

**PERISCOPIC AND LEGAL ANATOMY OF EXTRAORDINARY RENDITION:
REVISITING THE RE-ARREST OF MAZI NNAMDI KANU BY NIGERIA**

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Abstract

The need to combat global terrorism in the 21st century cannot be over-emphasised as being one of the challenges of globalisation. Given the transnationalism of crime and criminalities, there is always the need to arrest and repatriate fugitives or suspects to face justice, which is often done by treaties. However, there are times when the reality of international relations will not practically support the usual due process, thereby creating challenges to criminal justice. This reality often leads to alternative measures to attain justice. Following the terrorist attacks on the United States on the 11th of September 2001, more than ever before, the country authorised its Central Intelligence Agency to embark on an extraordinary rendition programme that would foster the arrest and detention of any suspect, especially the terrorist. Since then, the practice has been ongoing without any global check, although widely condemned. The Nigerian fugitive, Mazi Nnamdi Kanu was rearrested and repatriated to Nigeria in 2021 after a few years in exile. This article discusses extraordinary rendition as conceptualised in international law with the case of Mazi Nnamdi Kanu in view to determine the validity or otherwise of the widely circulated speculations, especially by his lawyers following his re-arrest that he was extraordinarily rendered by the Nigerian government in conspiracy with Kenyan government. The article found that, given the elements of extraordinary rendition and the practice, Kanu's re-arrest was not within the ambit of extraordinary rendition which is often hallmarked with human rights violations, illegal detention, transfer to another foreign country for interrogation, torture and many more without any judicial process. The article recommends that because extraordinary rendition violates human rights, the United Nations needs to develop a specific global Convention to tackle it forthwith for international human rights protection to be a reality as conceived.

Keywords: Extraordinary, Human Rights, Nigerian, Nnamdi Kanu, Rendition and United States

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2. Introduction

Generally, in public international law, to transfer a suspect or fugitive from one country to the state requesting him or her for criminal trial or adjudication, the normal procedure is 'extradition', which is based on bilateral and or multilateral extradition treaties.¹ However, since the early 1990s and progressively till date, the United States Central Intelligence Agency, together with other government agencies in America, has been using an intelligence-gathering programme that involves the transfer of foreign nationals suspected to have been involved in terrorism to detention and also subject them to interrogation in countries where in the opinion of Central Intelligence Agency (CIA), the federal and international legal safeguards do not apply.² Under this internationally 'unpopular' programme, suspects are detained and interrogated either by United States(U.S.) personnel at detention facilities run by the U.S. outside her sovereign territory or are handed over to the custody of foreign agents for interrogation. Whichever approach is adopted, interrogation methods that are used do not comply with federal and internationally recognized standards. This programme is commonly known as "extraordinary rendition".³

This internationally aberrant and hard-line practice of secret detentions, abductions on foreign territory, and transfers without respect for due process and the rule of law is a major concern in public international law.⁴ Without a doubt, to enable a suspect to face the law for any charge levied against him, international law recognises the lawful means of arresting and repatriating a fugitive or suspect who has absconded from one country to another.

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¹ J. A. E. Vervaele; 'Rendition, Extraterritorial Abduction, and Extraordinary Rendition', <<https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0171.xml>>

DOI:10.1093/OBO/9780199796953-0171 accessed 14 January 2026.

² See 'Fact Sheet: Extraordinary Rendition' December 6, 2005<<https://www.aclu.org/other/fact-sheet-extraordinary-rendition>> accessed 14January 2026.

³ M. Nino; 'The Abu Omar Case in Italy and the Effects of CIA Extraordinary Renditions in Europe on Law Enforcement and Intelligence Activities' *Revue internationale de droit penal*, 2007/1 Vol. 78 | pages 113 - 141 at page 115. <<https://www.cairn.info/revue-internationale-de-droit-penal-2007-1-page-113.htm>> accessed 4 February 2025.

⁴ Ibid. The international Human Rights Laws frown at the practice of extraordinary rendition for all intents and purposes because it lacks due process known to law. It also encourages human rights violation.

The re-arrest and or abduction of Nnamdi Kanu, the leader of the Indigenous People of Biafra (IPOB) in 2021 and his repatriation back to Nigeria to continue to face his trial pending in the Nigerian court made the country to be at the centre of focus of the global camera on extraordinary rendition. This is particularly so because it seems there were doubts and/or confusion as to how and where exactly the foremost leader of the neo-Biafran separatist group was caught and brought into Nigeria on the 29th of June 2021.⁵ It is no news that Nnamdi Kanu has been standing trial for treasonable felony and related offences in Nigeria since 2015 before he fled the country in or about September 2017 under seemingly mysterious circumstances. His dramatic escape from Nigeria stalled his trial until recently.⁶

It is also needless to state that just as the escape of Nnamdi Kanu from Nigeria in 2017 was mysterious, so to say his re-arrest outside Nigeria in 2021 and forced return was likewise dramatic. To date, the Nigerian government has refused to officially disclose to the world how Nnamdi Kanu was brought back to Nigeria despite the clamour for the same. While the details of how exactly Kanu was captured and brought back to Nigeria remains mucky and speculative, it was rumoured here and there that he was arrested in Brazil, where he went to enjoy himself with his side chick. On another note, rumour also had it that he was captured in the Czech Republic, where he went to arrange for weapons on behalf of Eastern Security Network fighters. A more laughable rumour was that he voluntarily surrendered himself to Nigerian authorities. The seemingly preponderant circulated rumour about his arrest and repatriation to Nigeria was the theory that he was captured in Kenya. All these were rumours around his case.

Despite all the speculations, all that the Honourable Attorney-General and Minister of Justice said in sum was that Kanu was re-arrested outside Nigeria and has since been brought to Nigeria for the continuation of his trial. No explanation was provided about his re-arrest strategy and the process of bringing him back to Nigeria. Based on this, the speculation remains so tense and high within legal communities to make a belief that Kanu was indeed extraordinarily rendered to Nigeria as opposed to the due process of extradition known and generally acceptable in international law. His lawyers 'made a mountain' out of the issue, as they loudly announced to the whole world that the

⁵ E. Ugwuonye, 'Nnamdi Kanu: The First Successful Extraordinary Rendition Case in Nigeria' <<https://www.eculaw.com.ng/nnamdi-kanu-the-first-successful-extraordinary-rendition-case-in-nigeria/>>accessed 14 January 2026.

⁶ Ibid.

repatriation of Nnamdi Kanu to Nigeria was nothing less than an extraordinary rendition. Using a doctrinal method, this article aims to answer some agitating questions around Kanu's case in Nigeria, such as: what is an extraordinary rendition? How is extraordinary rendition different from extradition? What is the attitude of international law to extraordinary rendition? Does Nnamdi Kanu's re-arrest saga and forced return to Nigeria fall within extraordinary rendition? Is there any human rights implication of extraordinary rendition and many more? The article is segmented into eleven parts discussed *seriatim* with some recommendations made in conclusion.

