR (pt. 845) 89, relied upon by the Appellants, was allegedly decided without reference to the decision of the Supreme Court in *STATE VS. AIBANGBEE* (supra).

That, the representation of parties does not affect the jurisdiction of the court. See ADEKANYE VS. FRN (supra) at 458 paras D - E; 462 paras D; MADUKOLU VS. NKEMDILIM (1962) 1 ALL NLW 587.

That, by virtue of section 251(1) & (3) of the 1999 Constitution, it's the Federal High Court, and not the Kaduna State High Court, that has jurisdiction to entertain the instant case. See NEPA VS EDEGBERO (2002) 18 NWLR (pt.798) 79 at 97 paras. E - G, per Uwais, CJN; section 230 of the 1979 Constitution which is the same with section 251 of the 1999 Constitution.

Issue No.2, as alluded to above, raises the vexed question of whether there was a valid charge or process commenced before the lower court from which legal consequences can flow. The said issue is predicated on grounds 1- 5 of the grounds of appeal. The argument of the learned counsel is contained at pages 3- 22 of the Appellant's brief. A charge, as a noun denotes a formal accusation of an offence as a preliminary step to the prosecution of an accused before a court of law. In the instant case, it's rather obvious from the submissions of the learned counsel in the respective briefs thereof vis-a-vis the records of appeal as a whole, that Seidu Kazeem Atteh, apart from having been a senior police officer, was also a qualified lawyer and legal practitioner in Nigeria within the meaning and contemplation of the provisions of the Legal Practitioners Act CAP 207 of Laws of the Federation of Nigeria, 1990 (CAP C. 23 Laws of the Federation, 2004). He is by virtue of the law in question alone, entitled, and has the absolute right and privilege, to appear and be accorded an audience in any court of law or tribunal throughout the country. See OLUSEMO VS. COP (1998) 11 NWLR (pt.575) 547 at 558 paras. G-H.

Thus, most undoubtedly, Mr. Atteh had the right to appear and prosecute cases, both criminal and civil, in any court, the lower court inclusive, without the authorization or fiat of the Attorney General, Federal or State, or any body for that matter. The issue under consideration inarguably questions the locus standi or competence of Mr. Atteh, as a senior police officer simpliciter, to prosecute criminal cases before the lower court without the authority or fiat of the Attorney General of the Federation. The provision of section 23 of the Police Act (CAP.359 of the Laws of the Federation of Nigeria, 1990) (and now Laws of the Federation of Nigeria, 2004) is to the following effect.

“23 subject to the provisions of sections 160 and 191 of the Constitution of the Federal Republic of Nigeria (relating to the Federal and State Attorney-

General's power to institute and undertake, take over, continue and discontinue criminal proceedings against any person before any court of law in Nigeria) any police officer may conduct in person all prosecutions before any court whether or not the information of complaint is laid in his name. "*Brackets added for clarification.* By virtue of the above provision of section 23 of the police Act (supra), it's rather indisputable that any police officer, Mr. Atteh inclusive, has the power to conduct in person all prosecutions before any court of law in Nigeria, including the lower court, although the exercising of such power is strictly subject to the well set out provisions of sections 160 and 190 of the 1979 Constitution (supra). For ease of reference, I have deemed it expedient to reproduce herein below the provisions of the said sections 160 of the 1979 constitution:

"160. (1) The Attorney-General of the Federation shall have power: -

- (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;
- (b) take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person."

See also sections 174 and 211 of the 1999 Constitution, which are *in pari material* with sections 160 and 190 of the 1979 Constitution (supra).

I think, it's apt to, at this stage in time, clarify the meaning and effect of the phrase 'subject to' as couched under section 23 of the police Act (supra). In the notorious case of TUKUR VS. GOVT OF GONGOLA STATE (1989) 4 NWLR (pt. 117) 517 at 565, the Supreme Court was reported to have held, inter alia, thus:

The expression "subject to" is often used in statutes to introduce a condition, a proviso, a restriction, a limitation. See THOMPSON OKE VS. ROBINSON OKE (1974) ALL NLR (pt. 1) 443 at 350. "...whenever the expression ("subject to") is used at the commencement of a statute, it is an expression of limitation the section or sub section is "subject to" shall govern, control, and prevail over, what follows in that section or subsection of the enactment."

It was likewise authoritatively held by the apex court in the case of LABIYI VS. ANRETIOLA (1992) 8 NWLR (pt. 258) 139 at 163 - 164 that: -

“The phrase “subject to” in a statute introduces a condition, a proviso, a restriction and a limitation.

The effect is that the phrase evinces an intention to subordinate the provisions of the subject to the section referred to which is intended not to be affected by the provisions of the latter. Thus, where the expression is used article commencement of a statute, as in section 1(2) of Decree 1 of 1984, it implies that what the subsection is “subject to” shall govern, control and prevail over what follows in that section or subsection of the enactment.”

See also OKE VS. OKE (1974) ALL NLR (pt.1) 443; AQUA LTD VS. ONDO STATE SPORTS COUNCIL (1988) 4 NWLR (pt. 9) 622; TUKUR VS. GOVT OF GONGOLA STATE (supra) 517, respectively.

Thus, it's rather obvious, that by the interpretation of the apex court in the plethora of authorities referred to above, the provisions of section 23 of the police Act (supra) ought to be considered to be rather restricted, limited, or controlled by the provisions of sections 160 and 190 of the 1979 (supra) That's to say, the provisions of the constitution shall govern and prevail over the provisions of section 23 of the police Act (supra). However, it must be reiterated, for the avoidance of doubt, that while the provisions of the constitution evince an intention to substitute the provisions of section 23 of the police Act, the latter are not rendered ineffective altogether, except where the former provisions are applicable. That's to say, the exercise of the power to prosecute in court of law by a police officer, under section 23 of the police Act, can only be effected where the provisions of sections 160 & 190 are not invoked.

It's trite that by virtue of the provisions of sections 160 (1) (a), (b) & (c) and 191 (1) (a), (b) & (c) of the 1979 constitution (supra), the Attorney-General of the Federation and of the State, as the case may be, have been conferred with unequivocal powers to institute and undertake any criminal proceedings in any court of law in Nigeria; to take over, continue or discontinue at any stage of the proceedings of any criminal proceedings, that may have been instituted or undertaken by any person in a court of law. Thus, the decision whether or not to take over, continue or discontinue any such criminal proceedings entirely depends on the Attorney- General concerned. The power in question is inarguably exclusive to the Attorney-General concerned. He does not share it with anybody, no matter how eminently placed.

In the instant case, it's rather indisputable that the Attorney-General had not opted to exercise the powers conferred there upon under section 160 of the

Constitution to institute or undertake any criminal proceedings against the Appellants. The powers of the police to prosecute or institute the criminal proceedings against the Appellants in the court below had not been limited restricted or controlled in any way. Thus, Mr. Atteh, qua police officer, was undisputedly competent to institute and prosecute the criminal proceedings against the Appellants in any court of law in Nigeria, the court below inclusive.

A question was posed by the Appellant at page 13 of the brief thereof as to: -
“Who has the *locus standi* to institute criminal prosecution under section 24 (2) of the Decree No. 18 of 1994.”

The provisions of the Failed Banks (Recovery of Debts) And Financial Malpractices in Banks Decree No. 18, 1994 are to the following effect:

“24 (1)”

(2) ...

(a) prosecutions for offences under this Decree shall be instituted before the Tribunal in the name of the Federal Republic of Nigeria by the Attorney General of the Federation or such officer in the Federal Ministry of Justice so to do, and in addition, he may ...

(b) if a Tribunal so directs or if the Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation so requests, authorize any other legal practitioner in Nigeria;

To undertake any such prosecution directly or assist therein.” It was the contention of the Appellants’ learned counsel that Mr. Atteh being a police officer, and not a law officer, he cannot, therefore, institute and prosecute the Appellants at the lower court. The case of OSAHON VS. FRN (2003) 16 (pt. 845) 89 at 94 - 95, a decision of this court was cited and relied upon in support of the above contention.

I entirely agree with the contention of the Respondent’s learned counsel (page 13 of the Respondent’s brief) to the effect that in view of the fact that section 24 (2) of Decree No. 18, 1994 had been repealed or deleted by Decree No. 2 of 1999 (at page A 1962 under part 1 of the schedule), the question of the *locus standi* to institute criminal prosecution did not arise.

It is a trite and well established principle of law, that when a lawyer (legal practitioner) appears in a court of law and announces that he is duly instructed

by a party, the court will have no business inquiring into his authority to appear. The only person that can challenge a legal practitioner's right or authority to appear in a court of law, is the party he claims to be representing. See ADEKANYE VS. FRN (2005) 15 NWLR (pt. 949) 433. In the instant case, it is rather obvious that neither the court, nor the Appellants have the authority or locus standi to question the representation of the Respondent by Mr. Atteh, a police officer, a qualified practitioner in his own right.

I have appraised the nature and circumstances surrounding the case of OSAHON VS. FRN (2003) 16 NWLR (pt. 845) 89, cited and relied upon by the Appellants' learned counsel in the submission thereof. That case, I must hold, does not seem to support the case of the Appellants, especially in view of the decisions of this court in OLUSEMO VS. COP (supra); ADEKANYE VS. FRN (supra); the Supreme Court's decision in STATE VS. AIBANGBEE (1988) 3 NWLR (pt. 84) 548 at 578 - 579; NEPA VS. EDEGBERO (2002) 18 NWLR (pt. 798) 79 at 97 paras. E - G; MADUKOLU VS. NKEMDILIM (1962) 1 ALL NLR 587, respectively.

As postulated above, there is no doubt that the provision of section 23 of the police Act (supra) is not, in any way whatsoever, in conflict with the provisions of sections 160 and 191 of the 1979 Constitution. Undoubtedly, the said provisions of section 3 of the police Act supplement, rather than whittle down or being in conflict with sections 160 and 190 of the 1979 Constitution. And I so hold. See OLUSEMO VS. COP (supra) at 563 para. H and 564 para. A, per Ejiwunmi, JCA, of blessed memory, (as he then was) thus: "It is self-evident from the legislation to which reference have been made that the only fetter in law to the prosecution of cases by a police officer is in the exercise of the power of the Attorney General of the Federation or that of the State to which reference have been made above. Lower court was therefore right to have held that the police officer who appeared for the respondent had the right to so appear and conduct criminal prosecution against the appellant."

In the light of the foregoing far reaching postulations, I have no hesitation whatsoever in coming to the inevitable conclusion that the answer to the second issue ought to be in the positive, and same is hereby resolved in the Respondent's favour.

I have, at this point in time, deemed it expedient to observe that the fundamental thrust or objective of setting up the defunct Failed Banks Tribunals under the Failed Banks (Recovery of Debts) And Financial

Malpractices Decree No. 18 of 1994, was to radically sanitize the corruptly debilitated financial community, with a view to ridding the institutions of corrupt officials and fraudsters.

It is a notorious fact, that over the years, Government had been taken to task for the executive indiscipline thereof. Efforts were made by previous Military administrations to sanitize the polity and instill discipline in the public service by introducing various programmes, including War Against Indiscipline (WAI) and War Against Indiscipline and Corruption (WAIC), et al. However, it is an altruism, that a genuine war against indiscipline and corruption cannot successfully be fought by the government alone. This is definitely so, because it's the general belief that the government itself constitutes a major cause of indiscipline and corruption in the country. I think, it was NICCOLO MACHIAVELLI, who stated, rather aptly in my view, that: -“Public affairs are easily managed in a city (notion) where the body of the people is not corrupt.” See MACHIAVELLI: THE PRINCE, WORDSWORTH Edition, 1997 at 113.

