

Addis Ababa University
College of Law and Governance
School of Graduate Studies

Extraordinary Rendition and Extraterritorial State Obligations in African Human Rights System

Thesis Submitted in Partial Fulfillment of Master of Laws Degree
(LL.M) in International Human Rights Law at Addis Ababa University

-By-

Brook Kebede Abebe

- Advisor -

Takele Soboka Bulto (PhD)

January, 2018
Addis Ababa

Declaration

I, undersigned, hereby declare that this work is original and has not been presented in any other institution before. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged and cited.

Name: Brook Kebede Abebe

_____

Verification

I, Takele Soboka, have read this thesis and approved it for examination.

Advisor: Takele Soboka Bulto (PhD)

_____

Extraordinary Rendition and Extraterritorial State Obligations in African Human Rights System

-By-

Brook Kebede Abebe

Approved by Board of Examiners

	Signature	Date
Advisor		
Takele Soboka (PhD)	_____	_____
Examiner		
Yonas Biremeta (PhD)	_____	_____
Mrs. Anchinesh Shiferaw (Lecturer)	_____	_____

This work is dedicated to all victims of extraordinary rendition.

Acknowledgment

First and above all, praise be to God for the good health and wellbeing that were necessary to complete this thesis. Secondly, I would like to express my great appreciation to my advisor Dr. Takele Soboka, who has been a wonderful guide for me.

I would like to thank my family and friends who helped me one way or another for the successful completion of the thesis. At the end, a special thanks to the contribution of Wubshet Kumelachew (PhD candidate), Ato Zegeye Haile and Bebizuhe Mulugata.

Abstract

Extraordinary rendition is a coercive, clandestine and illegal capturing and transferring of individuals from one state to another by state agents, or agents acting under the sponsorship of another state. By its nature, extraordinary rendition entails multifaceted human rights violations including denial of access to competent and impartial tribunals, to fair trails, and due process of law but worryingly involves torture as a means of interrogation. Moreover, in a single extraordinary rendition act several states may be involved as organizers, facilitators, abductors and safe-keepers, almost always clandestinely. Extraordinary rendition is thus a very complex and clandestine act which makes it difficult to establish responsibility against the participant state extraterritorially.

The African states' participation in the U.S program of extraordinary rendition and the creation of a similar approach among African states and other states have raised the question of the extraterritorial scope of the African Charter. Thus, the primary objective of this thesis is answering the question of when an African state is involved in extraordinary rendition activities and affects the lives of individuals outside its sovereign territory, how will it be responsible pursuant to the African Charter to which this African state is a party? It is true that the African Charter does not explicitly prohibit extraordinary rendition. But in order to answer the aforementioned question, the thesis analyses the African Charter and the jurisprudence of the African Commission. In addition, the paper makes analyses on the jurisprudence of international and regional human rights systems which it uses as 'inspirational sources' for the interpretation and application of the African Charter in case of extraordinary rendition. Therefore, the thesis strongly argues that the notion of state obligation under the African Charter could be applied to extraordinary rendition which violates human rights in extraterritorial context. The paper also makes an analysis on the practice of extraordinary rendition in Africa. The role of the African Commission and the remedies available for victims of extraordinary rendition in the African human rights system are also dealt under this paper.

List of Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACtHR	Inter-American Commission on Human Rights
AHSG	Assembly of Head of State and Government
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CIA	Central Intelligence Agency
ECCHR	European Center For Constitutional and Human Rights
ECHR	European Convention on Human Rights
ECoHR	European Commission on Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILC	International Law Commission
NGO	Non-Governmental Organization
OAU	Organization of African Unity
ONLF	Ogaden National Liberation Front

PDD	Presidential Decision Directive
SERAC	Social and Economic Rights Action Center
U.S	United States of America
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nation

Table of Contents

Declaration i

Acknowledgment iv

Abstract v

List of Acronyms vi

Table of Contents viii

-Chapter One-

Introduction

1.1. Background 1

1.2. Statement of the Problem 4

1.3. Objective of the Study 6

1.3.1. General Objective 6

1.3.2. Specific Objectives 6

1.4. Research Question 7

1.5. Scope of the Study 7

1.6. Research Methodology 8

1.7. Significance of the Study 8

1.8. Limitation of the Study 9

1.9. Organization of the Study 9

-Chapter Two-

Conceptual Framework and International Human Rights Instruments on Extraordinary Rendition