1. Transnationalism of Crimes and Internationalism in Criminal Justice System

Transnationalism of crime suggests that crimes have actual or potential impact across national borders and that intrastate crimes can offend fundamental values of the international community. According to Lautensach and Lautensach, transnational crimes are simply offences that cross international borders or which affect the interests of more than one state.⁷ Transnational crimes exploit the interconnected nature of our modern trading, transportation, and transactional systems that move people and commerce throughout the global economy and across state borders.⁸ Therefore, countering transnational crimes requires an integrated and comprehensive approach.⁹ Transnational organised crime is also embedded in the transnationalism of crimes and it is an advanced stage of international criminalities.¹⁰ Transnational Organised Crime was also referred to as "those self-perpetuating associations of individuals who operate transnationally for the

⁷ J. Wilson; 'Transnational Crime' in A. Lautensach and S. Lautensach (Eds.) (2020), *Human Security in World Affairs: Problems and Opportunities (2nd edition)*, Victoria, BC: BCcampus. <<https://opentextbc.ca/humansecurity/>> accessed 19 June 2024. See also <<https://opentextbc.ca/humansecurity/chapter/transnational-crime/#footnote-61-1>> accessed 09 March 2025. "In 2000 the UN Convention on Transnational Organized Crime defined an offence as transnational if it meets one of these four conditions: if it is committed in more than one state, if it is committed in one state but a substantial part of its preparation, planning, direction, or control takes place in another state, if it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state, and finally, if it is committed in one state but has substantial effects in another state."

⁸ United States 'Strategy to Combat Transnational Organized Crime' Addressing Converging Threats to National Security, Published JULY 2011. <https://obamawhitehouse.archives.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf> accessed 09 March 2025.

⁹ Ibid.

¹⁰ Ibid. See the Preamble to United States 'Strategy to Combat Transnational Organized Crime' Addressing Converging Threats to National Security, Published JULY 2011. There is no single structure under which transnational organized criminals operate; they vary from hierarchies to clans, networks, and cells, and may evolve to other structures. The crimes they commit also vary."

purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/ or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms.”¹¹ The transnationalism of crime gave rise to the internationalism of the criminal justice system which is all about the development of the international criminal justice system.¹² Globalization has exponentially produced and is still producing new challenges and changes to the world order in many facets of cross-border issues. Among the challenging aspects and the change are the international dimensions of crime, transnational organised crimes, especially terrorism, the impact of legal and illegal immigration, piracy and technological influences on global criminality.¹³ Criminal justice practitioners and researchers seem to be in dilemma on whether combating cross-border crime requires extra-judicial approaches and strategies or not.

While combating crimes municipally may admit a straitjacketed approach or conservatism in terms of policy formulation and implementation, wrestling down international criminals and criminalities may defy the conventional approach. In the rapidly changing global environment, the criminal justice system in the United States, for instance, as in some other jurisdictions, which consists of the police, court system, and correctional agents is facing and adapting to new forms of international criminalities which are often targeted at the America and its nationals.¹⁴

Also, given the growing recognition of the importance of international cooperation in countering global threats, the threats on state borders, especially America's borders, and the proliferation of new types of crime daily, the United States' response to these globalization challenges in the criminal justice arena will require major changes in both law and policy. This is a big problem on its own for a well-organised system with a globally respected model. The curiosity for solutions to the 21st-century threats left America with no option other than resorting to extralegal and extrajudicial approaches, part of which is extraordinary rendition. The evolution of extraordinary rendition in America is therefore a response to the country's national threats from transnational

¹¹ Ibid.

¹² These include INTERPOL, International Criminal Court etc.

¹³ R. H. Ward; 'The Internationalization of Criminal Justice', U. S. Department of Justice, Office of Justice Programs, 2000, Available at <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/internationalization-criminal-justice>> accessed 09 March 2025.

¹⁴ Ibid. These include terrorism, suicide bombing, piracy, cybercrimes etc.

criminalities with which the country was already engrossed as early as the first decade of the new millennium. Transnationalism of crime and internationalism in the criminal justice system remain the ignition of the practice of extraordinary rendition.

2. Discourse on the Key and Related Concepts

It is apposite to provide some insights into the key and related concepts in this paper. This will help in digesting the major issues that the paper seeks to address and also creates no room for ambiguity.

3.1 Rendition or Ordinary Rendition

The reality of life in international relations suggests that there are times when a suspect or a fugitive will escape to another state where it becomes difficult to bring him or her back to justice through extradition, which is the internationally legal means of handling such a case. Where this happens, it appears the only alternative means to get such a person to justice is through rendition. The term rendition is of Latin origin. It is derived from the Latin term *rendere* which connotes or means to "hand back," a meaning which is often lost in the current debate about rendition.¹⁵ Rendition, in legal terms, according to Frankopan, implies the transfer of a person from one jurisdiction to another.¹⁶ In the case of what is usually called "ordinary rendition," the procedure has kept its original meaning of handing over (or back) a person to another jurisdiction with better rights to instigate a trial.¹⁷ Rendition, *simpliciter* should not be seen as illegal and is indeed not illegal because it is different from extraordinary rendition, which is discussed hereinafter.

In modern international law usage, rendition to justice is a practice by which a suspected person is forcibly abducted in another state, but which should ordinarily occur when there is an outstanding warrant of arrest against the suspect in question and when the ultimate aim for the abduction is criminal adjudication in the abducting state.¹⁸ Such a forcible abduction may be

¹⁵ I. D. Frankopan, 'Extraordinary Rendition and the Law of War', North Carolina Journal of International Law, (2007) 33, 657-658. <<https://scholarship.law.unc.edu/ncilj/vol33/iss4/3>> accessed 14 January 2026. See also <<https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1854&context=ncilj>> accessed 09 March 2025.

¹⁶ Ibid

¹⁷ Bryan A Garner, Black's Law Dictionary 1298-99 (7th ed. 1999).

¹⁸ J. A, E Vervaele, op cit., note1.

executed unilaterally by the agents of the abducting state or with the cooperation of agents of the state where the person is abducted.¹⁹

From the perspective of Amnesty International, the term “rendition” refers to a variety of practices that involve the transfer of individuals from one country to another, mostly done by the US authorities, without any form of judicial or administrative process like it is done in extradition. These practices are usually carried out in secret, and they include transferring the “war on terror” detainees into the custody of other states, assuming custody of individuals from foreign authorities, and abducting suspects on foreign soil.²⁰ It appears Amnesty International’s perspective did not draw any line between ordinary rendition and extraordinary rendition which is not the correct position in international law. The two concepts are not in any way the same.

3.2 Deportation and Extradition

Escaping from a jurisdiction or a community in an attempt to escape justice or to seek a greener pasture is not a new phenomenon, as it dates back to antiquity.²¹ The reason being that human instinct will either flee or fight in reaction to any perceived danger. Transnational mobility has not only increased but has also become easier and quicker than ever before given the modern international relations among states and advancements in transport technology, thereby offering fugitives multiple opportunities of destinations and the means to get there.²² Paradoxically, the same factors have also formed the key assets enabling states to track, arrest, and have fugitives extradited through the agreement and cooperation between and/or among states.²³

Deportation and extradition are forms of rendition, although rarely referred to as such, and involve the sending of a person to be tried or otherwise dealt with by another jurisdiction. Deportation and extradition in international law have fundamental differences, although, in practice, there is not

¹⁹ Ibid.