The above statement of Machiavelli was undoubtedly predicated on the sound reasoning that corruption, in all its ramification, is abhorrent and I despicable in the eyes of the people, and thus demeans any leader who happens to be corrupt. According to Machiavelli: - “Above all, a prince (a leader) makes himself odious by rapacity, that is, by taking away from his subjects their property and their women, from which he should carefully abstain ... A prince becomes despised when he incurs by his act, the reputation of being variable, inconstant, effeminate, pusillanimous, and irresolute; he should therefore guard against this as against a dangerous rock, and should strive to display in all his actions grandeur, courage, gravity and determination. And in judging the private causes of his subjects, his decisions should be irrevocable.” See MACHIAVELLI, *op cit*, at 70.

Inarguably, the above exhortation by Machiavelli remains as relevant in today's world, as it was in the Sixteenth Century (1513), when the book was written. Thus, a genuine war against indiscipline and corruption must be waged by Nigerians, and the well-meaning civil society and non-governmental organizations. Hence, having resolved both issues in the Respondent's favour, there is no gainsaying the fact that the present appeal is devoid of any merit, and ought to thus be dismissed by this court.

Consequently, the appeal is hereby dismissed by me for being unmeritorious. The ruling of the lower court, dated 2nd November, 1999, is hereby affirmed.

RAPHAEL CHIKWE AGBO, J.C.A.: I have read before now the lead judgment of my learned brother SAULAWA, JCA and I agree with the conclusions contained therein. The judgment is quite exhaustive and I have nothing useful to add. I too dismiss the appeal as unmeritorious and affirm the ruling of the lower court.

REGINA OBIAGELI NWODO, J.C.A.: I was privileged to read in draft the Judgment just delivered by my learned brother, SAULAWA, J.C.A I agree with the reasoning contained therein and the conclusion arrived there at that this appeal is devoid of any merit. I also dismiss the appeal and abide by the consequential orders made therein.

Appearances

C. O. Aduroja with him Miss O. For Appellants

Respondents counsel was served on 22/12/2009 but absent and unrepresented.

CASE 16

**IN THE COURT OF APPEAL
HOLDEN AT LAGOS
ON MONDAY THE 26TH DAY OF FEBRUARY, 2007**

BEFORE THEIR LORDSHIPS:

MONICA B, DONGBAN-MENSEM-	JUSTICE, COURT OF APPEAL
PAUL ADAMU GALINJE	JUSTICE, COURT OF APPEAL
HUSSEIN MUKHTAR	JUSTICE, COURT OF APPEAL

CA/L/376/05

BETWEEN:

GEORGE UDEOZORAPPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT

DEFINITION

Extradition defined

INTERPRETATION OF STATUTE

Sections 6(1) and (2), 20 and 9(1) Extradition Act 1967 interpreted

Responsibility and powers to ascertain the conditionality for acceding to an extradition request on the Attorney-General (Sections 6)

The essence of the provision in section 20(1) of the Act, for a minimum sentence of two years is to ensure that a fugitive is not surrendered on a trivial offence,

TREATY

The extradition treaty between Nigeria and the United States of America is embodied in the Legal Notice No, 33 of 1967 published in the official Gazette

No, 23 Vol, 54 of the 13th day of April, 1967, known as an Extradition (United States of America),

PRACTICE AND PROCEDURE

An extradition hearing is not for the trial of the fugitive criminal but is a preliminary hearing pending the surrender of the fugitive accused to the requesting country,

JUDGMENT

(DELIVERED BY MONICA BOLNA'AN DONGBAN-MENSEM JCA JP)

On the 9th June 2004, the then Attorney-General of the Federal Republic of Nigeria signified to the trial Court, by an order under his hand, that a request had been made to his office for the extradition of the Appellant. The signification was made pursuant to the Extradition Act Cap 125 LFN 1990. The request was made by the Diplomatic Representative of the Embassy of the United States of America Abuja, for the surrender of Mr. George Chidebe Udeozor, the Appellant.

The documents accompanying in the request for surrender indicate that the Appellant had been charged in the United States District of Maryland, with the offences of: -

- (a) Conspiracy to commit, an involuntary servitude;
- (b) harbour an illegal alien; and
- (c) encourage an illegal alien to come to; enter and reside in the United States. Also involuntary Servitude, and harbouring an illegal alien for financial gain at the United States District of Maryland.

The request was also accompanied by the following documents:

- (i) Original Copy of a letter of Certification; with seal; by the United States of America Department of State dated 17th day of December, 2003;
- (ii) Original Copy of a letter of Certificate; with seal; by the United States Department of Justice dated 17 day of December, 2003;
- (iii) Original Copy of a letter of Certificate; by Ernestine B. Gilpin dated 17th day of December; 2003;
- (iv) Original Copy of an Affidavit in support of Request for extradition of GEORGE CHIDEBE UDEOZOR deposed to by Seth Rosenthal on the 12th day of December; 2003; and attached with the under mentioned Exhibit.

- (a) EXHIBIT 1: - A Certified True Copy of Superseding indictment dated 2 November, 2003.
- (b) EXHIBIT 2: - A Certificate True Copy of a warrant of arrest dated 12th November, 2003.
- (c) EXHIBIT 3: - A copy of statutes implicated by the superseding indictment.
- (d) EXHIBIT4: - A Copy of statute of limitation Governing offences charged in superseding indictment;
- (e) EXHIBIT 5: - Original Affidavit of Special Agent David Nelson; of United States immigration and Customs Enforcement; with attachments 1,2,3,4,5,6,7 and 8 which is photograph of GEORGE CHIDEBE UDEOZOR.

In support of the application was filed a five paragraph affidavit of Akindele Kolin whose deposition are made on behalf of the Hon. Attorney General of the Federation.

At the hearing of the application, the Appellant opposed the grant of application but was over-ruled, the application was granted and the Appellant ordered to be remanded in prison custody to await his surrender over to the United States of America.

Perturbed and discontented with the decision of the trial Court, the Appellant appealed the decision on four grounds of appeal which were amended with the leave of this Court from the three ground initially filed, the fourth original ground then, being the omnibus ground.

The amended grounds of appeal without their particulars are as follows:

1. GROUND ONE:

“The learned trial judge erred in law in refusing to declare proceedings nullity when he construed the provision of Section 9(1) of the Extradition Act and held that since what was before the court was a mere request for extradition, all the requirements for a valid arraignment in a criminal trial (or at least as near as possible) need not apply.”

2. GROUND TWO:

“The learned trial judge erred in law when he held that the word “may” as used in Section 20 of the Extradition Act is permissive and not mandatory and that the section applies only to commonwealth countries which America is not part of.”

3. GROUND THREE:

“The learned trial judge erred in law when he construed Section 3 of the Extradition Act and held, in effect, that, the Attorney- General need not place those facts before the court to enable the court exercise its discretion one way or the other.”

4. GROUND FOUR:

“The learned trial judge erred, in deciding whether the offences for which the Appellant is sought are returnable he held as follows:

“Although, the punishments under the United States Code prescribed a period of more than 2 years but same are the maximum without specify what the minimum punishment is.”

Three issues were distilled by the Appellants from the four amended grounds of appeal filed. The Respondents adopted the issues as formulated by the Appellant. This appeal shall be determined on the issues as formulated in the brief of the Appellant. Issues one and three will however be taken together.

ISSUE ONE

“WHETHER THE LEARNED TRIAL JUDGE OUGHT TO HAVE ADOPTED THE PROCEDURE APPLICABLE IN CRIMINAL TRIALS IN HEARING THE ATTORNEY-GENERAL’S REQUEST FOR THE EXTRADITION OF THE APPELLANT AT THE LOWER COURT”

ISSUE THREE

“WHETHER THE LEARNED TRIAL JUDGE WAS RIGHT IN NOT INSISTING THAT THE LEARNED ATTORNEY-GENERAL OUGHT TO HAVE SATISFIED THE COURT BY AFFIDAVIT EVIDENCE OF ALL THE PRECONDITIONS NECESSARY FOR THE COURT TO EXERCISE ITS DISCRETION IN AN EXTRADITION PROCEEDING AS LISTED IN SECTION 3 OF THE EXTRADITION ACT.”

The crux of the complaint of the Appellant under these issues are the procedure adopted by the trial Court and the quantum of the materials placed before the trial court by the office of the Hon. Attorney-General in support of the application.

It is the submission of the learned Counsel for the Appellant that the learned trial Judge failed to follow strictly the procedure for the arraignment of an accused person as provided for by Section 9(1) of the Extradition Act.

The learned Counsel states that the trial Court should have adopted a procedure similar to that in a summary trial in a criminal matter. This, maintains the learned Counsel, is the import of the phrase “as if” used in Section 9(1) of the Act.

To buttress this point, the learned Counsel relies in the cases of *N.N.P.C. Vs Anwuta* (2000) 13 NWLR (Pt. 684) page 363 at 377-378 and *Savannah Bank Vs Ajilo* (1989) 2 N.W.L.R. (Pt.97) page 305. Then learned Counsel commends on the interpretation placed on the phrase “as if” in the said cases. The Supreme Court in the two cases, cited the dictum of Lord Asquith on the construction of the “as if” clause. By the said construction, the learned Counsel contends that the learned trial Judge erred in law in failing to adopt full trial procedure as in the arraignment of an accused person in a criminal matter. It is the view of the learned Counsel that the request of the Hon. Attorney-General, constitutes the process of the Court which should have been read over and explained to the Appellant who had been placed in the dock before the Court. The learned Counsel however concedes that no formal charge was placed before the trial Court.

Following this procedure, the learned Counsel continues, the Appellant should then have had the charges read out to him and his plea taken. That plea, contends the learned Counsel, is for the Appellant to state whether or not he should be extradited as requested by the United States Embassy.

Having failed to adopt the said procedure the learned Counsel, submits that the learned trial Judge thereby failed to comply with the provisions of Section 9(1) of the Act. The procedure therefore was a nullity and of no legal consequence. Learned Counsel urged us to quash the proceedings.

Equally objectionable to the Appellant is the minimal affidavit evidence placed before the trial Court. Counsel contends that the Hon. Attorney General should have also stated in the affidavit in support of the application that he had complied with all the conditions required as stated

In section (3) (1-7) of the Extradition Act. Failure to do this contends Counsel, renders the application incompetent

The learned Counsel to the Respondent submits to the contrary that Section 9(1) of the Act relates to the jurisdiction and powers of the trial Judge rather than the procedure to be adopted in attending to the request placed before the Court by the Hon. Attorney-General. The learned Counsel submits that the procedure to be adopted in extradition proceedings is provided by Sections 6(2) and 9(1) of the Extradition Act Cap. 125 of the Laws of the Federation of Nigeria 1990 as amended and is now of E 25 LFN of 2004. Section 17 of Cap. 125, LFN also states the type of evidence to be received, which is purely affidavit evidence.

In order to fully comprehend and adequately address this appeal, it is imperative to peruse the relevant provisions of the legislation in respect of the subject matter.

First and foremost: - is there an extradition pact between Nigeria and the requesting state, the United States of America? There seems to be a consensus between the parties that there is an extradition agreement between the two countries. The Extradition (United States of America) order of 1967 published in the special gazette No. 23 Vol. 54 of the 13 April, 1967 is cited as the requisite legislation.

