



TERRORISM AND EXTRAORDINARY RENDITION: AN AFFRONT TO HUMAN RIGHTS AND RULE OF LAW

By

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Abstract

Terrorism has been identified as one of the greatest global challenges in the past decades, considering its threat to the existence of democratic values in the society. Arbitrary governments are not free from the accusation of constituting a bundle of these threats to democratic values in the society. Hence, these governments must act with safeguards in order to ensure that state authorities do not flagrantly violate human rights and rule of law in the course of fighting terrorism. This paper noted that human rights and rule of law has been notoriously violated especially in cases of extraordinary rendition acclaimed to be an instrument used in the fight against terrorism. This paper is of the opinion that whereas it is evident that terrorism must be eradicated, a balance must be struck between the fight against terrorism and protection of human rights and rule of law.

1.0 Introduction

The past decades of the century was overwhelmed by terrorist activities.¹ The global Jihad of terror struck from New York to New Delhi and of course, the whole world changed dramatically on September 11, 2001 when the dreaded al Qaeda dealt a deadly blow to the American Citizens at the World Trade Centre in New York.² In as much as terrorism is not the only major cause of death in the society, it has a terrific impact in the minds of the people, due to huge unpredictability. It has immeasurable impacts on human rights and rule law. It undermines the very foundation upon which democracy is built.

It is a deliberate strategy of violence designed to instill fear in a society in order to achieve a powerful outcome, propagate a cause, or inflict harm for vengeful political purpose.³ Hence fighting terrorism has become imperative for many governments, leading the governments to embark on many steps and taking all sorts of measures including intergovernmental cooperation in the bid to fight terrorism.

These measures are imminent in order to protect the nationals against all threats of terrorism, because the ultimate concern of every responsible government is the protection of citizens and their welfare including their human rights. Human rights are right inherent to all human beings, notwithstanding nationality, and place of residence, sex, ethnic origin, colour, religion or language.⁴ Thus, human rights

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¹ Okorie C.K., *Terrorism and the Challenges of National Security: The Nigerian Experience* (eds) Okonkwo N. Abosi and Chukwumaeze U.U., Contemporary Issues on Law and Society, A Tribute to an Exponent Hon. Justice B.A. Njemanze, Owerri High Court of Justice Imo State, Careers Publishers, Owerri 2014, 109.

² *Ibid.*

³ Alobo, J.E., *Terrorism, Kidnapping and Cyber Crime in Nigeria* in Honour of Hon. Justice Lorhemen Hwande, OFR Chief Judge of Benue State, Diamondreal Resources Consult, Abuja, 2005, 15.

⁴ Ayodeji, G.I., *Human Rights Violation and Quest for Justice: Interrogating the Role of Truth, Reconciliation and Reparation Commission Gambia* (2019) (Vol. 2) (No. 1) GLR, 89.



are the basic rights and freedom to which all human beings are entitled.⁵ Such rights include rights to life, liberty, property, freedom of expression⁶ *etcetera*.

It has however been observed that in the efforts of the government to fight terrorism, disproportionate force and acts of arbitrariness has continually been employed thereby breaching certain obligations under the international human rights law.⁷ One of such measures adopted by governments in the fight against terrorism is the controversial concept of extraordinary rendition.⁸

By this controversial measures, states transfer without any legal procedure, a person to the custody of another state in order for them to be detained and interrogated.⁹ This procedure allegedly affords the state to subject the individuals detained to all sorts of inhuman treatment, in disregard to rule of law and the principles of human rights.¹⁰

It must be noted that while terrorist activities negates all that the principles human rights represents, extraordinary rendition and secret detentions are more dangerous and harmful to human rights.¹¹

2.0 Terrorism

The concept of terrorism has different perceptions, so also are different definitions.¹² The United Nations made this observation that there are different definitions of terrorism in a General Assembly debate; hence, the Assembly remarked that this multifaceted definition has greatly undermined international efforts to tackle the threat of terrorism to humanity.¹³ The scourge of terrorism remains a threat to human rights, freedom and development. It constitutes a clog in the wheel of economic, political and social institutions. Terrorism is viewed as criminal and unjustifiable in nature. No matter what the aims of the perpetrators are, it remains a deliberate and indiscriminate attack against civil population which international law considers a crime.¹⁴