²⁰ Amnesty International “Rendition” and Secret Detention: A Global System of Human Rights Violation Question and Answer, <<https://www.amnesty.org/download/Documents/80000/pol300032006en.pdf>> accessed 09 March 2025.

²¹ United Nations Office on Drugs and Crime Country Office Nigeria; ‘Cases and Materials on Extradition in Nigeria’ <https://www.unodc.org/documents/nigeria/publications/Anti-Corruption-Project-Nigeria/Cases_and_Materials_on_Extradition_in_Nigeria.pdf> accessed 22 November 2021.

²² Ibid

²³ Ibid

much difference.²⁴ Deportation is an expulsion by the executive agency of an alien whose presence in a country is deemed unlawful or detrimental. Deportation has often had a broader meaning, including exile, banishment, and the transportation of criminals to penal settlements.²⁵ Under Roman law, the concept of deportation, historically in its original usage, connotes or describes a form of banishment for life from a society to a foreign country, mostly an island. In the initial period, deportation was often inflicted upon those who committed political crimes (political criminals). Later on, it became a means of removing the people with suspicious wealth and popularity.

Deportation was also used as a punishment for offences such as adultery, murder, poisoning, forgery, embezzlement, and so on.²⁶ Today, Deportation as a term in law is used in connection with the expulsion of an alien whose presence in the territory of a state is presumed undesirable and as such illegal. Most of the time, the deportation of an alien occurs after he or she has been apprehended and made to face the law of the State where the alien is found illegally. It is a unilateral act of the government of a state that expels the illegal immigrant from its territory using a legal process.²⁷

On the other hand, extradition is the practice in international law whereby one state hands over to another state a person who is suspected to be a criminal or a person who has been convicted of a crime but fled to the territory of the former.²⁸ In other words, extradition is an official process by which a person accused or convicted of a crime is transferred to the State where he or she is either wanted for trial or required to serve a sentence duly imposed by a competent court of law upon his or her conviction for an offence.²⁹ The Nigerian Court of Appeal defined ‘extradition’ in **George Udezor vs. Federal Republic of Nigeria**³⁰ as the process of returning somebody, upon request, accused of a crime by a different legal authority to the requesting authority for trial or punishment.

²⁴ Z. Kiani1 and Z. Purkhaghan; ‘Deportation and Extradition from an International Perspective’ (2017) 10 (1) *Journal of Politics and Law*, 198.

²⁵ Britannica, ‘Deportation Law’, <https://www.britannica.com/topic/deportation> accessed 14 January, 2026.

²⁶ Ibid

²⁷ Z. Kiani1 and Z. Purkhaghan; *supra*. note 24

²⁸ M. N. Shaw; *International Law*, 7th Ed. (Cambridge University Press 2014) 498.

²⁹ P. Pathak and A.K Bhatt, ‘Mapping Legal Sanctity of Extradition Treaties:Contemporary International Relations on the Run (2023) 9(3) International Journal of Law 34-37.

³⁰ CA/L/376/05, Unreported.

Extradition is based upon bilateral treaty law and does not exist under customary international law as an obligation upon the states. In other words, without a bilateral treaty, a state is not under any duty to accede to an extradition request.³¹ Extradition is not a concept that falls within the natural right of government but only plays out based on the existence of bilateral or multilateral treaties on extradition, or at least based on governments' reciprocity. Some general principles are derived from the existing treaties on extradition. These principles include double criminality which states that the crime involved should be a crime in both states that are concerned. The specialty principle is another principle that states that a person who surrendered may be tried and punished only for the offence for which extradition had been sought and granted. Also, offences of political nature are excluded from extraditable offences but do not cover terrorism.

The clear rationale in international law for extradition is that it is now a universal consensus that all criminal acts and deliberate criminal omissions should attract deterrent consequences. Crime should not go unpunished.³² It is also important to state that the process for determining and enforcing the consequences of any criminal act should be controlled and managed in the place where the crime was committed. It appears logical to state that proof of a crime is best done at the place where the crime was committed because adducing evidence will be easier if there is proximity to the sources of evidence. In addition, evaluation and measurement of the injury occasioned by a crime committed against society can arguably be best carried out at the place where the crime was committed.³³

3. Extraordinary Rendition

Extraordinary rendition is an extrajudicial practice carried out by government agencies that transfer a suspect or fugitive to a foreign country for detention and interrogation. The practice does not afford detainees the benefits of enjoying the legal safeguards that are constitutionally provided to prisoners under municipal and international human rights laws. Extraordinary rendition, simply put, is the practice that involves abduction that is state-sponsored from one country to another or to a designated place with or without the cooperation of the government of

³¹ Whenever there is an extradition treaty between any two countries, sender country is bound by treaty between the two countries and the offender shall be returned to the applicant's home country.

³² United Nations Office on Drugs and Crime Country Office Nigeria; 'Cases and Materials on Extradition in Nigeria' *supra.*, note 21.

³³ *Ibid.*

the country where the abduction took place, for extrajudicial actions such as detention and abusive interrogation outside the normal legal framework.

The technique has been globally criticised because prisoners are often subjected to untimely, indiscriminate, and indefinite imprisonment without trial coupled with the possibility of torture and all forms of degrading treatment, in violation of the rule of law and international human rights law. The practice of extraordinary rendition, more often than not, combines the detention, abduction, and international transfer of presumed terrorists or criminals without any due process of negotiation of extradition procedure, deportation, or expulsion to third-party countries to be interrogated using techniques equivalent to torture, inhuman, or degrading treatment.³⁴ Extraordinary rendition practice has been held to describe human rights abuse.³⁵ It is undoubtedly a hybrid violation of human rights, which combines elements of arbitrary arrest, enforced disappearance, forcible transfer, torture, denial of access to consular officials, and denial of impartial tribunals.³⁶ It is a state-sponsored illegal abduction of a person in one country, either with or without the cooperation of the government of that country, and the subsequent transfer of that person to another country for detention and interrogation. Some states facilitate extraordinary rendition by arresting suspects, and without due process, delivering such suspects to the custody of the officials from another country, who then transfer the suspects to wherever they are wanted.³⁷

4. Historical Development and Trends of Extraordinary Rendition

In the words of the US Vice-President, Dick Cheney:

“We also have to work through sort of the dark side, if you will. We’ve got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies, if we’re going to be successful.”

³⁴ P. Galella and C. Esposito; ‘Extraordinary Renditions in the Fight Against Terrorism’, International Journal of Human Rights, (2012) 16.