Other relevant statutes cited by both the learned counsel for the parties are as follows:

2. Extradition Act Cap. 125 Laws of the Federation of Nigeria, 1990 now Cap. F 25 LFN 2004,
3. Evidence Act Cap. 112 LFN 1990 now Cap. E 14, LFN 2004.
4. The Civil Procedure Act.
5. Legal Notice No 33 of 1967.
6. The Immigration Act Cap. 171 LFN 1990. Above all is the Constitution of the Federal Republic of Nigeria of 1999.

Since it is a common ground that an extradition agreement exists between the two countries, the next question to determine is the provisions of the said agreement and those of other related statutes. In the circumstance, Section

9(1) of the Extradition Act eminently features in the argument of both parties. Section 9(1) of the Act provides as follows:

“When a fugitive criminal is brought before a magistrate on warrant under section 7 of this Act, or when, in the case of a fugitive criminal brought before a magistrate on a provisional warrant under section 8 of this Act and remanded in pursuance of subsection (5) of the said Section 8, an order of the Attorney General under Section 6 of this Act relating to that fugitive is received, the magistrate shall proceed with the case in the same manner as near as may be and shall have the same jurisdiction and powers as if the fugitive were brought before him charged with an offence committed within his jurisdiction.”

To fully comprehend the provisions of section 9(1) of the Act, one must consider the purport of the Extradition Act. Section 1 of the Act states that: -

“Where a treaty or other agreement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender by each Country to the other, of persons wanted for prosecution or punishment, the National Council of Ministers may by order published in the Federal Gazette apply this Act to that country.’

Thus, the purpose of the agreement is for the “surrender by each country to the other, of persons wanted for prosecution or punishment,” for the trial on behalf of the one country by the other. (emphasis mine). In the circumstance, the submission of the learned counsel for the Respondent seems more in consonance with the purport and spirit of the Extradition Act. Thus, the reference in section 9(1) of the Act is to confer on the trial Court, the special jurisdiction and powers to perform the preliminary judicial functions requisite to enhance the administrative processes for the completion and execution of the order of the Attorney-General to surrender the alleged fugitive criminal to the requesting country.

The Appellant was not standing trial before the trial Court for the offence for which the extradition order is sought.

There was thus no legal requirement to follow full arraignment “rites” as in a criminal trial. The phrase “asif” used in section 9 (1) of the Act cannot be used as a panacea to place the Appellant on trial in Nigeria for offences allegedly committed extra-territorially in the United States of America.

Next, was the Hon. Attorney-General required to satisfy the Court by affidavit evidence that all preconditions listed in section 3 of the Extradition Act had been complied with?

The learned Counsel to the Appellant posits that the extradition procedure before the trial Court is a criminal proceeding by the provisions of section 9(1) of the Act. The Hon. Attorney-General was therefore bound to satisfy the Court by credible evidence that all the conditions set out in subsections 1-6 of section 3 of the Extradition Act have been fulfilled. It is the view of the learned Counsel that the procedure seeks to take away, vested rights and must be construed strictly against the party seeking to take the advantage. (Refers *Fasogbon Vs Layode* (1999) 10 NWLR (Pt. 628) page 542 at 556.)

Counsel maintains that the learned trial Judge erred in law in failing to construe the provisions of section 3 (1-7) strictly against the Attorney General of the Federation. Citing pages 4, 5 and 6 of the records, and his submission on page 160 of the records for this appeal, the learned Counsel submits that the Hon. Attorney-General failed to satisfy the Court on some of the conditions listed in section 3 of the Act. The application should therefore not have been granted.

The response of the of the learned Counsel to the Respondent is that bringing the request to the trial Court shows that the Hon. Attorney-General has satisfied himself that the conditions stated in section 3 of the Act have been met by the requesting country. The operative words in section 3(1-7), submits the learned Counsel, are “if it appears...” and “shall not be surrendered if satisfied...,” which are indications that the Hon. Attorney-General has the discretion to decide. Section 174 of the 1999 Constitution of the Federal Republic of Nigeria is cited in support of the submission for the Respondent.

The question of whether the Hon. Attorney-General had complied with the provisions of section 3(1-7) of the Act is a question of fact which can be brought to the attention of the trial Court only by affidavit evidence. No amount of brilliant submission of Counsel can take the place of legal evidence (Refer. *Bwanbe Tapshang V Dalak Lekret* (2000) 13 N.W.L.R (Pt. 684) page 381 at 388.) No counter-affidavit was filed by the Appellant.

The Appellant did not deny that he had been served with the processes but he filed no process challenging the application of the Hon. Attorney General. None of the depositions were controverted, no conflict therefore was there any application to examine any of the deponents upon conflict arising from the depositions in the affidavit. The postulations of the Counsel to the Appellant on the failure of the Hon. Attorney-General of the Federation to comply with the provisions of section 3(1-7) of the Act are therefore mere academic exercise of no legal value in the circumstance.

Further, and as rightly contended by the learned Counsel to the Respondent, the Hon. Attorney-General was exercising his constitutional duty under section 174 of the 1999 Constitution. The learned trial Judge could not have turned inquisitorial, demanding of the Hon. Attorney-General evidence that he had carried out his statutory functions.

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

In the absence of any serious challenge to the proper exercise of discretion by the Hon. Attorney-General for the Federation, the Court must uphold the official integrity of the Hon. Attorney-General, and presume that he carried out his duties as prescribed by section 6(1) and (2) of the Act. There would thus have been no justification in requiring proof by affidavit evidence, of the performance of such duties. The legal maxim is *omnia praesumuntur rite et solemniter esse acta*, while section 150 (1) of the Evidence Act provides the statutory anchor of the presumption. Section 20 actually reposes the responsibility and powers to ascertain the conditionality for acceding to an extradition request on the Attorney-General not on the Court. By the provisions of the Act, the Hon. Attorney-General, who is the chief legal officer of the Federal Republic of Nigeria, has the discretion to exercise the

power. Once he has ascertained that there exists an offence which falls within the Extradition Act, and he so orders, the duty of the Court is delineated, the Court is circumscribed to question the exercise of discretion by the Hon. Attorney-General only upon cogent and compelling reasons challenging the proper exercise of such powers may the Court inquire into the manner of its exercise.

The powers of the Attorney-General in this issue is similar in extent as when the Hon. Attorney-General initiates a criminal proceedings or enters a *nolle prosequi* in a criminal matter. The Court does not question that exercise.

It has become a well-guarded legacy that this Court does not undermine the doctrine of the separation of powers enshrined in the Constitution of the Federal Republic of Nigeria. (Refer: *The State v. S.O. Ilori & Ors.* (1983) All NLR page 84; (1983) 1 SCNLR 94.)

The discretion to accede to an extradition request is that of the Hon. Attorney-General of the Federation, not of the Court. (Refer: Sections 6 of the Extradition Act).

The role of the Court is to issue warrant and undertake such other adjudicatory functions as are required to enhance the statutory powers of the Attorney-General. (Refer to Section 7 of the Extradition Act.)

Further, contrary to the opinion of the learned Counsel to the Appellant, the purpose of a hearing, which is in fact purely at the discretion of Hon Attorney-General, is not to ask the fugitive criminal if he desires to be extracted that would be ridiculous. The purpose is to determine whether requisition made shows sufficient cause to warrant extradition to so determine is reposed in the Hon. Attorney-General of the Federation by section 6(1) and (2) of the Act, not in the fugitive accused. To hold otherwise would be ridiculous and would clearly negate the purpose of the extradition treaty which is to prevent the successful escape of a fugitive accused from trial and punishment for the alleged crimes committed in the requesting country.

The purpose of the hearing in the trial court upon the application of the Hon. Attorney-General is not for the trial of the fugitive criminal. Rather, it is to

invoke the exercise of the judicial powers, of the Court over the fugitive accused as the Court would over an accused person standing trial before it. In the circumstance, those powers are preliminary to the eventual trial of the fugitive accused, such as the power to remand or to release on bail pending the completion of investigation. In the instant case, it is pending the surrender of the fugitive accused to the requesting country.

The learned trial Judge was therefore right in holding that the application of the Hon. Attorney-General cannot be equated with a criminal trial. (Refer page 178 of the records). It is not a criminal trial but a preliminary to such trial which shall take place where the offences are alleged to have been committed.

ISSUE TWO:

“WHETHER THE LEARNED TRIAL JUDGE RIGHTLY
INTERPRETED SECTION 20 OF THE EXTRADITION
ACT IN GRANTING THE REQUEST OF THE ATTORNEY-
GENERAL FOR EXTRADITION OF THE APPELLANT.”

The learned Counsel challenges the interpretation by the trial Court, of word “may” as used in section 20 of the Extradition Act. It is the submission of the learned counsel for the Appellant that the context of the usage of the word “may” in section 20 (1) of the Act is mandatory and not permissive. The learned Counsel opines that the word immediately after “may” which is “only” serves to restrict the instances which the Court will grant an extradition request to “only” returnable offences.

Section 20 (1) provides as follows:

“(1) A fugitive criminal may only be returned for a returnable offence.”

Subsection (2) defines “returnable offence as an offence

“which is punishable by imprisonment for two years or a greater penalty both in Nigeria as well as the Commonwealth country seeking his surrender.”

By the terms of this provision, Counsel submits that the offences for which the Appellant is sought carry with them a minimum of one-year imprisonment per the deposition made in support of the request for extradition. The learned Counsel argues that it follows that the failure of the offences to carry

a minimum of two years' imprisonment in the United States, no matter what the maximum punishment stipulate, renders the said offences non-returnable. The Appellant ought therefore to be discharged and the request refused.

The learned Counsel for the Appellant argues further that although section 20 of the Act specifically mentions the Commonwealth countries in respect of returnable offences, the United States of America would be included for the purpose only, of the application of the provisions of the Extradition Act. The learned counsel cites section 1 of the Act which makes the Act applicable to every country which has entered into an agreement with Nigeria for the surrender of a fugitive criminal. Counsel concludes that the learned trial Judge therefore erred in holding that the United States not being a Commonwealth country is not bound by the provisions of section 20 (I) of the Act.

Conversely, the learned counsel to the Respondent submits that the learned trial Judge rightly interpreted section 20 of the Act in holding that the minimum punishment prescribed for returnable offences is not mandatory but only permissive by virtue of section 20 (1) of the Act. The learned Counsel submits further that by the provisions of section 1 (1), (2) and (3) of the Act, the Legal Notice No 33 of 1967 (*supra*) which is the only document containing extradition agreement between Nigeria and United States of America does not prescribe any minimum sentence for the returnable offences listed in item 3 of the said order. The Act, maintains the learned Counsel for the Respondent, therefore applies to the United States of America subject to the provisions of the Legal Notice No. 33 of 1967 which has no provision of two years' minimum sentence for returnable offences. Further that section 20 of the Act is inapplicable, the United States of America not being a Commonwealth country as provided for in the Act.

The learned counsel cites the case of *Odiase Vs Anchi Polytechnic* (1998)4 N.W.L.R. (Pt. 546) page 477 to buttress its argument that section 20 of the Act does not apply to the United States since parties in an agreement are bound only by the terms of their agreement. In the instant case, the terms of the agreement are as stated in the Legal Notice No. 33 of 1967.

Extradition is the process of returning somebody upon request, accused of a crime by a different legal authority to that authority for trial or punishment. (Refer: page 170 dictionary Law by L.B. Curzon, 6th Edition 2002.)