Terrorism knows no bounds; it is a global menace, which needs to be frontally confronted. It violates the fundamental human rights, especially, the rights to life and that of peaceful coexistence.¹⁵ Terrorism is considered a direct attack on the core values the global community stands for namely, the protection of human rights and the rule of law, protection of civilian population, mutual respect between people of different faiths, cultures and tribe and peaceful resolution of conflicts.¹⁶

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Borenstien, J.G., Extraordinary Rendition and State Secrets: A Human Rights Approach, ugp.rug.nv>GROJIL>article>view. Accessed 11/11/2022.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Abolurin, A., *Terrorism: Nigerian and Global Dimensions*, Ibadan, Golden-Gem Unique Multiventures, 2011, 8.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Okoronye, I., *Terrorism in International Law*, Whytem Publishers Nigeria, Okigwe, 2013, 113.



Indeed, bombing of markets, embassies, kidnapping, mass killings enforced disappearances among others are acts of aggression, which not only constitute threats to the peace but also, violates basic human rights and fundamental freedoms.¹⁷ Although it is described as both a tactic and a strategy, a holy duty and a justifies reaction to oppression and inexcusable abomination, a lot still depends on whose point of view is being presented.¹⁸ Despite the viewpoint of any presenter, the attributes of terrorism, which includes use of unlawful violence or threat of unlawful violence to inculcate fear, intimidate government or societies in the pursuit of goals that are generally political, religious, ideological or social objectives¹⁹ are considered affront to human rights and coexistence of humankind.

This is so because terrorist acts can destabilize governments, undermine civil society, jeopardize peace and security, and threaten social and economic development among others. To make it easier for terrorists to destabilize the government, they choose their targets at random and thus; there is little if any precaution that potential victims can take.²⁰ Terrorists exploit death as a means to advertise their cause.²¹ Terrorists do not expect governments to capitulate; indeed, their activities are frequently designed to elicit an overreaction that will aid in winning hearts and minds.²²

The scourge of this malady has claimed the lives of several thousands of people through senseless killings either from calculated bombing or from full scale or low intensity wars.²³ The scourge no doubt, has left the global community with Nigeria as no exception, continuously grasping for solution in the mist of plethora of legal instruments and well-motivated military.

Amidst this grasping for solutions by the global community, arbitrary governments resort to illegal practice of extraordinary rendition of persons suspected of being involved in terrorist activities. This practice exposes the individual extraordinarily renditioned to torture and other human rights abuses in course of attempting to extract information from him.

3.0 Extraordinary Rendition

Extraordinary rendition is broadly defined as the secret transfer of people from one country to another against their will and without due process of law.²⁴ It is included in the long list of practices used in the war against terrorism but its legality is highly contentious.²⁵ It is all idiomatic term, which does not

¹⁷ *Ibid.*

¹⁸ Chukwumaeze, U.U., *Adequate Definition and Criminalization of Aggression: The First Step to Counter Terrorism*, (eds) Okonkwo, N., Abosi and Chukwumaeze, U.U., Contemporary Issues on Law and Society: A Tribute to an Exponent-Honourable Justice B.A., Njemanze Owerri High Court of Justice, Imo State, Careers Publishers, Owerri, 2014, 30.

¹⁹ *Ibid.*

²⁰ Abadinsky, H., *Organized Crime*, Eight Edition, Belmont, CA, Thomson Wadsworth, 2007, 392.

²¹ *Ibid.*

²² *Ibid.*

²³ Oho, F.O., "Terrorism in Nigeria: A Comparative Analysis of the Solutions in the United States of America and the Republic of India" (eds) Chukwumaeze, U.U., Nnadi, I., and Okorie C.K., *Beyond Excellence, A book of Readings in Honour of Honourable Justice Paschal O. Nnadi, Chief Judge of Imo State*, Owerri, Imsu Zubic Infinity Concept, 2020, 367.

²⁴ All Party Parliamentary Group, *Extraordinary Rendition: Closing the Gap*. www.statewatch.org>nov. Accessed 19/11/2022.