³⁵ D. Weissbrodt and A. Bergquist, ‘Extraordinary Rendition: A Human Rights Analysis’, 19 HARV. HUM. RTS. J. 123 (2006) 124, <<https://core.ac.uk/download/pdf/217199847.pdf>> accessed 24 March 2025.

³⁶ Ibid.

³⁷ Ibid.

That's the world these folks operate in, and so it's going to be vital for us to use any means at our disposal, basically, to achieve our objective."³⁸

From the foregoing comments of one of the past US Vice-President, one could easily glean that the practice of extraordinary rendition was specially designed by the world power to circumvent due process while chasing their targets in the name of fighting cross-border crimes such as international terrorism. The United States of America remains the arrowhead and the major practitioner of extraordinary rendition. It should also be noted that there is no available official or public U.S. government document that defines 'extraordinary rendition' as a concept. It is defined by the Open Society Foundation as "the transfer—without legal process—of a detainee to the custody of a foreign government for purposes of detention and interrogation."³⁹

The concept of 'extraordinary rendition' has become a worrisome international issue since the September 11, 2001 attacks,⁴⁰ that U.S. President George W. Bush to declare a global 'war' against international terrorism.⁴¹ This policy of fighting terrorism that traces its roots to the administration of former President Bill Clinton with a limited programme has been expanded dramatically in structure and practice.⁴² Bush authorised the CIA to commence a secret detention programme in conspiracy with various cooperating governments around the world where suspected terrorists were held in CIA prisons otherwise known as "black sites" outside the United States and subjected to interrogation methods void of due process, which involved torture and other abuses. The CIA was about the same time granted expansive authority to engage in extraordinary rendition. Both programmes, initiated and promoted by the United States in concert with other countries were highly classified and conducted outside the United States to place detainee interrogations beyond the purview of the law. The US President, circumventing the usual channels of international law,

³⁸ U.S. Vice President Dick Cheney, September 16, 2001, culled from Open Society Foundation, 'Globalizing Torture : CIA Secret Detention and Extraordinary Rendition' Open Society Foundation publication 2013, page 5. <<https://www.justiceinitiative.org/uploads/655bbd41-082b-4df3-940c-18a3bd9ed956/globalizing-torture-20120205.pdf>> (accessed 20 January 2022).

³⁹ Ibid, at13.

⁴⁰ The United States was attacked by international terrorist group, Al-Qaeda being led then by Osama Bin Laden who was later killed by the USA military during a special operation in Pakistan on May 2, 2011.

⁴¹ P. Galella and C. Esposito; 'Extraordinary Renditions in the Fight against Terrorism' International Journal on Human Rights, International Journal of Human Rights, Issue 16, June 2012. Available at: <<https://sur.conectas.org/en/extraordinary-renditions-fight-terrorism/>> (accessed 14 June 2022).

⁴² The September 11, 2001 attack on the World Trade Center in New York was the most lethal or deadly terrorist attacks in history of the U.S. The attack took the lives of 3,000 Americans and nationals of other nations. See History – 9/11 Investigations, available on <<https://www.fbi.gov/history/famous-cases/911-investigation>> (accessed 14 August 2021).

authorised the programme for abductions, detentions, and transfers of presumed terrorists to secret prisons in third-party States.

Generally, rendering criminal suspects to the United States has a long history in the country, even with judicial approval notwithstanding the breach of international law. As early as 1886, the practice was specifically addressed by the U.S. Supreme Court. The court held in **Ker v. Illinois**⁴³ that the abduction and forcible transportation of a man from Peru to face larceny charges in the United States without compliance with the extradition treaty in existence at that time between the two countries did not violate the U.S. Constitution, nor did the extradition treaty confer on the suspect a right to asylum in Peru that would bar his forcible return to the United States. The Supreme Court held that “for mere irregularities in the manner in which he may be brought into the custody of the law, we do not think he is entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment.”⁴⁴ The court also said that its decision did not “leave the detainee or the government of Peru without remedy for his unauthorised seizure within its territory” since the messenger who abducted the detainee could be surrendered and tried for violations of Peruvian laws and could also be sued by the detainee for trespass and false imprisonment.

Also, the United States Supreme Court upheld the rule in Ker’s case in the case of **Frisbie v. Collins**⁴⁵, when it held that “the power of a court to try a person for a crime is not impaired by the fact that he had been brought within the court’s jurisdiction because of a ‘forcible abduction.’” In **United States v. Alvarez Machain**⁴⁶, the court further held that the forcible abduction of an individual from Mexico, regardless of an extant valid extradition treaty between the two countries, did not prohibit his trial in the United States court for violations of the United States criminal laws.

⁴³ See 118 U.S. 436, 440-443 (1886). culled from Open Society Foundation, ‘Globalizing Torture : CIA Secret Detention and Extraordinary Rendition’ Open Society Foundation publication 2013, page 13. Available at <<https://www.justiceinitiative.org/uploads/655bbd41-082b-4df3-940c-18a3bd9ed956/globalizing-torture-20120205.pdf>> (accessed 20 January 2022).

⁴⁴ Ibid. at 440

⁴⁵ 342 U.S. 519, 522 (1952)

⁴⁶ 504 U.S. 655, 670 (1992).

President Ronald Reagan, in 1986, through National Security Decision Directive 207⁴⁷, reportedly authorised “renditions to justice” of any suspects to face criminal charges in the United States from locations where extradition procedures could not secure custody by the U.S. government. This includes countries where no government exercises effective control or countries that are known to be planning and in support of international terrorism, among others.⁴⁸

5. Purported Justification for Extraordinary Rendition

After the attacks against the United States of America, the Central Intelligence Agency went into an alliance or conspired with some governments of nations around the world to build and arrange a secret extraordinary rendition and detention programme that spanned the globe for the transfer of a suspect or detainee to the custody of a foreign government without the due legal process for purposes of detention and interrogation.⁴⁹ This illegal programme was designed and intended to protect the United States, having been a victim of the world’s most grievous terrorist attacks. To the United States and its Intelligence Agency, extraordinary rendition is a viable means of fighting terrorism.

Condoleezza Rice, former Secretary of State under President Bush, defended extraordinary rendition when she said, “Rendition (referring to extraordinary rendition) is a vital tool in combating transnational terrorism. Its use is not unique to the United States, or the current administration. Last year, then Director of Central Intelligence, George Tenet, recalled that our earlier counterterrorism successes included “the rendition of many dozens of terrorists before September 11, 2001.”⁵⁰ She also went further to say, “Renditions take terrorists out of action and save lives.”⁵¹

⁴⁷ "National Security Decision Directive 207, otherwise referred to National Programs for Combatting Terrorism provides policy guidance on combatting terrorism. See ‘Homeland Security Digital Library’ available at <<https://www.hsdl.org/?abstract&did=463170>> accessed 24 June 2022.