The right of one state (country in the present circumstance), to request of another, the extradition of a fugitive accused of 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. Due to the divergence in the penal codes of the world, most nations give definite terms in treaties to their mutual obligations to extradite.

The extradition treaty between Nigeria and the United States of America is embodied in the Legal Notice No.33 of 1967 published in the official Gazette No. 23 Vol. 54 of the 13th day of April 1967, known as an Extradition (United States of America). Such treaties enumerate what offences the two nations consider extraditable. The general rule is that extraditable crimes must be those commonly recognise as *mala in se* (acts criminal by their very nature) and not those which are *malum prohibitum* (acts made crimes by statute). This in most cases explains why the type of crime and the punishment prescribed are included in the extradition treaty. By this principle also, it is generally regarded as an abuse of the terms of the treaty for a state to secure the surrender of a criminal for an extraditable offence and then to punish the person for an offence not included in the treaty. (Refer generally to “Extradition1” “Microsoft” S. 2007 DVD.)

The essence of the provision in section 20 (1) of the Act, for a minimum sentence of two years is to ensure that a fugitive is not surrendered on a trivial offence. An offence which carries a maximum sentence of over five years cannot by any stretch of the imagination be described as trivial. The offences for which the fugitive criminal is sought are not unknown to Nigeria neither are they, by our Penal Laws trivial in nature.

The nations of the world have, out of the need to make the world a safe place for its people, agreed to cooperate in curbing the excesses of suspected miscreants. The Courts and Law Officers must not allow technicalities to frustrate this exercise.

Accordingly, I uphold the submission of the learned Counsel for the Respondent, that section 1(3) of the Extradition Act applies to the United States of America subject to the provisions of the Legal Notice No. 33 of 1967. Therein, the terms of the treaty state item 3, the returnable offences for extradition between the two parties. The treaty prescribes no minimum sentence for the returnable offences listed.

The provisions of section 20(1) of the Act cannot therefore be interpreted to include the United States of America, the said section having specifically stated the group of nations to which the section applies. If it were otherwise, the Act would have so specified.

Therein, the terms of the treaty state in item 3, the returnable offences for extradition between the two parties. The treaty prescribes no minimum sentence for the returnable offences listed.

The provisions of section 20 (1) of the Act cannot therefore be interpreted to include the United States of America, the said section having specifically stated the group of nations to which the section applies. If it were otherwise, the Act would have so specified.

All the issues formulated, by the Appellants in this appeal having each collapsed in total submission to the superior case made out by the

Respondent, this appeal is without merit. It is accordingly hereby dismissed. The decision of the learned trial Judge is affirmed.

Appearance:

1. Festus Keyamo for the Appellant.
2. J. I. Pius-Iovnumbe (Mrs) for the Respondent.

CA/L/ 376/05

HON. JUSTICE PAUL ADAMU GALINJE. JCA

I have read the draft now the judgment list delivered by my learned brother, Dongban-Mensem JCA, and I agree with the reasoning contained therein and the conclusion arrived thereat: I have nothing useful to add since my learned brother has exhaustively treated all the issues canvassed in the appeal. I therefore dismiss the appeal. The decision of the trial Court is accordingly affirmed.

All the issues formulated, by the Appellants in this appeal having each collapsed in total submission to the superior case made out by the Respondent, this appeal is without merit. It is accordingly hereby dismissed. The decision of the learned trial Judge is affirmed.

Appearance:

1. Festus Keyamo for the Appellant.
2. J. I. Pius-Iovnumbe (Mrs) for the Respondent

CASE 17

**IN THE COURT OF APPEAL
LAGOS JUDICIAL DIVISION
ON WEDNESDAY, THE 14TH DAY OF JULY, 2004**

SUIT NO: CA/L/79/2003

**BEFORE THEIR LORDSHIPS
JAMES OGENYI OGEBE JUSTICE, COURT OF APPEAL
SULEIMAN GALADIMA JUSTICE, COURT OF APPEAL
MUSA DATTIJO MUHAMMAD JUSTICE, COURT OF APPEAL**

BETWEEN:

DANIEL ORHIUNUAPPELLANT

AND

FEDERAL REPUBLIC OF NIGERIARESPONDENTS

JURISDICTION

Jurisdiction in extradition matters – Interpretation of Section 251(1)(i) of the Constitution of the Federal Republic of Nigeria 1999 – Federal High Court’s exclusive jurisdiction on extradition matters

GALADIMA, J.C.A. (Delivering the Leading Judgment): This is a consolidated appeal against the interlocutory decisions of the Federal High Court, Lagos, delivered by Shuaibu, J. on the 25/11/2002 and 19/2/2003 refusing to strike out the substantive application of the respondent for the extradition of the appellant to the United States of America.

On 29/7/2002, the Honourable Attorney-General of the Federation, in his application, asked the Federal High Court to deal with the request of the United States of America for the offence of health care fraud, aiding and abetting by the appellant. He was sentenced by Judge Edward C. Prado on 11/10/2001 in absentia at the United States District Court, for the Western District of Texas to 87 months, 3 years supervised released, \$1,061,110.55 in restitution and a special assessment of \$300. When the matter came up for the

first time before Shuaibu, J. on 28/10/ 2002, the appellant through his counsel raised a preliminary objection challenging the jurisdiction and competence of the Federal High Court to entertain the proceedings and a consequential order dismissing the request for his extradition to the United States of America. In his considered ruling 25/11/2002, the learned trial Judge held that the Federal High Court has exclusive jurisdiction in extradition matters and consequently dismissed the appellant's preliminary objection. Similarly, on 19/2/2003 he also ruled in the appellant's second objection, dismissing his contention that he does not fall within the contemplation of Extradition Act Cap. 125 Laws of the Federation of Nigeria (1990) herein after referred to as "the Extradition Act" not being a fugitive criminal as envisaged by the combined effect of sections 3-9 and section 21(1) of the Extradition Act.

Pursuant to the appellant's application, this Court by its order, dated 10/7/2003, consolidated the appeal vide Notice of Appeal filed on 25/3/2003 containing three grounds against the decision of 25/11/2002 and the appeal vide notice of appeal filed on 4/3/2003 containing four grounds against the decision of 19/2/2003. The issues proffered by the appellant for determination from the grounds of appeal, is consolidated, read as follows:

- "4.1. Whether having regard to the wordings of section 251 (1) (i) of the Constitution of the Federal Republic of Nigeria 1999, the Federal High Court can be said to be conferred with jurisdiction or exclusive jurisdiction in respect of extradition of Nigerians from Nigeria to foreign countries?
- 4.2. Whether the appellant can be said to be a fugitive Criminal within the meaning set out in the Extradition Act Cap. 15, Laws of the Federation of Nigeria, 1990, as to make him eligible for extradition from Nigeria to the United States of America?" The two issues identified in the respondent's brief for our determination which are similar to those of the appellants, are as follows:
 - "2.1. Whether the Federal High Court is conferred with jurisdiction to entertain extradition matters under section 251 (1) (i) of the Constitution of the Federal Republic of Nigeria, 1999?
 - 2.2. Whether the appellant can be said to be a fugitive Criminal within the definition of section 21 of the Extradition Act Cap. 125 Laws of the Federation of Nigeria, 1990?"

I have carefully considered the issues set out for our determination by the respective parties. The issues set out by the respondent's appeal to me is quite

apt and direct to the grounds in the consolidated appeal. It is on these two issues the merit of this appeal will be considered.

When this appeal came before us for argument on 18/5/2004 Mr. Fashanu, learned Senior Advocate for the appellant adopted the appellant's brief of argument. On the first issue learned Counsel for the appellant submitted that having regard to the grounds of appeal the first issue for determination ought to be answered in the negative. The reason was that the provisions of section 251 (1) (i) of the 1999 Constitution purporting to give exclusive jurisdiction to the Federal High Court is at best, unclear and a failed provision in as much as it purports to invest that court with jurisdiction to hear suits concerning the extradition of a Nigerian to foreign functions. It is argued that it is not the function of the court to fill in explanatory words in the gap obviously existing in the provision so as to give it meaning, that function being that of legislature, Reliance was placed on the cases of *AG Ondo State v. Attorney-General of the Federation* (1983) 2 SCNLR 269 at 277; *Okumagba v. Egbe*. (1965) 1 All NR 62; *IBWA v. Imana* (1988) 3 NWLR (Pt.85) 633 (1988) 2 NSCC (Pt. 11) 245 at 268.

Learned Counsel for the respondent Mr. Agusiobo, has submitted on the first issue, that the Federal High Court has jurisdiction under section 25 (1) (i) (3) of the Constitution of the Federal Republic of Nigeria 1999 to entertain extradition matters. The basis for this submission is that the wordings of the said sections of the Constitution are clear and unambiguous. Reliance was placed on the cases of *Nigerian Shippers Council v. United World Limited Inc.* (2001) 7 NWLR (Pt. 713) P.576 at 584. *Nafiu Rabi v. The State* (1981) 2 NCLR 293 at 326. *Miscellaneous Offences Tribunal v. Okoroafor* (2001) 18 NWLR (Pt. 745) 18 NWLR (Pt. 745) 295 at p.335 and *Bronik Motors and Anor v. Wema Bank Limited* (1985) 6 NCLR. P.1.

In the 1999 Constitution, the jurisdiction of the Federal High Court is contained in section 251 (1) (i) and (3) of the said Constitution. Where the words used in a statute are direct and straight forward and unambiguous, the construction of those words must be based on the ordinary and plain meaning of the words: see *African Newspaper of Nigeria Ltd. v. The Federal Republic of Nigeria* (1985) 2 NWLR (Pt. 6) p.137. I am of the firm view that the Federal High Court has jurisdiction under the said section 251 (1) (i) and (3) of the Constitution of the Federal Republic of Nigeria 1999, which state as follows:

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

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

(3) The Federal High Court shall also have and exercise jurisdiction and powers in respect of criminal causes and matters in respect of which jurisdiction is conferred by sub-section (1) of this section.”

It was contended by the learned Counsel for the appellant that unless and until the National Assembly makes rules enabling the Federal High Court to exercise jurisdiction, extradition matters remain outside the jurisdiction of the Federal High Court. It was submitted that it was the introduction of the word “of” into the section in the ruling that enabled the lower court to find section 251 (1) (i) of the Constitution intelligible in the first place, otherwise it would have no meaning so as to make the learned trial Judge come to the conclusion that the provisions conferred exclusive jurisdiction on the Federal High Court on extradition matters. With due respect I do not agree with the view expressed above by the learned counsel for the appellant. I am of the opinion that the provisions of section 251 (1) (i) are clear and unambiguous. The subject matter in respect of which the Federal High Court shall have jurisdiction includes extradition. The section as it is without the addition of the word “of” is very clear, intelligible and unambiguous so as to convey the intention of the law makers in conferring jurisdiction on the Federal High Court in respect of extradition matters. This sub-section (i) of section 251 is not the only subsection that is not introduced with the words like “relating to”, “connected with” “arising from”. The other sub-sections with no such introductory words but which are still clear and unambiguous are section 251

(1) (j), (k), (l), (m), (n) and (o). Therefore, the argument of the appellant that the omission of such introductory words is a mistake made by the legislature is not tenable. The wordings of section 251 (1) (i) of the Constitution is so clear as to reveal the intention of the law makers in conferring jurisdiction on extradition matters to the Federal High Court. This cannot therefore be regarded as a “failed” constitutional provision. In *Miscellaneous Offences Tribunal v. Okoroafor* (supra) the Supreme Court stated that:

“It is generally acknowledged that the court faced with the interpretation of a statute has a duty to first discover the intention of the lawmakers. This has to

be discovered from the words used in their ordinary and natural sense when there is no ambiguity about their meaning.”