²⁵ Nikolas, K., *The International Convention for the Protection of all Persons from Enforced Disappearance and its Contribution to International Human Rights Law, with Specific Reference to Extraordinary Rendition* [2012] MelbJlntlaw 16. classic.austlii.edu.au. Accessed 19/11/2022.



meet with general agreement as to the act(s) it describes.²⁶ The very notable components of extraordinary rendition include unlawful seizure, secret detention, torture and dehumanization of individual or individuals outside any legal process.²⁷

An extraordinary rendition goes beyond the concept of arbitrary detention and therefore shows similarities to the concept of forced disappearance of persons.²⁸ This distinction is relevant, among other reasons, because cases of extraordinary rendition can be qualified as forced disappearances and could constitute a violation of the norms of *jus cogens*, generating international responsibility for those states who commit these illegal acts and the possibility of trial for crimes against humanity for individual perpetrators.²⁹

The state will take responsibility for the work of her agents or persons acting with her authorization and support for internationally wrongful acts in this connection.³⁰ Any wrongful conduct of a state organ in this perspective shall be considered as act of state under international law.³¹

This is so because persons alleged as terrorists of high value who are being sought for purposes of interrogation and possible prosecution by state are at all cost and chased about wherever they are. When they are caught, the agents or persons working for the state before being transferred out to that state detain them.

This technique is capable of subjecting a detainee to indefinite imprisonment, without trial and the possibility of torture in violation of basic due process together with protections under the international human rights laws.³² The use of this technique known as extraordinary rendition was accelerated after the terrorist attack of September 11, 2001 in the United States of America.³³ It was feared that another attack was imminent, hence, the United States government embarked on a global sweep of terrorism suspects, claiming that extraordinary rendition was a necessary element of counter terrorism effort,³⁴ thereby not considering the human rights implications.

However, the United Kingdom frowns against this technique of extraordinary rendition. The case of *Regina vs. Horsferry Road Magistrate Court*, where the court asserted emphatically that where a defendant in a criminal matter had been brought back to the United Kingdom in disregard of available extradition process and on breach of international law and the law of the state where the defendant had been found, the courts in United Kingdom should refused to try the defendant³⁵ is instructive in this regard, but that is not the same position under the Nigerian legal system.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Galella, P., and Esposito, C., Extraordinary Renditions in the Fight against Terrorism. *Sur.conectas.org*. Accessed 19/11/2022.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² Ryan, K.J., "Extraordinary Rendition" *www.britannica.com*. Accessed 21/11/2022.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Ejimakor, A., "Extraordinary Rendition and Laws of Nations" *guardian.ng*. Accessed 22/11/2022.



Similarly, in New Zealand, the court in *R vs. Harhey* held among others that the explicit statutory directions that surround the extradition procedure must be adhered to in order to ensure the protection of the public and that the court must sanction the demand for one to be surrendered from one court to another.³⁶

In South Africa's case of *Ebrahim vs. Minister of Justice*, the South African Court of Appeal held that the common law regards the removal of a person from a foreign country in which he has been illegally arrested to another as tantamount to abduction and thus constituted a serious injustice that should bar him from prosecution. The court further held that the individual had to be protected against unlawful detention and against abduction and that; the state is bound by rules.³⁷ Expectedly, courts are meant to take firm stands on issues connected to matters of human rights abuses in any form including torture and unlawful detention among others, arising from extraordinary renditions. For instance, it must consider that human rights is the crux of human existence.

4.0 Human Rights

Human rights are moral principles or norms that describe certain standards of human behaviour that can be said to be inherent in every human being.³⁸ They are regarded as inalienable and immutable and as such cannot be taken away from any one without recourse to justice.³⁹ Human rights equally are claims and entitlements as of right and not claims to love, brotherhood or charity.⁴⁰ They are rights, which exist with man as human being.⁴¹

The concept of human right is omnibus or generic in nature because it incorporates many kinds of claims, liberties, powers, immunities and advantages which individuals seek to enjoy from the society, some of which are non legal because they are not so recognized.⁴² Thus in *Uzoukwu vs. Ezeonu*, it was stated that human rights is a term used at international level which encompasses all forms of rights both justiciable and non-justiciable rights.⁴³

This dynamic nature of the concept of human rights however led to its classification into five sub-leading, namely civil, political, social, economic and cultural rights. While the civil and political rights were given prominence in the international covenant in Civil and Political Rights, the Economic, Social and Cultural Rights are the subjects of International Covenant on Economic, Social and Cultural Rights. Hence, it has been grouped into three generations, namely; first generation rights comprising of the Civil and Political rights, the Economic, Social and Cultural rights are the second generational rights, while the third generational rights are the subject of diverse international treaties, charters and conventions.⁴⁴

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Osuji, E., and Nze, J., "Upholding Human Rights in the Fight against Terrorism: An Overview", Okene OVC, Akolokwu, G.O., and Otuturu G.G., (eds) Legal Essays in Honour of Mary Odili, Justice of the Supreme Court, Ikeja Princeton & Associates Publishing Co. Ltd, 508-521.