⁴⁸ M. Satterthwaite and A. Fisher, *Tortured Logic: Renditions to Justice, Extraordinary Rendition, and Human Rights Law, The Long Term View*, Vol. 6, (2006), at 55. A partially declassified version of the National Security Decision Directive 207 is also available at <<http://www.fas.org/irp/offdocs/nsdd/nsdd-207.pdf>>

⁴⁹ See J. Horowitz & S. Cammarano; ‘20 Extraordinary Facts about CIA Extraordinary Rendition and Secret Detention’ February 05, 2013, available at <<https://www.justiceinitiative.org/voices/20-extraordinary-facts-about-cia-extraordinary-rendition-and-secret-detention>>(accessed 14 January 2026).

⁵⁰ See Condoleezza Rice, the then U.S. Secretary of State’s Remarks Upon Her Departure for Europe on the 5th December, 2005, available at <<https://2001-2009.state.gov/secretary/rm/2005/57602.htm>> accessed 1 June 2022.

⁵¹ Ibid.

Obviously, in America's opinion, the terrorists should be dealt with 'by hook or by crook.' It was no doubt that the Bush government was so desperate about extraordinary rendition. Rice, his Secretary of State, said unequivocally, "We must track down terrorists who seek refuge in areas where governments cannot take effective action, including where the terrorists cannot in practice be reached by the ordinary processes of law. In such places, terrorists have planned the killings of thousands of innocents – in New York City or Nairobi, in Bali or London, in Madrid or Beslan, in Casablanca or Istanbul."⁵²

While the practice of extraordinary rendition did not start in 2001,⁵³ however, since the September 11, 2001 terrorist attacks on the United States, the practice and the cases have been expanded greatly in scope and numerically, such that it encompasses transfer to third countries solely for detention and interrogation, even in cases where there was no prospect of criminal prosecution and where detainees were at risk of torture. The justification for extraordinary rendition in the view of the American government is the fight against terrorism. This remains a debate among international law scholars.

6. Human Right Issues and Global Response to Extraordinary Rendition

Extraordinary rendition in its present form and practice, as earlier discussed, usually involves abducting a person who is not formally facing any criminal charge before the country that is conducting the abduction. It is a sudden seizure of a person abroad and transported to a third country.⁵⁴ To say the least, this practice can be no less than a flagrant violation of human rights. The efforts to establish international human rights standards in the 20th century emerged as a reaction to the horrors of World War II.⁵⁵ The German Nazi regime's massacre of Jewish people is the most globally documented and analysed case of humans rights violations during the World

⁵² Ibid.

⁵³ Rendition was commenced in the United States as far back as 1980s. In 1986, it was reported that in National Security Decision Directive 207, Ronald Reagan, the then US President authorised "renditions to justice" of all suspects into the United States to face criminal charges, but this is only applicable to locations where the U.S. government could not use extradition procedures to secure custody, such as countries where there was no effective control by any government or those countries which are known to be in support of international terrorism among others. See M. Satterthwaite and A. Fisher, *Tortured Logic: Renditions to Justice, Extraordinary Rendition, and Human Rights Law, The Long Term View*, Vol. 6, (2006), at 55. President George H.W. Bush reportedly did authorise specific procedures for renditions through National Security Directive 77, into the United States which remains classified. Ibid.

⁵⁴ D. Weissbrodt and A. Bergquist, *Extraordinary Rendition: A Human Rights Analysis*, supra, note 35 at page 125.

⁵⁵ World War II took place between 1939 and 1945.

War II era.⁵⁶ Ever since that time, whenever human rights violations emerge and are identified, the global community has always responded one way or the other, mostly by naming and describing the violations and secondly by establishing global standards to prohibit such human rights abuses or violations. Examples include Crimes against humanity,⁵⁷ genocide,⁵⁸ human trafficking, and torture, all of which have been addressed through this process.⁵⁹

Undoubtedly, new types of human rights abuse surface from time to time as society advances. A case in point is extraordinary rendition. Extraordinary rendition remains a novel global human rights violation that has not been specifically addressed with a definite proactive legal effort such as the Convention. Although it has been argued that while it is not expressly mentioned in any human rights instruments by name, there are different provisions within existing instruments that usually address the offence.⁶⁰ Such a skeletal provision does not suffice given its enormous impact on human rights.

Extraordinary rendition is a convoluted human rights violation that combines the elements of arbitrary arrest or abduction, enforced disappearance, forcible transfer, torture, denial of access to consular officials, and denial of impartial tribunals. This human rights violation involves the state-sponsored abduction of a person in one country, with or without the cooperation of the government of that country,⁶¹ and the subsequent transfer of that person to another country for detention and interrogation.⁶²

⁵⁶See S. Waters and W. B. Russell III; 'The World War II Era and Human Rights Education' Social Education 76(6), Pp 301–305 at 303, available at

<https://www.socialstudies.org/system/files/publications/articles/se_7606301.pdf> (accessed 14 June 2022)

⁵⁷ This include enslavement, murder, deportation, extermination, and other inhumane acts or persecutions on social, cultural, racial, political, or religious grounds among others.

⁵⁸ Genocide has been perpetrated and been perpetrated around the world. See Article 2 of Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, which entered into force Jan. 12, 1951. Examples of Genocide include the holocaust, the persecution of Christians in Europe in 1200s, Tutsi minorities killed Rwanda in 1994, Tamil people of Sri Lanka in 1983 etc.

⁵⁹ D. Weissbrodt and A. Bergquist, op cit., note 40 at page 126.

⁶⁰ *ibid*

⁶¹ Some countries are involved and facilitate extraordinary rendition by seizing the suspects and by delivering them to the custody of officials from another country, who then transfer the detainees. See Indonesia's cooperation with the United States in the extraordinary rendition of Muhammad Saad Iqbal Madni. In other cases, extraordinary rendition may take place without the assistance of local authorities or in violation of local laws. Culled from D. Weissbrodt and A. Bergquist; *Ibid* page 127.

⁶² *Ibid*.

In 2005, the Center for Human Rights and Global Justice⁶³ published a list of persons who had been detained in the war against terrorism and whose whereabouts were unknown. The list was divided into three categories and was based on articles, reports, and investigations made by various NGOs around the world. The categories were:

“(a.) Persons confirmed to be or to have been held in secret detention centers in the United States or in installations on foreign territory controlled by the government of the United States; (b.) Persons presumably held by the government of the United States and who are probably held in secret detention centers controlled by the United States or in installations on foreign territory being controlled by the United States government; and (c.) Persons who may be held by the United States and who may be held in secret detention centers controlled by the government of the United States or in installations on foreign territory that are controlled by the government of the United States.”⁶⁴

The United States government has admitted at some point that the persons who are in category (a) above have been detained under its authorities. However, nobody outside the United States officials in charge has any information about them or their whereabouts.⁶⁵ The United States did not admit the detention of the persons in categories (b) and (c) above, and the difference between these categories lies in the degree of certainty over the detention. While cases in category (b) include substantial evidence of secret detention by the U.S. government, the cases in category (c) have no conclusive evidence.⁶⁶

Extraordinary rendition is, in a way, similar to enforced disappearance. Extraordinary rendition could be analysed and compared with enforced disappearance; although not totally the same, they often have the following substantive elements in common, viz, deprivation of liberty, state involvement, and refusal to acknowledge the deprivation. Over the years, enforced disappearance gained prominence and became persistent. The UN General Assembly took the first step in 1992

⁶³ This Center is housed in New York University. See <<https://www.law.nyu.edu/centers/chrgj-center-for-human-rights-global-justice>> accessed 26 June 2022.