In interpreting the provisions of the Constitution a broad and liberal approach should prevail. Undue regard must not be paid to mere technical rules; otherwise the objects of the provisions as well as the intention of the framers of the Constitution would be frustrated. See the following cases: *Nigerian Shippers Council v. United World Limited Inc* (supra); *Rabiu v. State* (1981) 2 NCLR (supra); *Bronik Motors and Anor v. Wema Bank* (supra).

Having expressed this opinion, I would go further to strengthen my position with the relevant provisions of the Extradition Act vis-a-vis the Constitution as a ground norm. This is necessary in view of the contention expressed by the appellant’s counsel that it is the Magistrate Court that has been vested with the jurisdiction to entertain extradition matters. It is pertinent therefore, to carefully note section 6 (1) and (2) of the said Extradition Act. It provides thus:

- (1) “A request for the surrender of a fugitive criminal of any country shall 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.
- (2) Where such a request is made to him, the Attorney-General may by an order under his hand signify to a magistrate that such a request has been made and require the magistrate to deal with the case in accordance with the provisions of this Act, but shall not make such an order if he decided on the basis of information then available to him that the surrender of the fugitive criminal is precluded by any of the provisions of subsection (1) to (7) of section 3 of this Act.”

In *Attorney-General Abia State v. Attorney General Federation* (2002) 6 NWLR (Pt. 763) p. 264, the Supreme Court of Nigeria, referring to Section 1 (1) and 1 (2) of the 1999 Constitution has emphasized and reiterated the hierarchy of our laws thus:

“The Constitution is what is called the ground norm and the fundamental law of the land. All other legislations in the land take their hierarchy from the provisions of the Constitution. By the provisions of the Constitution, the laws made by the National Assembly comes next to the Constitution; followed by those made by the House of Assembly of a State. By virtue of section 1 (1) of

the Constitution, the provisions of the Constitution take precedence over any law enacted by the National Assembly even though the National Assembly has the power to amend the Constitution itself.” Careful examination of the Extradition Act Cap. 125 will help ascertain its hierarchical provisions as enunciated by the Supreme Court in the A-G. Abia State’s case (supra). Section 4(2) of the 1999 Constitution provided that:- “The National Assembly shall have power to make laws for the peace order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in part 1 of the second Schedule to this Constitution.”

However, item 27 of the said part 1 of the second schedule listed “Extradition” as a subject which National Assembly could legislate upon. That being the case, the Extradition Act which came into operation on 31/1/1967 is protected by section 315 (1) which provides that: “Subject to the provisions of this Constitution; an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be:- (a) An Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws.”

Sub-section 3 of this section of the Constitution went a bit further to add that: “Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provisions of any other law, that is to say:-

- (a) any other existing law;
- (b) a law of a House of Assembly;
- (c) an Act of the National Assembly; or
- (d) any provision of this Constitution.”

On the strength of the provisions of section 4 (2) and 315 (1) and (3) above, it is not in doubt that the Extradition Act Cap. 125 of the Laws of the Federation 1990, being an existing law, deemed to have been made by the National Assembly shall continue to rate next to the Constitution in terms of precedence. Thus, the argument of the learned Counsel for the appellant that there is need for the legislature to cure what he called “a deficiency” is a clear misconception of the legal position of this issue. See the case of Federal Civil

Service Commission v. Laoye (1989) 2 NWLR (Pt. 106) 652 at 676; where the Supreme Court held that the Civil Service Rules though made long before the 1979 Constitution, but must to that extent be subservient to the 1979 Constitution. I must say that the learned Senior Advocate, with due respect did not give due attention to section 315 of the 1999 Constitution which is in pari material with section 274 of the 1979 Constitution which talks about “existing law”.

Therefore, the provision of the Extradition Law has on coming into force of the 1999 constitution started to have effect with such “modification” as may be necessary to bring them into conformity with the provisions of section 251 of the 1999 Constitution. It is trite law that where the constitution, as in this case has given a jurisdiction, it cannot be lightly divested. Where it is intended to be divested of the jurisdiction that has been assigned to it by the Constitution, it must be done so by clear express and unambiguous words and by a competent amendment of the Constitution, not by any other method. See *Nwonu v. Administrator-General Bendel State* (1991) 2 NWLR (Pt.173) 342. Consequently, the provisions of section 251 of 1999 Constitution having been solemnly ordained by “the people of the Federal Republic of Nigeria”, not by the National Assembly, wherein it expressly conferred exclusive jurisdiction on the Federal High Court on matters of extradition, in the exercise of their sovereign powers, cannot therefore be limited otherwise than by the same Constitution. The Second issue formulated by the parties for the determination of the appeal is whether the appellant can be said to be a fugitive criminal within the definition of section 21 of the Extradition Act Cap. 125, Laws of the Federation of Nigeria, 1990. Learned Senior Counsel has submitted on behalf of the appellant that the Extradition Act Cap 125, Laws of the Federation of Nigeria, 1990, does not apply to the appellant not being a fugitive criminal who was convicted and sentenced before being at large as envisaged by section 21(1) of the Act. The learned Counsel for the respondent on the other hand, has argued that by virtue of section 21 (1) (b) of the Extradition Act, that Act applies to a fugitive criminal. It will be recalled that upon the appellant changing his counsel, he applied by motion on notice to dismiss the suit on the ground that the provisions of the Extradition Act do not apply to the appellant. Hence, the ruling of the lower court refusing the application is the subject of the second consolidated appeal.

If I understand the learned Senior Counsel for the appellant very well, his contention is that the provisions of Section 21(1) of the Extradition Act has

defined a fugitive criminal to mean a person who having been convicted, but became unlawfully at large. That the accused person though convicted but became unlawfully at large before being sentenced is not a criminal fugitive as provided by the enabling Act and where enabling statute has provided an interpretation, court is duty bound to abide by that interpretation and no more. In the Black's law dictionary, the word "fugitive" is defined to mean one who flees, used in criminal law with the implication of a flight; evasion or escape from arrest, prosecution or imprisonment. But section 21 (1) of the Extradition Act defines "Fugitive Criminal" or, "Fugitive", to mean:

- “(a) any person accused of an extradition offence committed within the jurisdiction of a country other than Nigeria; or
- (b) 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.”

The simple rule of interpretation of statute is that statute should be construed according to the intention of the lawmakers. If words of the Statute are in themselves precise and unambiguous, then those words must be given their natural and ordinary meaning, I am of the firm view that the words of section 21 (1) of the Extradition Act admit no ambiguity and does not make sentence as a condition precedent for the application of extradition cases. In *Egbe v. Alhaji* (1990) 1 NWLR (Pt.128) P. 546, the Supreme Court held that it is the function of the Court or Judge when interpreting statutory provisions not to import words which do violence to the intent and meaning of the statutory provision. Similarly, it is wrong to read into an enactment an exception which it has not expressed and which will have the effect of depriving the person to be protected of that protection.

It is not in doubt, as was admitted in the appellant's brief, that the appellant was charged, tried and convicted by a competent court in the United States of America, but fled that country before the expiration of the sentence imposed on him. In the final analysis having resolved the two issues in favour of the respondents, I find that this consolidated appeal lacks merit, I dismiss it. The case is hereby remitted to the lower court to conclude expeditiously the extradition proceedings initiated before it for the extradition of the appellant to the United States of America.

OGEBE, JCA: I had a preview of the judgment of my learned brother, Galadima, JCA, just delivered and I agree entirely with his reasoning and conclusion and I adopt it as mine.

M. D. MUHAMMAD, J.C.A.: I had a preview of the judgment just delivered by my learned brother, Galadima, JCA, with whose reasoning and conclusions, I entirely agree. The appeal raises an issue pertaining to construction of statute. This is a trite area of the law and his lordship has correctly stated the principle involved. Words that are clear and unambiguous must fetch their ordinary and plain meaning where the meaning of the statutory provision constitute a given controversy. The result of such an exercise in the instant case shows clearly that the appeal is bereft of merit and I equally so find and dismiss it. I abide by all the consequential orders reflected in the lead judgment too. Appeal dismissed.

Appearances

B. A. M. Fashanu, SAN, (with him, S. O. Modile, [Miss.]) For Appellants
Obi Agusiobo, Esq. (Senior Legal Officer, Federal Ministry of Justice) For Respondents

CASE 18

**IN THE COURT OF APPEAL
LAGOS JUDICIAL DIVISION
ON TUESDAY, THE 18TH DAY OF DECEMBER, 2007**

SUIT NO: CA/L/521/04

**BEFORE THEIR LORDSHIPS
CLARA BATA OGUNBIYI JUSTICE, COURT OF APPEAL
PAUL ADAMU GALINJE JUSTICE, COURT OF APPEAL
ADZIRA GANA MSHELIA JUSTICE, COURT OF APPEAL**

BETWEEN:

KAYODE LAWRENCEAPPELLANT

AND

ATTORNEY-GENERAL OF THE FEDERATION.....RESPONDENT

EVIDENCE

Bias: Proof of bias by court in extradition proceedings

ADZIRA GANA MSHELIA, J.C.A. (Delivering the Leading Judgment): This is an interlocutory appeal from the decision of the Federal High Court Lagos delivered on the 8th of October, 2004 refusing an application for transfer of suit No FHC/L/219C/04 to another Federal High Court Judge for hearing and determination on ground of likelihood of bias. An application for the extradition of the appellant to the United States of America was made by the respondent and same was filed at the Federal High Court Lagos. The matter was assigned to Shuaibu J. for hearing and determination. In the course of hearing the application, the appellant expressed dissatisfaction with the way and manner the trial Judge was handling the matter. Appellant then, filed a motion on notice dated 7th day of October, 2004 praying for an order permitting, allowing and or authorizing the transfer of the suit No FHC/L/219C/2004 from Federal High Court No 8 (Annex) presided over by Shuiabu J. to any other court and/or Judge of the Federal High Court, Lagos. On 7th day of October 2004 the motion was moved by appellant's counsel.

In a considered ruling delivered on 8th day of October, 2004 Shuaibu J. dismissed the application for transfer of the Suit to another Judge on the ground that there was absence of apparent bias or likelihood of same from the facts of this case. Aggrieved with this decision, appellant lodged his Notice of Appeal dated 11th day of October, 2004 which contained 7 grounds of appeal.

In compliance with the rules of court at the time the appeal was filed both parties filed their respective briefs of argument. Appellant's brief dated 24th day of February, 2006 was deemed filed and served on 1/11/06. While respondent's brief dated 8th day of February, 2007 was deemed filed and served on 12/03/07. Appellant's reply brief was also deemed filed and served on 5/07/07. When the appeal came up for hearing on 3/10/07 both counsel adopted their respective briefs of argument.

From the seven grounds of appeal filed, appellant distilled two issues for determination as follows: -

- 2.1 (1) whether having regards to the circumstances surrounding this case, it was proper for the learned trial Judge to preside or continue to preside and adjudicate over the case or refuse to transfer the matter to another Judge in view of the allegation of likelihood of bias against the Judge and apparent loss of confidence in the trial Judge by the Appellant (Grounds 1, 3, 4, 5, 6 & 7).
- (2) whether the hearing by the learned trial Judge of the Appellant's application for transfer in the circumstances of the case particularly in the face of allegation of likelihood of bias made against him does not contravene the principles of natural justice and therefore a nullity.