³⁹ Falana, F., *Fundamental Rights Enforcement*, Ikeja, Legal Text Publishing Company Limited, 2004, 1.

⁴⁰ Obiareri, N.O., *Human Rights in Nigeria – Millennium Perspective*, Lagos, Prefect Concepts, 2001, 3.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ (1991) 6 NWLR (Pt. 200) at 763.

⁴⁴ *Hereinafter* called UDHR.



The third generational rights incorporating human rights are principally entrenched in the Universal Declaration of Human Rights 1948 and adopted by the United Nations General Assembly for the protection of human rights, and emphasized the need of its protection by rule of law.⁴⁵ Thus under international law, all human rights are accorded legal recognition and states are under an imposed duty to respect them.⁴⁶

Here, in Nigeria, human rights are entrenched in the 1999 Constitution of Nigeria⁴⁷ as an integral part of fundamental rights, not minding the distinction between fundamental rights and human rights. They are fundamental because the laws of the land, that is to say the 1999 Constitution, have guaranteed them. In view of the above assertion, the protections of these rights are sacrosanct even in the face of countering terrorism.⁴⁸

Above all there can be no protection of these rights without the rule of law prevailing, hence the rule of law must prevail in all circumstances. States must not abdicate its responsibilities in protecting human rights and ensuring that rule of law prevents even in the face of challenges of terrorism.

5.0 Rule of Law

The concept of rule of law refers to the various ideologies captured within the crucibles of jurisprudential analysis of law.⁴⁹ Legal philosophers see the concept of the rule of law from different perspectives from the ordinary man's view.⁵⁰ While the ordinary man may see the rule of law as the operation of specific provision of law. Legal philosophers conceive it beyond the provisions of the law, to extend to general principles or norms that guide a legal system and determine the attribute of the people towards the supremacy of the law.

According to A.V. Dicey, the rule of law has three fundamental principles, which include the supremacies of the law, equality before the law and law because of the right of the people.⁵¹ The supremacy of the law indicates that the authority of the law is supreme and ranks above the interests, desires, whims and caprices of those to whom such law was made, including those put in authority because of supremacy of the law.⁵²

The supremacy of the law is a fundamental concept in the society. The rule of law requires both citizens and governments to be subjected to known and standing laws. As Dicey postulated, the supremacy of law requires generality in law, laws should not be made in respect of a particular person or persons, hence, laws ought to be rooted in moral principles. It cannot be argued that the technique of extraordinary rendition is rooted on morality in as much as the practice of extraordinary rendition is

⁴⁵ See UDHR 1948.

⁴⁶ *Ibid.*

⁴⁷ CFRN 1999 (as amended) chapter iv.

⁴⁸ Osuji, E., and Nze, T., (*supra*) 518.

⁴⁹ Obioha, I.B.O., "Rule of Law and the Challenges of the Nigeria State". (eds) Okene, V.C., Akolokwu G.O., and Otuturu G.G., *Legal Essays in Honour of Mary Odili, Justice of Supreme Court of Nigeria*, Ikeja, Princeton & Associates Publishing Co. Ltd, 2022, 88.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

considered a mode of taking out fight against terrorism; it has become a lawless practice aimed at perverting the rule of law as well as human rights.⁵³

At its most basic level, the rule of law concepts insists that both the government and citizens know the law and obey it.⁵⁴ This presupposes that no one is above the law, regardless of status, race, culture, religion or any other attribute.⁵⁵ Rule of law presupposes where law protects human rights and justice is accessible to all, it implies a set of common standard for action, which are defined by law and enforced in practice through procedure and accountability mechanism.⁵⁶ This accountability the state must ensure at all times and in all situations.