⁶⁴ Culler Patricio Galella and Carlos Esposito; ‘Extraordinary Renditions in the Fight against Terrorism’ *International Journal on Human Rights*, op cit, note 40.

⁶⁵ Ibid.

⁶⁶ Ibid.

by approving the Declaration on the Protection of All Persons from Enforced Disappearance.⁶⁷ The issue received additional impetus in 1998 when the Chairperson-Rapporteur of the Working Group on the Administration of Justice at the UN presented a Preliminary Draft Convention inspired by the 1992 Declaration and the Convention against Torture. The process was concluded in 2006 with the adoption by the UN General Assembly of the International Convention for the Protection of All Persons from Enforced Disappearance.⁶⁸

Some of the human rights violations associated with extraordinary rendition include the Right to Life, Right to Personal Liberty, Right to Dignity of human person, the Right to health, the Right not to be tortured, the Right to a good standard of living and the Right to food among others. Extraordinary rendition runs contrary to numerous international human rights standards. It violates the Universal Declaration of Human Rights.⁶⁹ Article 3 of the Declaration guarantees the right to life, liberty and security of a person. It also violates the International Covenant on Civil and Political Rights.⁷⁰ Article 7 of the Covenant prohibits torture and other forms of cruel, inhuman, or degrading treatment or punishment. Article 10 also requires States Parties to treat all detained persons with respect meant for humanity given the inherent dignity of the human person. Subjecting individuals to torture and other forms of cruel, inhuman or degrading treatment after transfer is a violation of the provisions of Articles 7 and 10 of the Covenant, and the process of abduction and transfer itself may violate a detainee's inherent human dignity.⁷¹

Extraordinary rendition also violates the International Covenant on Economic, Social and Cultural Rights.⁷² Undoubtedly, when a person is abducted and transported to another country to face torture and other forms of cruelty, degrading and inhuman treatment, the abducting government violates the person's economic, social, and cultural rights. Extraordinary rendition, therefore, is a violation of Article 11, which is on the right to an adequate standard of living for all persons and their family members. The practice of extraordinary rendition also runs afoul of

⁶⁷ See United Nations General Assembly Resolution 47/133 adopted 18 Decemeber, 1992.

⁶⁸ Patricio Galella and Carlos Esposito; 'Extraordinary Renditions in the Fight against Terrorism' International Journal on Human Rights, op cit., note 39

⁶⁹ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, Third Session., First Plenary meeting, U.N. Doc A/810 (12 December, 1948).

⁷⁰ International Covenant on Civil and Political Rights, entered into force on the 23 March, 1976.

⁷¹ See D. Weissbrodt and A. Bergquist, Extraordinary Rendition: A Human Rights Analysis, op cit., note 40.

⁷² International Covenant on Economic, Social and Cultural Rights, entered into force on the 3rd January, 1976

the Convention and Protocol Relating to the Status of Refugees;⁷³ the Convention against Torture;⁷⁴ the Vienna Convention on Consular Relations,⁷⁵ and the Geneva Conventions among others.⁷⁶

7. KANU'S CASE AND EXTRAORDINARY RENDITION

The self-acclaimed leader of the Indigenous People of Biafra (IPOB), popularly known as Mazi Nnamdi Kanu, was born on the 25th day of September 1967 at Afaraukwu, Abia State, South-East Nigeria. His ordeal with the Federal Government of Nigeria formally commenced when he was arrested on the 14th day of October 2015 and charged to court on eleven counts bordering on treasonable felony, terrorism, promoting and managing an unlawful society, defamatory publications, and illegal possession of firearms, as well as importation of goods unlawfully, *inter alia*.⁷⁷ He was also accused by the Nigerian Government of instigating violence, especially in south-eastern Nigeria which resulted in the loss of lives and the destruction of properties of civilians, military, paramilitary, and police force as well as the destruction of civil institutions and symbols of authorities in Nigeria.⁷⁸

Following his arrest in 2015 and subsequent charge to court, he was granted bail on medical grounds in 2017. While on bail, he fled the country. He told the whole world that he escaped from Nigeria because he feared for his life after security operatives raided his home in a standoff that left many people dead. To date, nobody knows how many people died in the attack against his country home. Upon his escape from Nigeria, the Federal High Court, Abuja, revoked the bail granted him on health grounds, and a bench warrant was issued for his arrest by the court because he failed to attend the court for the continuation of his trial. Operating offshore, Kanu, upon jumping bail, was also accused of engaging in subversive activities against Nigeria,

⁷³ Convention Relating to the Status of Refugees, entered into force on the 22nd April, 1954

⁷⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature on the 4th February, 1985.

⁷⁵ Vienna Convention on Consular Relations, 24th April, 1963

⁷⁶ See D. Weissbrodt and A. Bergquist, *Extraordinary Rendition: A Human Rights Analysis*, op cit., note 40

⁷⁷ See Text of Press Conference held by the Honourable Attorney General of the Federation and Minister of Justice, Abubakar Malami, SAN on Tuesday 29th June, 2021 to Clarify the Re-arrest of the Nnamdi Kanu and his Repatriation back to Nigeria to face trial. Available at <<https://www.premiumtimesng.com/features-and-interviews/470626-in-full-what-agf-malami-said-about-nnamdi-kanus-arrest.html>> accessed 23 September 2025.

⁷⁸ Id. See also Timothy Obiezu, *Nigerian Separatist Leader Arrested, Faces Trial* Voice of America, Africa, June 20, 2021, available on <https://www.voanews.com/a/africa_nigerian-separatist-leader-arrested-faces-trial/6207665.html> accessed 03 June 2026.

including the campaign for violence against the government of Nigeria, the Nigerian State, and institutions through television, radio, and online broadcasts.⁷⁹

The federal government of Nigeria declared IPOB a terrorist group in 2017 and blamed various attacks targeting security agents in southeast Nigeria on the group's armed wing, popularly known as Eastern Security Network. A series of attacks have been linked to the network, such as the killings of many police officers and the burning of police facilities in the region. Several other public facilities have also been attacked.⁸⁰ Kanu was not so popular until 2009, when he started Radio Biafra, situated in London, where he used to live and from where he used to call for an independent state of Biafra. Kanu had spoken at different gatherings, often with a threat to the Nigerian government and calling for Biafra's independence. He had referred to the Nigerian state as a zoo, persuading his followers and loyalists to take up arms against the country.⁸¹

When Kanu departed Nigeria in a dramatic and seemingly esoteric manner, the Nigerian Government embarked on his manhunt until he was eventually tracked down and repatriated back to Nigeria in a dramatic manner on the 27th June, 2021 allegedly from Kenya, because the Nigerian Government refused to disclose the details about his re-arrest, except the skeletal information officially provided by the Honourable Attorney-General of the Federal Republic of Nigeria.⁸² Shocked by Kanu's dramatic return to Nigeria in a seemingly mysterious way, many legal minds, especially his lawyers, have argued and alleged that he was extraordinarily rendered to Nigeria. The debate has been unsettled, and the government of Nigeria refused to disclose the procedure that led to the successful interception and re-arrest of Kanu in whichever country he was caught. While Kenya was accused of complicity, the country denied any involvement in his re-arrest. The International Human Rights Commission (IHRC) based in Geneva, upon its private investigation, absolved Kenya of any blame in the arrest of Nnamdi Kanu and repatriation to

⁷⁹ Text of Press Conference held by the Honourable Attorney General of the Federation and Minister of Justice, Abubakar Malami, SAN on Tuesday 29th June, 2021, *supra*.