(Grounds 2).

The respondent formulated three issues for determination by this court. The issues are: -

- 2.0 (i) whether having regards to the facts and circumstances of the case, the trial court was wrong in refusing the Appellant's application for transfer of the case to another Judge.
- (ii) whether the learned trial Judge erred in law when he continued with the matter after it was reassigned to him by the Chief Judge after the courts vacation.
- (iii) whether having regards to the circumstances of this case, it can be said that the learned trial Judge was biased against the Appellant to warrant

the allegations of bias against the court as contained in the Appellant's Notice of Appeal and brief of argument in the matter.

I have examined all the issues filed by both counsel. Appellant did tie the two issues to the seven grounds of appeal filed. While respondent on the other hand failed to tie the three issues to any of the grounds of appeal filed by appellant. Before I proceed I find it necessary to determine whether issue 2 formulated by appellant and issue 2 formulated by respondent are competent or not.

As regards appellants issue 2 it is evident from the record of appeal that appellant allowed the trial Judge to hear the application for the transfer without objection. The said motion dated 7/10/04 the subject of this appeal was moved by the appellant without any complaint. Having failed to challenge the competence of the trial Judge to hear the application in the first instance, makes such complaint raised at this stage of the appeal to be regarded as a fresh issue. It was not part of the decision of 8/10/04 appealed against by the appellant. Grounds of appeal against a decision of a trial court must relate to that decision and should be a challenge to the ratio of the decision. A ground of appeal must arise from the Judgment. Where a ground of appeal is not related to the judgment of the court it becomes incompetent. See *Adelekan Vs ECU -line NV* (2006) All FWLR (Pt 321) 1213 at 1223 Paras B-E.

The position of the law is that an appellant will not be allowed to raise on appeal a point or issue that was not raised, canvassed or argued at the trial without the leave of the Appeal Court. The only exception is where issue of jurisdiction is involved, then it can be raised on appeal even though leave has not been obtained. See *IBWA vs Sasegbon* (2007) 16 NWLR (Pt.1059) 195; *Elugbe Vs Omokhafa* (2004) 18 NWLR (Pt 905) 319; *M.L.G. Kwara State Vs Oyebiyi* (2006) 10 NWLR (Pt 988) 520 at 333.

In the instant appeal, Ground 2 did not relate to or challenge the validity of the ruling of 8/10/04 appealed against. The complaint of the appellant as per the ruling of 8/10/04 was against the refusal of the learned trial Judge to transfer the case to another Judge for hearing since there was allegation of likelihood of bias against him. The fact that the trial Judge heard the application for transfer himself was not made an issue by the appellant at the court below. Since the appellant did not ask for leave to argue fresh issue on appeal Ground 2 should be is countenanced.

Consequently, Ground 2 and issue 2 arising from it, as well as the argument canvassed in respect of same are hereby struck out.

I have also observed that respondent's issue 2 did not arise from any of the seven grounds of appeal filed by the appellant. The issue of reassignment of the case to the learned trial Judge after vacation was not also mentioned in the ruling appealed against. It has to be noted that a respondent who did not cross-appeal or filed respondent's notice can only formulate issues from the grounds of appeal filed by the appellant, otherwise, the issues would be discountenanced and struck out. See *Nzekwu Vs Nzekwu* (1989) 2 NWLR (Pt 104) 373; *Edopkolo & Co Ltd Vs Seun -Edo Wire Ltd* (1989) 4 NWLR (Pt 116) 473 and *Adeniran Vs Ashabi* (2004) 2 NWLR (Pt 857) 405.

I agree with appellant's counsel that issue 2 should be discountenanced. For the reason stated hereinabove I will discountenance respondent's issue 2 as well as the arguments canvassed in respect of it and same is struck out. Having discountenanced appellant's issue 2 and respondent's issue 2, what is left to be considered in this appeal are appellant's issue 1 and respondent's issues 1 and 3. I have examined the contents of respondent's issues 1 and 3 as couched. Respondent just decided to proliferate it if not they could be treated as one issue just as couched by the appellant. In order to avoid repetition, I will treat issues 1 and 3 together as one issue because they are similar to issue 1 formulated by the appellant.

Appellant's issue 1 is whether having regards to the circumstances surrounding this case, it was proper for the learned trial Judge to preside or continue to preside and adjudicate over the case or refuse to transfer the matter to another Judge in view of the allegation of likelihood of bias against the Judge and apparent loss of confidence in the trial Judge by Appellant.

Grounds 1, 3, 4, 5, 6 & 7.

Appellant's counsel contended that the ruling of the learned trial Judge delivered on the 8th October, 2004 is manifestly oppressive as against the Appellant and a glaring attempt to prevent the Appellant a fair and unbiased hearing and determination of the case against him. It was contended that the court below dismissed the motion on Notice on the ground that no averment in the Appellant's affidavit specifically states the nature and/or the form of either the conduct or utterances that indicate bias on the part of the trial Judge. Learned counsel further contended that there was no basis for this line

of reasoning and went on to enumerate some conducts of the learned trial Judge. See page 4 of the Appellant's brief of argument. The learned trial Judge ought to have disqualified himself from hearing or further hearing the case and should have returned the file to the Judge originally handling the case or allow the case to be taken before any of the other Judges of the Federal High Court.

It was further contended that the learned trial Judge failed to balance the requirements of fair hearing with the requirements of hearing to be within a reasonable time. See *Salu Vs Ejesson* (1994) 6 NWLR (Pt 348) 22 at 40. It is settled law that justice must only be done but manifestly and undoubtedly be seen to have been done. See *Kwajaffa Vs Bank of the North* (2004) 5 SC (Pt 103) 134 per Pats Acholonu JSC.

In a further argument appellant's counsel submitted that appellant was not given adequate time and facilities for the preparation of defence contrary to section 36 (1) & (6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 as appellant prayed for 2 weeks and he was given 2 days' adjournment. Appellant's counsel relied on the case of *Udo Vs The State* (1988) 3 NWLR 316 where the Supreme Court held that a trial Judge must, grant an adjournment in a murder charge once the defence counsel is absent; at the hearing for the right of the accused to fair hearing is not only statutory but constitutional. Learned counsel contended that the trial Judge ought to have adjourned the case to await the Chief Judges directive instead of proceeding with the hearing despite the fact that appellant's counsel Adebayo Onifade, Esq. on 6/9/04 told court that appellant lost confidence in him.

It was further submitted that the impression of a reasonable man watching the conduct of the proceeding of the learned trial Judge is that the court had made up its mind on the case against the Appellant even before hearing him as the trial Judge took up the role of a Judge and a prosecutor at the same time. According to counsel there was real likelihood of bias on the part of the learned trial Judge. See *Metropolitan Properties Co. (F.G.C.) Ltd Vs Lannon* (1969) 1 QB 577 at 599 per Lord Denning M. R and *Okoduwa Vs The State* (1988) 3 NWLR (Pt 77) 333.

It is submitted further that when the learned trial Judge delivered his ruling, instead of adjourning the matter to enable appellant either decide on whether to appeal against the decision or file a counter-affidavit/defence to the Respondent's Extradition application the learned trial Judge called on the

Respondent to argue his application for Extradition of the appellant. That foreclosed appellant's constitutional right of appeal and/or right of defence. He said a citizen should not be denied the right of appeal conferred by the constitution. A matter coming up for ruling cannot properly be treated as coming up for hearing. See *F.B.N. Vs Ejikeme* (1996) 7 NWLR (Pt 462) 618 and *Okereke Vs NDIC* (2002) FWLR (Pt 100) 1392, at 1398. Learned counsel further submitted that the respondent did not file counter-affidavit to the affidavit in support of the motion seeking for transfer which is the subject of this appeal as such the averments being unchallenged are taken as correct and needing no further proof. The test is one of likelihood of bias and not actual bias need to be proved.

Respondent's counsel on the other hand submitted that the learned trial Judge was right in refusing the transfer of the case to another Judge as he had no power to do otherwise. Learned counsel contended that the power to assign or withdraw a case from a particular court is vested in the Chief Judge. See *S.G.B (Nig.) Ltd. Vs Aina* (1999) 9 NWLR (Pt. 497) 293 at 311 to 312 paras G-H and *Apavex Int. Co. Ltd Vs IBWA* (1994) 5 NWLR (Pt.347) 686 at 696 paras G-H. Where there is no bias, prejudice or likelihood of the same, whether express or implied is apparent from the facts of the case, there can be no basis for an order of transfer of a case to another Judge for trial. It was further contended that appellant's counsel never wanted the Respondent to move his application for the appellant's extradition that was why he brought frivolous applications for adjournments. The trial court only frowned at the delay tactics employed by the appellant to frustrate timely prosecution of the case and hence delay the course of justice in the matter. See *Omega Bank (Nig.) Plc. Vs OBC Ltd.* (2002) 16 NWLR (Pt 794) 483 at 519 paras B-C and *Okpoko Vs Uko* (1997) 11 WLR (Pt 527) 94.

Learned counsel contended that appellant was accorded every opportunity of presenting his case but he chose to throw it away himself by staying at home and requesting for unwarranted adjournments even when he was not the only counsel appearing in the matter. Counsel contended that it is trite that matters of adjournment are discretionary, thus, a court has a discretion to grant or refuse applications for unwarranted adjournments. Such adjournments are to be discouraged by the court itself or at worst reduced to the barest minimum, as most adjournments are designed to delay and defeat the course of justice and usually lead to miscarriage of justice. See *Akpan Vs The State* (1991) 3 NWLR (Pt 182) 646 at 661 and 662 para A where Supreme Court held that adjournments that have the above tendencies should be discouraged by the

court. See also *Saipen SPA VS Tefa* (2002) 16 NWLR (Pt 793) 410 at 431 paras D-F and *University of Lagos Vs Aigoro* (1985) 1 NWLR (Pt 1) 143. In a further submission, respondent's counsel contended that an application to the Chief Judge for a transfer of a case cannot act as a stay without the actual directive of the Chief Judge being obtained to that effect. To ask for adjournment because an application has been made to the Chief Judge without more, must especially an application made on a day the matter was slated for hearing, shows clearly the inordinate delay tactics employed by the appellant in the matter. It was contended that the trial Judge was right in holding that appellant did not employ due diligence in the defence of his case.

Furthermore, it was submitted on behalf of the respondent that an allegation of bias or likelihood of bias against a trial court is a very serious matter as it can be a disqualifying factor of such a Judge in the matter. Consequently, an appellate court faced with such an allegation must look for a strong and cogent evidence or proof of such an allegation before accepting or sanctioning it. See *MFA Vs Inongha* (2005) 7 NWLR (Pt 923) 1 at 25-26 Paras G-A and *Apavex Int Co Ltd Vs IBWA* (1994) 5 NWLR (Pt.347-8) 685 at 701 Paras F; *Adeniran Vs Ashabi* (2004) 2 NWLR (Pt 857) 375 at 392 Paras D-G.

On relevant consideration for determining existence of real likelihood of bias respondent's counsel referred to the Supreme Court decision in *Abiola Vs Federal Republic of Nigeria* (1995) 7 NWLR (Pt 405) 1 at 14 paras D-E. What the court looks at is the impression of right minded people. If reasonable people would think that, in the circumstances of the case, there was a real likelihood of bias, then the decision cannot stand, the basis of this is that justice must be rooted in confidence and confidence is destroyed when right minded people go away with the impression that the Judge was biased. See *Comm. For Local Government etc Vs Ezemuokwe* (1991) 3 NWLR (Pt 181) 615.

