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Examination of the challenges facing the law on exchange of fugitives between Zanzibar and other jurisdictions

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Abstract
Customary international law and treaties have evolved over the centuries by the willing and active commitments of nations among other things to subdue criminal tendencies by punishing fugitive offenders who attempt to escape from justice by seeking refuge in other nations. The law which regulates extradition in Tanzania is the Extradition Act, Cap.368 (Act. No.15/1965). Under Section 1, the Act applies both in Mainland Tanzania and in Zanzibar. Although extradition by its nature is a non-union matter as it relates to legal affairs but it is regulated as if it is union matter. One of the problems of this research is that, Zanzibar cannot enter into extradition agreement as such matter is an international one and Zanzibar does not have qualities of a State with mandate to enter in international treaties. Another problem is the difficulties to initiate procedures for arresting fugitive from Zanzibar particularly when a person faces certain criminal charges and decides to run away from Zanzibar to escape prosecution. The methodology used in this study is library oriented. It also dwelled on the finding information from legal institutions and knowledgeable people by questionnaire and interview. The research found that arresting a person under extradition requires following procedures which are provided for in the respective law, to initiate extradition procedures in Zanzibar means a fugitive is brought before the court under unlawful procedures. The research recommended the existing law on extradition should be amended to consider the situation of Zanzibar on the matters relating to extradition.

Keywords: extradition, fugitives and treaties

Introduction

It is a long time principle under international law that a civilian of a particular state must be tried by the domestic courts of the country of his nationality or citizenship. The principle is explained in Latin maxim *jus de non evocando.* The rationale behind the principle was to prevent miscarriage of justice when a person is tried by foreign court or tribunal for the matter which happened in the jurisdiction of another state. The speedy global socio-economic and political changes sometimes resulted to notable consequences to the legal development and principles. For instance, the development of technology has led people to situate in one jurisdiction and to commit offences in another jurisdiction. Some of them commit offences in one jurisdiction and immediately flee to another jurisdiction.

At first, the world nations applied the principle of asylum which prohibited the asylum seeker from being forced to return back to their homes. It was believed that such seekers were in dangers of being persecuted when they go back to their countries. It is especially those who run away because of political problems. These people were protected under International Covenant on the Status of Refugees of 1950. However there are some people who commit crimes in one jurisdiction and then run away to another jurisdiction in order to go away from being prosecuted and not running away from the problem of persecution. These people under international law do not deserve asylum. They are required to be sent back to the countries where they committed crimes in order to face their charges. These people are called fugitives.

In order to deal with the problem of fugitives, the international community has established something called extradition. It is not an international custom but rather a matter of bilateral agreement. The states are required to sign agreements to exchange the escaped criminals and offenders (fugitives).

Over centuries, extradition has become one of the key factors to deliver justice to the spectacular victims of international crimes. The scope of international crimes has also been expanding from the earlier times with the intention of seeing that no individual can get away with freedom. The world today has undisputedly experienced a remarkable international relations and cooperation. Crime previously restricted to the territorial limits of states has now shed a harsh light on a new scene with increasing international changes which is becoming increasingly strong and complex due to the law of extradition.

Background and Problem of the Paper

Tanzania is a united republic; Tanzania Mainland on one hand and Zanzibar on another. There are matters which are union ones while others are not, legal affairs are among non-union matters. That is to say Tanzania Mainland and Zanzibar do not share common ministers for legal affairs, no common Attorney Generals and no common judiciary except the Court of Appeal of Tanzania. Zanzibar has internal sovereignty but it does not have external sovereignty. Within Zanzibar, there is government with full authority but externally the government of Zanzibar has no

legal recognition. In 2002, the Court of Appeal of Tanzania in the treason case (2002) which originated from Zanzibar said that treason cannot be committed in Zanzibar. The reason behind this is that treason is the offence against the state and Zanzibar does not have qualities of the state which are required under international law (Montevideo, 1933). The judgment of the court in this case comes up with very significant effect that Zanzibar has no external jurisdiction. It implies that Zanzibar cannot engage in the international relations.