6.0 State Accountability and Convolution on Extraordinary Rendition

The concept of extraordinary rendition is a scheme significantly designed and meticulously carried out to nullify the effect of the law removing entirely its protection, avoiding oversight and leaving no traces.⁵⁷ It permits no prospect for accountability.⁵⁸ The scheme was shaped around a policy of systematic torture, a violence of the most firmly enshrined prohibition in international law.⁵⁹

In a single extraordinary rendition act, several states may be involved as organizers, facilitators, abductors and safe keepers.⁶⁰ This coercive, clandestine and illegal capturing and transferring of individuals from one state to another significantly involves state sponsorship. States perceive extraordinary rendition as a key component of its war on terror. The United States of America took to this scheme immediately following the September 2001 attack. The central intelligence Agency of the United States of America set up the extraordinary rendition programme in which supposed *al Qada* agents were secretly kidnapped and rendered to countries for purposes of torturing and obtaining information.⁶¹ Germany is not left out in this scheme of extraordinary rendition.

Germany for instance has severally rendered assistance to the United States of America on transferring terrorist suspects outside of normal legal and administrative channels.⁶² Such extraordinary rendition and secret detention programme consists of apprehensive and transfer of the suspects, followed by torture and humiliation.⁶³ The suspect detained is stripped subjected to body cavity search, photographed naked dressed up in diapers and purportedly beaten during the process.⁶⁴ Hence, such acts profoundly violate international human rights law and even the domestic laws of the states carrying it out. States adopt extraordinary rendition as counter terrorist measure in response to public outcry. In

⁵³ Satterthwaite, M., Rendered Meaningless: Extraordinary Rendition and the Rule of Law. www.researchgate.net. Accessed 26/11/2022.

⁵⁴ Education Centre. Rule of Law, www.ruleoflaw.org.au. Accessed 26/11/2022.

⁵⁵ *Ibid.*

⁵⁶ OECD, Rule of Law, www.oecd-ilibrary.org/rule-of-law. Accessed 26/11/2022.

⁵⁷ Duffy, H., Case Study III: Extraordinary Rendition, cambridge.org/core/boc. Accessed 28/11/2022.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Abede, B.K., Extraordinary Rendition and Extraterritorial State Obligation in African Human Rights System. chilotme/2019/10/20/e. Accessed 28/11/2022.

⁶¹ Michele, C., Commodifying State Crime: Accounting and Extraordinary Rendition Ideas repec.org/a/eee/c. Accessed 28/11/2022.

⁶² Kagel, L.T., Germanys Involvement in Extraordinary Renditions and its Responsibility under International Law. ciaotest.cc.columbia.edu/gps. Accessed 28/11/2022.

⁶³ Borenstien, J.G., Extraordinary Rendition and States Secrets: Human Rights Approach.

⁶⁴ *Ibid.*



such situation, states tend to ignore the fundamental existence of the tenets of democracy and its core value.⁶⁵ In this connection States are drawn to diminish human rights protection in the face of challenges of terrorism.⁶⁶ Hence, it has been argued that the adoption of extraordinary rendition is not proportionate to the actual attack or threat of terrorism.

7.0 Conclusion

The increase in the menace of terrorism has led most states to indulge in schemes to assist them confront this violence,⁶⁷ including extraordinary rendition. This situation propelled most of the states to overlook the need to heed to both the provisions of international law and constitutional provision at the domestic level relating to protection of human rights.⁶⁸

Human rights and rule of law are of universal value aimed at protecting individual rights and preserving democratic values.⁶⁹ It is seen as the hub of man's existence and requires protection in the mist of challenges encountered in countering terrorism.

Countering terrorism both at international and domestic levels has often abused the right to liberty of individuals against the position of both international conventions and state laws.

8.0 Recommendations

It must be noted that the use of extraordinary rendition as a counter terrorism strategy is not compatible with human rights and rule of law principles. It is recommended that the reformation of extraordinary rendition concept is necessary. Such reformation must include the consideration and assessment of the totality of circumstances before an extraordinary rendition is permitted.⁷⁰ In addition to that, diplomatic assurances must be extracted and post monitoring of individuals rendered to foreign states must be assured.⁷¹ These additional oversight mechanisms will strengthen compliance with the rule of law and human rights both internationally and domestically. Again, sanctions for erring states in this regards must be effected at both international and domestic levels.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Osuji, E., and Nze, T., *op.cit.*, 521.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Manawalia, M., The Practice of extraordinary Rendition: Increasing Accountability and Oversight. sctrolawnorms.edu>han. Accessed 2/12/2022.

⁷¹ *Ibid.*