It was contended that the appellant's allegation against the trial Judge in the present appeal is not just unfounded but unfair, mischievous and calculated attempt to delay the course of justice in the extradition of the appellant. See *Ajibola Vs Popoola* (1997) 4 NWLR (Pt 498) 206 at 214 Paras A-B. Learned counsel further contended that the Judge in this case did not express any hostile opinion against the appellant and neither has he indicated partisanship in the matter. There must be real likelihood of bias, surmise or conjecture is not enough. See Apex Court decision in *Onigbede Vs Balogun* (2002) 6

NWLR (Pt 762) 1 at 22-23 Para C-A. It was further submitted that none of the situations mentioned in the case of PDP Vs KSIEC (2005) 15 NWLR (Pt 948) 230 at 255 Paras G and Udo Vs CSNC (2001) (Pt 732) 116 at 150 Paras G applies to the circumstances in the case at hand. It was submitted further that appellant was not denied any right of appeal as enshrined in S.241 of the 1999 Constitution.

Appellant was not only allowed the right to appeal but the proceedings were stopped to enable him prosecute the appeal. There was no defence filed in form of counter affidavit filed so the court was right to go on. See *Ogbanu Vs Oti* (2002) 8 NWLR (Pt 670) 582 at 591. Learned counsel further contended that appellant's failure to establish allegation of bias or likelihood of bias is fatal to his case. See Section 136 Evidence Act and *Omega Bank (Nig) Plc Vs O.B.C. Ltd* (2002) 16 NWLR (Pt 794) 483 at 518 Paras E-G. Learned counsel "submitted further that the right to fair hearing is a right that cannot be denied a litigant. However, the principle of fair hearing does not accommodate the notion that a litigant should take inordinate time to prosecute his case. In the instant case appellant was given sufficient time but he failed to prosecute his case. See *Saipem S.P.A. Vs Tefa* (2002) 16 NWLR (Pt 793) 410 at 430 Paras F-G.

Finally, learned counsel contended that there was no basis for an order of transfer, as there was no proof of bias or likelihood of bias either express or implied and urged the court to dismiss the appeal. See *OMPADEC Vs Incar (Nig) Ltd* (2001) 7 NWLR (Pt 712) 327 at 336 Para D. Furthermore, she contended that the court of appeal in the case of *Edosomwan Vs Erebor* (2001) 13 NWLR (Pt 730) 265 reiterated the need for counsel to refrain from levying unfounded allegations on Judges.

In the reply brief appellant's counsel maintained that not only was Appellant's confidence that justice would be done to him destroyed, right minded people watching the proceedings would have gone away with the impression that the Judge was biased. See *Commissioner for Local Government etc. Vs Ezemuokwe* (1991) 3 NWLR (Pt 181) 615. Learned counsel further submitted that there can be no exhaustive list as to what constitutes "personal interest" in a case. Counsel contended that rushing to hear or take the respondent's application for extradition of the Appellant on a day the matter was only coming up for ruling also goes to buttress their submission that there was bias or likelihood of bias on the part of the trial Judge. See *F.B.N Vs Ejikeme* (supra). Finally, learned counsel urged the

court to allow the appeal. In resolving issue 1, the question I will pose is whether, it was proper for the learned trial Judge to refuse the transfer of the matter when there was allegation of likelihood of bias against him. The word “bias” was defined in Black’s Law Dictionary (5th Edition) as an inclination, bent, a preconceived opinion or predisposition to decide a cause or an issue in a certain way which does not leave the mind perfectly open to conviction. The apex court held in *Kenon Vs Tekan* (2001) 14 NWLR (Pt. 732) 12 at 41-42 paras H - A, that bias, in its ordinary meaning is opinion or feeling in favour of one side in a dispute on argument resulting in the likelihood that the court so influenced will be unable to hold on even scale. In deciding whether a tribunal is partial and therefore disqualified from presiding over an enquiry, the court will not enquire whether the tribunal did, in fact, favour one side unfairly. The court looks at the impression of right minded people. If reasonable people would think that, in the circumstances of the case, there was a real likelihood of bias, then the decision cannot stand, the basis of this is that justice must be rooted in confidence and confidence is destroyed when right - minded people go away with the impression that “the Judge was biased”. See *Comm of Local Government etc Vs Ezemuokwe supra*; *Onigbede Vs Balogun supra* and *Awosika Vs Igbeke* (1999) 8 NWLR (Pt 616) 656 at 695.

Furthermore, the Supreme Court in *Abiola vs Federal Republic of Nigeria* (1995) 7 NWLR (Pt 405) 1 at 14 paras D-E state, inter alia, on relevant consideration in determining existence of real likelihood of bias thus :-

“The principle that a Judge must be impartial is acceptable in the jurisprudence of any civilized country and there are no grounds for holding that the law of Nigeria differs in this respect. Thus to disqualify a person from acting in a Judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or propriety) in the subject-matter of the proceedings, a real likelihood of bias must be made to appear not only from the material ascertained by the party complaining but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries”. See also *Apavex Int. Co. Ltd. Vs IBWA Supra*.

In the instant appeal the grounds for the allegation of likelihood of bias averred in paragraphs 4(a) - (c) of the affidavit in support of the motion on notice was reproduced and relied upon by the learned trial Judge in his ruling delivered on 8/10/04 the subject of this appeal (see page 108 of the record). Paragraph 4(a) - (c) of the supporting affidavit read as follows: -

“(a) Hon. Justice Shuaibu has made several open remarks about the Accused/Applicant which frightened and robbed the accused/Applicant’s confidence in the independence and impartiality of his court.

(b) The overall conduct of Hon. Justice Shuaibu with regard to this case leading to the withdrawal of Adebayo Onifade & Co. (of Counsel previously representing the Accused/Applicant) clearly indicates that His Lordship has an interest in the matter raising reasonable fear of likelihood of bias. Attached hereto and marked as Exhibit “FA1 and FA2 are application for transfer of this suit lodged With the Honourable Chief Judge dated Friday September 3rd, 2004, by Adebayo Onifade & Co. (of Counsel previously representing the Accused/Applicant and medical extract made by D. Sibudu of the Federal High Court clinic, who resuscitated the Accused/Applicant following his collapse from shock received from His Lordship utterances and pronouncement on the 20th August, 2004 respectively.

(c) Notwithstanding the above, Hon. Justice Shuaibu has insisted on trying the matter at all cost despite objection of the Applicant and his solicitors.”

The learned trial Judge after considering the grounds referred to supra, refused the application on the ground that there was absence of apparent bias or likelihood of same from the facts of this case. In order to appreciate the complaint of the appellant, I find it necessary to briefly state the facts as appearing in the record of proceedings from 17/8/04 to 8/10/04 when the ruling subject matter of this appeal was delivered. On 17/8/04 the application for extradition was mentioned and it was adjourned to 20/8/04 for hearing at the instance of appellant's counsel Mr. Onifade. On 20/8/04 appellant slumped in court so the matter was further adjourned to 31/8/04. On 31/8/04 one Mr. S.M.O. Mohammed asked for a stand down of the case to enable him reach the leading Counsel Onifade Esq. The matter was stood down till 12.00 noon. When the court resumed sitting at 12 noon, Mr. Mohammed sought for adjournment because leading counsel Onifade Esq. was not in court. Respondent's counsel objected and urged the court to strike out the preliminary objection filed by appellant which was fixed for hearing that day. Mr. Mohammed failed to argue the notice of Preliminary objection. Consequently, it was struck out by the court, the trial Judge remarked that in absence of cogent and convincing reason advanced for the adjournment same cannot be granted as adjournment could not be granted as a matter of course. The court, however, adjourned the hearing of the main application to 1/9/04 since the date was fixed for hearing of the notice of preliminary objection. On 1/9/04 Onifade Esq. filed a motion on notice and notice of preliminary objection. The motion on notice was heard that date and ruling delivered

same date. Other motions were fixed against 6/9/04 for hearing. On 6/9/04, Onifade Esq. intimated the court that he applied to the Chief Judge for the transfer of the case to another court. He applied for adjournment to await the directive of the Chief Judge. The reason for the adjournment was not accepted by the trial Judge. At this stage Appellant's counsel Onifade Esq. applied to withdraw his appearance from the matter. The court granted the prayer. The pending notice of preliminary objection was struck out on the application of counsel to the applicant now respondent. The court adjourned the matter to 20/9/04 to enable appellant engage services of a new counsel. On 20/9/04 the matter was adjourned at instance of counsel to the applicant now respondent because defendant now appellant was not represented. On the next adjourned date being 23/9/04 one Femi Atoyebi SAN appeared with Femi Akande, Esq. for the defendant now appellant. Atoyebi SAN still maintained that the case be transferred to another court because he could not get justice. He opted to await the Chief Judge's formal response to the application. The court further adjourned the application to 5/10/04 due to the absence of applicant's counsel. But the trial Judge declined to adjourn or stay proceedings to await the Chief Judge's directives. On 5/10/04, defendant now appellant was in court but his counsel was absent. There was a letter from defence counsel seeking for adjournment which was served on applicant's counsel. Incidentally the letter was not served on the court but since applicant's counsel did not oppose the application the learned trial Judge adjourned the matter at the instance of the defence counsel to 7/10/04 with an order that fresh hearing notice to issue on the defendant's counsel.

On 7/10/04 appellant filed a motion on notice seeking for the transfer of this matter to another court which is the subject of this appeal. One Akande appeared in court and moved the motion. Although counsel to the applicant Mrs. Ironumbe was not served with the motion, she did not object to the hearing of the application. On 8/10/04 the trial Judge delivered a considered ruling which appellant appealed against same.

From the above stated facts can the appellant's complaint of breach of fair hearing be sustained? What is required under the principle or concept of fair hearing is an ambidextrous standard of justice in which the court must or must be seen to be fair equally to both sides of the conflict or dispute. See *Amadi Vs Thomas Aplin & Co* (1972) 4 SC 428 and *Mohammed Vs Olawunmi* (1990) 2 NWLR (Pt 133) 458 at 485. Thus the principle of fair hearing as codified and entrenched in Section 36 of the 1999 constitution requires the court to decide a case on the evidence of or after hearing, both

parties to the dispute. This rule of fair hearing has been described by our apex court as not a technical doctrine but one of substance and the test or question applied to it is not whether injustice has been done or not from the judgment in question but whether a party entitled to be heard before deciding on his right was in fact given the opportunity of hearing. *Kotoye Vs C.B.N.* (1989) 1 NWLR (Pt 98) 419 at 448. Bearing in mind the above principles what is required to be applied to the facts and circumstances of the present case is the true test of fair hearing which is the objective impression of a reasonable person who was present at the trial and his view on whether from his observation justice has been done in the case. See *Whyte Vs Police* (1966) NWLR 215 at 219 and *Ekiyor Vs Bonor* (1977) 9 NWLR (Pt 579) 1 at 11-15. On the question of whether or not appellant was accorded fair hearing, it is my humble view, that a reasonable man who was hypothetically present in the proceedings before the Lower court will opine that the said court or trial Judge afforded the appellant ample opportunity to present his defence. The proceedings of 8/10/04 clearly shows that after the application for extradition was taken appellant's counsel was granted adjournment to another date to present his reply. The learned trial Judge did not compel appellant's counsel to present his reply on 8/10/04. It is worthy of note that from 17/8/04 when the matter was first mentioned to 8/10/04 when the application was argued appellant did not file any counter-affidavit. It is apparent that appellant made no effort to file the counter affidavit within the period mentioned, so he cannot be heard to say that he was not given adequate time to prepare his defence. Both parties in my humble view were treated fairly. Appellant's argument that he was denied opportunity to present his defence cannot hold water.