⁸⁰ These include Independent National Electoral Commission's office, Villages and communities, Banks, Markets among others.

⁸¹ See 'The "Zoo" called Nigeria' Comments in The Nation, June 17, 2017. Available on <<https://thenationonline.ng/net/zoo-called-nigeria/>> accessed 03 June 2026

⁸² Text of Press Conference held by the Honourable Attorney General of the Federation and Minister of Justice, Abubakar Malami, SAN on Tuesday 29th June, 2021, *supra*.

Nigeria.⁸³ Also, it was reported that the “Kenyan government has confirmed that the arrest of Nnamdi Kanu, did not go through extradition proceedings.”⁸⁴ The question then remains, was Kanu actually extraordinarily rendered to Nigeria as alleged by his lawyers and a host of others? Undoubtedly, if he was extradited to Nigeria, the process could not be carried out clandestinely as done by the Nigerian government.

8. Was Kanu’s Re-Arrest Extraordinary Rendition?

The outcry and public agitation about Kanu’s re-arrest and repatriation to Nigeria call for legal clarifications, especially with the allegations by his lawyers that his case was purely an extraordinary rendition case. From the explanation of extraordinary rendition earlier discussed, Kanu’s case could not have been an extraordinary rendition for the following reasons:

- i. Kanu was originally arrested in Nigeria in 2015 by the Nigerian government and charged in court on 11 counts charge bordering on treasonable felony, terrorism, promoting and managing an unlawful society, defamatory publications, and illegal possession of firearms, as well as unlawful importation of goods.
- ii. While he was on trial, he was granted bail on health grounds. He used the bail opportunity to escape from Nigeria in seemingly mysterious circumstances, and he alleged his escape was because it was not safe for him to remain in Nigeria for his trial due to the invasion of his country home by the Nigerian military men, which resulted in the death of an unknown number of IPOB members.
- iii. Following his failure to appear in court for the continuation of his trial, a Bench warrant of arrest was issued against him.
- iv. After many campaigns of calumny against Nigeria, the Nigerian state and calls for the independent state of Biafra by Kanu, he was allegedly rearrested in Kenya and repatriated to Nigeria under some concealed circumstances.

⁸³ See C. Uchechukwumgemuze; ‘Nnamdi Kanu’s arrest: IHRC absolves Kenya of any wrongdoing’ today 13 July 2021, available at <<https://www.today.ng/news/africa/nnamdi-kanus-arrest-ihrc-absolves-kenya-wrongdoing-377829>> accessed 16 June 2022.

⁸⁴ See S. Opejobi; ‘Kenyan govt confirmed Nnamdi Kanu’s extradition illegal, no record of arrest – Brother’ Daily Post, published November 14, 2021. Available at <<https://dailypost.ng/2021/11/04/kenyan-govt-confirmed-nnamdi-kanus-extradition-illegal-no-record-of-arrest-brother/>> accessed 15 November 2024.

A community appraisal and analysis of the circumstances surrounding Kanu's case betray the allegation that he was extraordinarily rendered to Nigeria as announced to the world by his legal team. Extraordinary rendition has its elements and is different from ordinary rendition. From all the facts and figures, the case of Kanu was a mere case of ordinary rendition (rendition) which is common and not unacceptable in international law, being one of the means of bringing a fugitive to justice where there is no better alternative. It is a criminal law rule that an offender must be punished.

Rendition abridges the gap created in international law when the reality in international relations makes it difficult to bring a fugitive or suspect back to justice through extradition, which is the internationally widely acceptable legal means of handling such a situation and is often based on treaties. Whenever there are obvious and critical hitches, undoubtedly, the only lawful alternative means to get a fugitive back to face justice is through rendition. Extradition itself is a form of rendition. The major characteristic of extradition is the fact that it is based on treaties and requires a judicial process.

Rendition, as discussed above, means to hand back. It is a practice of bringing back a person to where he is wanted to face justice through arrest or abduction, but it does not require torture and may not require cooperation from the state where the fugitive is abducted. It may also include the arrest or recapturing of the suspect or fugitive even without a warrant, but in most cases, if not in all, no human rights violation is involved. It was no wonder that the International Human Rights Commission in Geneva absolved Kenya and Nigeria from any allegation of human rights violation in Kanu's case. The suspected person may be forcibly abducted in another state, which ordinarily should occur when there is an outstanding warrant of arrest against the suspect in question and when the ultimate aim of the abduction is for criminal justice in the abducting state. Ordinary rendition does not hinder the trial of the suspect by the state that rendered him. The ultimate purpose more often than not is to make the suspect face justice in criminal trials. Kanu's case falls within this interpretation. At his arrest, there was a Bench warrant of arrest against him. Rendition is therefore not the same as extraordinary rendition.

Contrary to the claim by his legal counsel and devotees, Nnamdi Kanu's rearrest does not fall within the extraordinary rendition elements. For the avoidance of doubt and emphasis, Black's

Law Dictionary defines extraordinary rendition as the "transfer, without formal charges, trial, or court approval, of a person suspected of being a terrorist or supporter of a terrorist group to a foreign nation for imprisonment and interrogation on behalf of the transferring nation."⁸⁵ In extraordinary rendition, there is extrajudicial practice, carried out by government agencies. A suspect is intercepted, arrested, abducted, and transferred by whatever means to a foreign country different from his country or the country where he was abducted for detention and interrogation. The practice does not afford detainees the benefits of enjoying any legal protection that is constitutionally guaranteed to prisoners under municipal and international human rights laws.

Extraordinary rendition involves abduction that is state-sponsored from one country to another or to a designated place with or without the cooperation of the government of the country where the abduction took place, for extra-judicial actions such as detention, torture, and abusive interrogations outside the normal legal framework. It often goes with degrading human treatment, subjecting the suspect or prisoner to hunger, victimization, threats, and all forms of human rights violation. Most times the victim's whereabouts are unknown. Those extraordinarily rendered are often indiscriminately and indefinitely subjected to imprisonment without trial, coupled with the possibility of torture and all forms of inhuman treatment, in violation of due process and international human rights law. Extraordinary rendition is illegal and condemnable. It has no valid justification in international law, and it is often widely condemned. Kanu's case lacks the elements of extraordinary rendition and should not be so classified.