By its very nature, extradition is a matter of international relations. It is a product of diplomatic arrangements and attained through signing of treaties. The question which is asked here is how Zanzibar can enter into extradition agreement while such a matter is international one and Zanzibar does not have qualities of a State in one hand and which Attorney General stands on behalf of Zanzibar on such matter provided that legal affairs is non-union matter in Tanzania. Therefore, the main aim of this paper was to examine the position of law and practical situation on the question of extradition in Zanzibar so as to see its very nature and practical implications in these islands.

Methodology

The qualitative design was used to obtain the responses to questions from the respondents like; what are the challenges which face exchange of fugitives between Zanzibar and other jurisdictions. The rationale of choosing this research design was to enable the researcher to hand the issue on the spot and to show the challenges facing the law of Extradition in Tanzania. The target population was constructed by people who had knowledge, experience or at least ideas on Extradition situated in Zanzibar.

A total of 52 respondents were involved to provide information about the study investigation using purposive technique. The reason behind using purposive sampling was due to the fact that this helped the researcher to choose respondents with specified characteristics from legal affairs. Primary data was collected using interview and questionnaire survey from the targeted respondents in order to know the reality of what is experiencing on Extradition matters. Descriptive analysis was used for data analysis through the quotations of the respondents.

Findings

Zanzibar faces serious challenges in the exchange of fugitives with other jurisdictions. There is absence of diplomats in Zanzibar. The diplomats are found in Mainland Tanzania and they represent their countries in the United Republic of Tanzania. Practically, it implies that their representation covers Zanzibar as well. However, they cannot initiate extradition process with Zanzibar because inside United Republic of Tanzania, Zanzibar has internal sovereignty in such a way that it is not everything that it can be done by the government of United Republic.

The minister mentioned in the Extradition Act has no jurisdiction in Zanzibar. The Extradition Act directs that the diplomat who wants extradition process to take place is required to inform minister for legal affairs. This minister holds office which in fact non-union. On the other hand, it is the minister who has no power to order anything in Zanzibar concerning legal affairs. One may think that he has to consult the minister of such office in Zanzibar but it is not a solution as well.

Another challenge is that the magistrate who is empowered to issue a warrant does not exist in Zanzibar court structure. Under the Extradition Act, the magistrate who may issue warrant for the arrest of fugitive is resident magistrate court. Unfortunately, this magistrate does not exist in Zanzibar. Even if the minister for legal affairs of Tanzania requests the minister for such affairs in Zanzibar to apply for arrest, then no magistrate in Zanzibar has jurisdiction to give such warrant. That is to say, when the fugitive is in Zanzibar he/she cannot be arrested under the existing procedures.

Finally, it is noted that when Zanzibar initiates the process to arrest a person abroad, there is every possibility that such person is going to be presented before the court wrongly. When a person is wrongly brought before the court, then the whole trial becomes a nullity. This position was laid down by the English Court of Appeal in the famous helicopter case. In such a case, the appellant was arrested in South Africa after organization of informal procedures between English police and South African police. When he informed the court on such matter, the court acquitted him.

Conclusion and Recommendations

Conclusion

Extradition is the question of international law. The country which wants to engage in the extradition must sign treaty. The treaty which is signed is enforced under international law. This means that a country which may enter into extradition treaty must have capacity to enter into international relations. The capacity helps such a country to transact internationally on various matters.

Zanzibar as a country has only internal sovereignty. It does not possess capacity to acquire international recognition. It cannot enter into international relations. This means that the question of extradition has a number of complications in Zanzibar. The way Zanzibar is treated is different from the way, it is internally.

Recommendations

First, the existing law on extradition should be amended to consider the situation of Zanzibar on the matters relating to extradition. The minister of foreign affairs must be required to play part in extradition and not the minister for legal affairs because this minister has no legal power in Zanzibar. This may help to cure the problem of absence of jurisdiction to political figures recognized in the laws.

Secondly, the Constitution of United Republic of Tanzania should emphasize on working in good faith on matters relating to extradition. There is no need to make this question a political one while it is typically a legal matter. The law should be used to regulate it.

Thirdly, the existing Act refers old extradition structure; there is a need to be amended in order to incorporate the actuality of Tanzania extradition situation.

Fourthly, extradition law should be highly encouraged to be considered by criminal law enforcement agencies in Tanzania. There is a need for these agencies to be made aware of such law so as to understand what to do whenever it appears necessary to do so.

Fifthly, the union trial court should be established and special legal arrangement for communication in order to

deal with the issues concerning international relations.

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