Appellant also complained about the conduct of the proceedings of 31/8/04. It is evident from the brief summary of what transpired in court on 31/8/04 that the learned trial Judge granted adjournment in respect of the main application for extradition. It was only the application for adjournment in respect of the notice of preliminary objection that was refused, which in my humble view was in order because the reason given by Mr. Mohammed the counsel who appeared on behalf of the appellant was unacceptable. Mr. Mohammed did inform the court that himself and Onifade Esq. were handling the case together. As rightly submitted by respondent's counsel Mr. Mohammed could conveniently move the notice of preliminary objection without having to wait for Onifade Esq. Adjournments which are designed to delay the proceedings should not be allowed by the court. See *Akpan Vs State* (1991) 3 NWLR (Pt182) 646 at 661 Paras 4 and 662 Para A.

Furthermore, it could be observed from the entire proceedings of the trial court that on all the occasions in which the trial Judge refused adjournment requested by the appellant, he gave sound reasoning which cannot be faulted. A court has the discretion to decide whether or not to grant an adjournment of its proceedings. In exercising such discretion, the court shall not only give the applicant the opportunity of obtaining substantial justice by hearing or granting him fair hearing but shall also ensure that no injustice is thereby caused to the other party. See *Saipem S.P.A. Vs Tefa supra*. Where trial court exercises its discretion bona fide, uninfluenced by irrelevant considerations and not arbitrarily or illegally, an appellate court will not interfere with the exercise of that discretion. See *Udensi Vs Odusote* (2003) 6 NWLR (Pt 817) 547.

Appellant alleged that the trial Judge made several open remarks about him which frightened and robbed his confidence in the independence and impartiality of the trial court. Appellant referred particularly to the proceedings of 20/8/04. For purposes of clarity I will reproduce same hereunder. The record of proceedings of 20-/8/04 are as follows :-

“ Defendant in court.

J. I. Pius Lorunmbe: Applicant

A.B. Onifade: Defendant (with S.M.O. Molid Defendant)

Mrs. Pius Lorumbe: The matter is for hearing of our application and I received a process this morning from the defendant that is a notice of preliminary objection of the application. I do not intend to file anything and we are ready to serve (sic) for the unfortunate incident to the defendant who slumped in court and now on admission at the Federal High Court Clinic. I will now concede for an adjournment.

Mr. Onifade: That is the position.

Court: The matter is adjourned to 31/8/2004 for hearing at 11.00 a.m.”

I have examined the above proceedings of 20/8/04. I find it difficult to appreciate the complaint of the appellant. The learned trial Judge adjourned the hearing because appellant slumped in court and was taken to Federal High Court Clinic for treatment. The proceedings speak for itself. I agree with the submission of respondent’s counsel that appellant did not state the nature of the utterances of the trial Judge indicating bias. Appellant ought to have deposed in the affidavit in support the alleged remarks or utterances made by the trial Judge on 20/8/04. This court cannot work on assumption. It is the duty of the appellant to place sufficient materials before the court

to substantiate his allegation. I therefore hold that appellant's complaint as regards the trial Judge's remarks or utterances is not tenable. It is also worthy of note that the power to assign or withdraw a case from a particular court is vested in the Chief Judge. See Order 35 Rule (2) and (3) of the Federal High Court (Civil Procedure) Rules 2000 and *S.G.B. (Nig.) Ltd Vs Aina* (1999) 9 NWLR (Pt 619) 414 at 426 Paras G-H.

In *S.G.B. (Nig.) Ltd Vs Aina* supra the Court of Appeal held that it is within the administrative power of the Chief Judge to assign cases to courts and he could in the exercise of this power withdraw a case from a court to which he has earlier assigned it and place it in another court not necessary in the same Judicial division. See also *Apavex Int. Co. Ltd v. IBWA* (1994) 5 NWLR (Pt 347) 685 at 696 Paras G-H. In the instant case it was the Chief Judge that assigned the case to Shuaibu J. for hearing and determination. After the appellant petitioned the Chief Judge that the matter be removed from his court to another court, the Hon. Chief Judge did not sanction the request. Shuaibu J. was directed to continue with the case despite the allegation of likelihood of bias on his part raised by appellant in his petition. Had it been the Chief Judge found substance in the allegation as stated in the Petition attached to the motion for transfer as Exhibit 'FA1' (see page 96 of the record), the matter would not have been returned to Shuaibu J. for continuation.

Under the circumstances, the trial Judge had no power to transfer the case to another Judge. Having examined the entire proceedings of the trial court reproduced supra, the question is, can it be said that appellant has established the allegation of bias or likelihood of bias on the part of the trial Judge. In other words, can right-minded people go away with the impression that "the Judge was biased." Without much ado, it is my humble view that no reasonable person in all the circumstances might suppose that there was an improper interference with the course of justice. An allegation of bias or likelihood of bias on the part of a Judge is a very serious matter and as it is a disqualifying factor, it should not be taken lightly but seriously. As rightly submitted by respondent's counsel, there must be real likelihood of bias, surmise or conjecture is not enough. See *Onigbede vs Balogun* Supra. In *Omega Bank (Nig) Plc Vs O.B.C. Ltd* (2002) 76 NWLR (Pt 784) 483 at 518 Paras E-G the Court of Appeal had this to say:- "Proof of allegation of bias or likelihood of bias on the part of Judge entails a description of the issue before the court and must therefore be supported by clear, direct, positive,

substantial, unequivocal, real and solid evidence. It is not enough that a party alleging it is suspicious and not at ease with the ruling of the Court.”

The fact that the trial Judge refused application for adjournment on some occasions is not enough proof of allegation of likelihood of bias on his part. Where a party or his counsel orchestrates a plan designed to foist a situation of helplessness or naivety upon a court, it is the duty of the court to assert its control over the proceedings before it. See *Fagbule vs Rodrigues* (2002) 2 NWLR (Pt 765) 188 at 207. The contention of appellant’s counsel that the depositions in their supporting affidavit should be accepted as correct and require no further proof since respondent did not file counter affidavit to the motion for transfer is not tenable. The statement of the law that there is a presumption that unchallenged and uncontroverted averments are deemed admitted do not hold in all situations. Where averments in affidavit in support of an application are contradictory or if taken together are not sufficient to sustain the applicant’s prayers a counter-affidavit in challenge of such averments would manifestly become unnecessary. See *Ejefor vs Okeke* (2000) 7 NWLR (Pt 665) 363 at 369. In other words, every case must be treated according to its given set of facts and circumstances. In the instant case, by the nature of the allegation the burden is on the appellant to substantiate the allegation of likelihood of bias on the part of the trial Judge. The position of the law is that he who asserts, must prove the assertion by cogent and credible evidence. See sections 135 - 137 Evidence Act 1990. I am of the humble view that the appellant has failed to discharge the burden placed on him by law. I hold that no reasonable person in all the circumstances might suppose that there was an improper interference with the course of justice. In the circumstances since there is, no bias, prejudice or likelihood of the same, whether express or implied is apparent from the facts of the case, there can be no basis for an order of transfer of a case to another Judge for trial. I am of therefore of the firm view that the learned trial Judge rightly refused the application to transfer the matter to another Judge.

In the final analysis, I would resolve issue 1 in favour of the respondent. Grounds 1, 3, 4, 5, 6, and 7 from which issue 1 was distilled are dismissed. I also wish to note that appellant’s issue 2 as well as Respondent’s issue 2 have already been struck out. Consequently, the appeal fails and is dismissed. I affirm the decision of the trial Judge delivered on 8/10/04. I make no order as to cost.

PAUL ADAMU GALINJE, J.C.A: I have read before now the judgment just delivered by my learned brother Mshelia, JCA and I agree with the reasoning contained therein and the conclusion arrived thereat. My learned brother has treated all the issues raised exhaustively, as such I have nothing to add. I adopt the judgment as mine and I also dismiss the appeal.

There is no order as to cost.

CLARA BATA OGUNBIYI, J.C.A.: I have read in draft the judgment just delivered by my brother Mshelia JCA and I agree that the appeal has no merit and should be dismissed. I would however briefly wish to say a few words in buttress or the judgment. The concept of bias is self-defeating and a limiting factor affecting the jurisdictional powers of the judge. Any proven act thereof, if not checked, would certainly serve a derogative and erosive confidence in the performance of a judicial process. In other words, by the very proven act of bias same would operate in slighting the exalted office by the public and thereby bringing to question and disrepute the continued upholding of the office sworn to by a judicial officer. It is impairing and a serious act of castigation on the integrity, personality of the exalted office sworn to be upheld.

The consequential effect and seriousness of the allegation should not be treated with levity but that calling for an objective and critical analysis. The appellant has an unfettered burden to prove the allegation of bias against a judicial officer. An objective and a reasonable man's test should be the acceptable determining yardstick to be applied. This is because bias connotes perversion of justice. Any element of an existing likelihood of fear, and intimidation would be a defeating factor, as parties should not be allowed the latitude of picking and choosing a court. To do otherwise would certainly pose a serious threat to the very foundational set up of our judicial system, and thereby leaving same at the mercy of manipulators: Their Lordships of the apex court for instance have in the case of *Abiola v Federal Republic of Nigeria* (1995) 7 NWLR (Pt.405) page 11, laid down the test of real likelihood of bias. At pages 23 and 24 Uwais JSC (as he then was) said:

"The test of a real likelihood of bias which the courts have applied is based on the reasonable man who is fully apprised of the facts involved. Thus in the case of *Metropolitan Properties Co. (F.G.C.) Ltd. v Lannon & Ors.* (1968) 3 All ER 304, Lord Denning, M. R. remarked as follows on page 310 thereof: -

"...In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal or whoever it may be who sits in judicial capacity. It does not

look that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right minded persons would think that, in the circumstance there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand ...never the less, there must appear to be a real likelihood of bias. Surmise or conjecture is not enough. Justice must be rooted in confidence which same is destroyed when right minded people go away thinking:- “The judge is biased.”

Other related authorities are: *Olue v Enenwali* (1976) 1 All NLR 70 at 76; *Deduwa v. Okorodudu* (1976) 1 NMLR 236 at 247.

Justice is not a one-way ball game, but to all parties concerned inclusive of the court, which should be given a free hand in the determination of all cases without fear or favour. Aspersions of bias is an intimidating factor and there can be no justice where fear exists. Judicial officers are guided by their oath of office. Deviating there from would not only be injurious to the parties and the society but to the foundational set up of the very judicial system to which the judges are to pay allegiance. A consequential effect of bias is far reaching and devastating. The proof and existence of such unfortunate malaise should be stamped out with the quickest dispatch. In the same way a deliberate, calculated, and an unfounded allegation should also be condemned in very strong terms, as it is the case at hand. The appeal has no merit. I also endorse the lead judgment of my brother Mshelia JCA that same be and is hereby dismissed in the same terms. The learned trial judge should therefore proceed with the matter before it.

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Ayo Olorunfemi with O. Thomas for Appellants

(Mrs) P. I. Ajoku for Respondents

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