As a general rule developed from juridical and judicial reactions, extraordinary rendition impugns the validity of the prosecution of the suspect rendered. From decided cases around developed jurisdictions, except America, where extraordinary rendition was developed and practiced with impunity, the uniform judicial response does not support the prosecution of the suspect by the abducting State.

In the United Kingdom, the House of Lords held **In the Matter of Regina v. Horseferry Road Magistrates Court, Ex Parte Bennett**,⁸⁶ that

⁸⁵ See Black's Law Dictionary, Bryn A. Garner, (ed.), 9th Edition, 2009) p.1403.

⁸⁶ [1994] 1 A.C. 42

“Where a defendant in a criminal matter had been brought back to the United Kingdom in disregard of available extradition process and in breach of international law and the laws of the state where the defendant had been found, the courts in the United Kingdom should take cognisance of those circumstances and refuse to try the defendant”.

This decision has been a good law to date, not only in the United Kingdom but in many other countries where the courts have cited it with much approval.⁸⁷ Also, the Court of Appeal of New Zealand decided in **Regina v. Hartley**,⁸⁸ where the New Zealand police obtained the return of one Bennett from Australia to New Zealand where he was needed to face a charge of murder, merely by telephoning to the Australian police and asking them to arrest Bennett and put him on an airplane back to New Zealand, which they did. Lord Lane C.J. cited the following extract from the judgment of Woodhouse J. in the reported case, at page 216- 217 where it was held that:

"There are explicit statutory directions that surround the extradition procedure. The procedure is widely known. It is frequently used by the police in the performance of their duty. For the protection of the public, the statute rightly demands the sanction of recognised court processes before any person who is thought to be a fugitive offender can properly be surrendered from one country to another and in our opinion there can be no possible question here of the court turning a blind eye to action of the New Zealand police which has deliberately ignored those imperative requirements of the statute. Some may say that in the present case, a New Zealand citizen attempted to avoid a criminal responsibility by leaving the country: that his subsequent conviction has demonstrated the utility of the shortcut adopted by the police to have him brought back. But this must never become an area where it will be sufficient to consider that the end has justified the means. The issues raised by this affair are basic to the whole concept of freedom in society."

The above cases gave a clear picture that the prosecution of the apprehended fugitive through extraordinary rendition by the same state that abducted him does not go down well with the

⁸⁷ A. Ejimakor; 'Extraordinary Rendition and the Laws of Nations' Available at <<https://www.vanguardngr.com/2021/10/extraordinary-rendition-and-the-laws-of-nations/>> published 4 October 2021, Accessed on 15 November 2024.

⁸⁸ [1978] 2 N.Z.L.R. 199. This is a New Zealand case.

judicial arm of the government. This is not unconnected with the fact that a state seeking to apprehend a fugitive by all means, including extraordinary rendition, is desperate to punish the suspect by all means and may not serve the interest of justice during prosecution.

9. Extraordinary Rendition and the Nigerian Law

In determining the attitude of Nigerian law to extraordinary rendition, a brief examination of the provisions of the Constitution will be apposite and suffice. The Nigerian laws generally derive validity from the Constitution of the Federal Republic of Nigeria.⁸⁹ If any other law is inconsistent with the provisions of the Constitution, the Constitution prevails, and that other law is void to the extent of its inconsistency with the Constitution.⁹⁰ The Constitution provides for and guarantees the fundamental human rights of every citizen of Nigeria, and by extension, any individual within Nigeria's territory.⁹¹ Given the elements of extraordinary rendition and the practice, the Constitution of Nigeria does not in any way allow it. Section 34(1)(a), (b) and (c) provides that:

“Every individual is entitled to respect for the dignity of his person, and accordingly – (a) no person shall be subject to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour (except as allowed by the Constitution)(sic).”

Also, the Constitution provides for the right to personal liberty and no person should be denied the same except in the cases permitted by the Constitution.⁹² Section 35(4) forbids illegal and indefinite detention. Also, section 36 provides for the right to fair hearing.⁹³ Any person charged with a criminal offence is presumed innocent until he is proven guilty.⁹⁴ From various provisions of the Constitution of the Federal Republic of Nigeria, there is zero tolerance for extraordinary rendition which is hallmarked with a breach of the right of a person to the dignity of human person because of torture, inhuman and degrading treatment; illegal detention; lack of

⁸⁹ See Section 1(1) of the Constitution of the Federal Republic of Nigeria 1999 hereinafter referred to as the ‘Constitution’.

⁹⁰ See Section 1(3) of the Constitution.

⁹¹ See Chapter IV of the Constitution.

⁹² Section 35 of the Constitution.

⁹³ Section 36 of the Constitution.

⁹⁴ Section 35(5) of the Constitution.

fair hearing; breach of the right to personal liberty; imprisonment without trials or court orders and many more. While the Nigerian Constitution prohibits extraordinary rendition by all standards given its element, there is nothing in the Constitution that forbids bringing back a fugitive to face trial in Nigeria.

10. Conclusion and Recommendation

This paper discussed extraordinary rendition and related concepts and it was found that the concept of extraordinary rendition was developed, and mostly practiced by the American government most especially, after the September 11, 2001 terrorist attacks. The purpose, in the opinion of the American Central Intelligence Agency, was to counter global terrorism that emerged with 21st century globalisation and which mostly threatens American borders. In the discourse, the re-arrest of the Nigerian, Mazi Nnamdi Kanu was used as a case study given the wide speculations that he was extraordinarily rendered by the Nigerian government in conspiracy with the Kenyan government; a claim that has since been denied by the Kenyan government. The Nigerian government refused to disclose to the world the details about the re-arrest and the repatriation of Kanu back to Nigeria to date, thereby leaving room for suspicion and insinuation that he was extraordinarily rendered. The facts and the glaring circumstances surrounding his case, especially his escape from Nigeria while on trial and his repatriation to continue his trial do not support extraordinary rendition as alleged by his lawyers. In the light of the elements of extraordinary rendition and the practice, which include human rights violations, illegal detention, torture, inhuman and degrading treatments, transfer of the fugitive or suspect to another foreign country through extra-judicial means for interrogation, and imprisonment without trials among others, Kanu's case was not in any way extraordinary rendition case but ordinary rendition which is not illegal unlike the former.

It is humbly viewed that extraordinary rendition remains a baseless practice in international law and should not be promoted by any nation, including the United States, the initiator. The world is now a global village. We all belong to and reside on the same planet. The rights of every citizen of our planet must be protected in reality and not in the abstract. Extraordinary rendition is summarily a violation of human rights, and the perpetrator should be remorseful. While terrorism must be fought in our world, it must not be fought through human rights violations. The world leaders should concertedly, unanimously, and unequivocally prohibit

the existence and practice of extraordinary rendition. In conclusion, it is recommended that the United Nations expedite the development of a global Convention against Extraordinary Rendition in clear terms and not skeletally if human rights protection must be a reality in our world as conceived and promoted by the institution.