2.1. Introduction 10

2.2. Meaning and Concepts of Extraordinary Rendition 10

2.3. The Evolution of Extraordinary Rendition 12

2.4. The Practice and Patterns of Extraordinary Rendition in Africa 15

2.4.1. The Practice of Extraordinary Rendition in Africa 15

2.4.2. Patterns of Extraordinary Rendition in Africa 16

2.5. Extraordinary Rendition and International Human Rights Instruments 18

2.6. Conclusion 21

-Chapter Three-

Extraterritorial Obligations of States and Extraordinary Rendition under the African Human Rights System

3.1. Introduction 22

3.2. The Content of Extraterritorial Human Rights Obligation of State in General 22

3.3. Extraterritorial Scope of Human Rights Obligation and State Responsibility: The Special Case of Extraordinary Rendition 24

3.3.1. Extraordinary Rendition and Spatial Control 25

3.3.2. Extraordinary Rendition and Personal Control 26

3.3.3. Extraordinary Rendition and *Non-Refoulement* 27

3.4. Extraterritorial Obligations of States under the African Human Rights System in Cases of Extraordinary Rendition 29

3.5. Conclusion 35

-Chapter Four-

Extraordinary Rendition, Problems of Attribution and Extraterritorial Remedies in African Human Rights System

4.1. Introduction 36

4.2. Problem of Attribution and Extraordinary Rendition in Africa 36

4.2. Extraordinary Rendition and the African Charter: The Divergence of Rhetoric and Reality in Africa 38

4.3. The Role of the African Commission in Averting Extraordinary Rendition in Africa 41

4.4. Remedies for Victims of Extraordinary Rendition in the African Human Rights System 43

4.4.1. The Right to Restitution and Extraordinary Rendition 44

4.4.2. The Right to Compensation and Extraordinary Rendition 45

4.4.3. The Right to Satisfaction and Extraordinary Rendition 46

4.4.4. The Right to Rehabilitation and Extraordinary Rendition 47

4.4.5. The Right to Guarantees of Non-Repetition and Extraordinary Rendition 48

4.5. Conclusion 48

-Chapter Five-

Conclusions and Recommendations

5.1. Conclusions 50

5.2. Recommendation 51

5.3. Suggested Areas for Further Studies 52

Bibliography

-Chapter One-

Introduction

1.1. Background

The term extraordinary rendition is relatively a recent and fancy term, which was coined by the Central Intelligence Agency (CIA) to justify the secret extrajudicial arrest, detention, and transfer of an individual suspected of "terrorism" to the custody of another state.[1]Originally, extraordinary rendition was termed as just "rendition".[2] It was carried out on an exceptional basis and sought to bring suspects before a court of law but it was not conducted in line with extradition laws.[3] Concerning the issue, the chief architect and advocate of the extraordinary rendition program, Michael Scheuer, strongly argues for the appropriateness and necessity of the practice. He argued that this program is the most efficient and important weapon used to tackle the act of terrorists.[4] One of the prominent counterterrorism experts, Rohan Gunaratna also supports the idea of Scheuer and argued that 'rough tactic -extraordinary rendition- can save hundreds of lives'.[5]

Even though the United States of America (U.S) is an architect of the extraordinary renditions program, the execution of this program is eventually dependent upon the active and collaborative involvement of foreign governments.[6] Regarding this, several African states are cooperating with the U.S to capture, detain, interrogate, abuse, and transfer an individual to secret CIA detention centers, and allow the use of their airspaces and airports for this program.[7]In addition, some of those states also created their own extraordinary rendition programs for the same purpose and

---

[1]See Jeanne-Mari Retief, *Foreign Aid Toward Extraordinary Rendition: An African Perspective*, *in* INTERNATIONAL CRIMINAL JUSTICE IN AFRICA ISSUES, CHALLENGES AND PROSPECTS (HJ van der Merwe and Gerhard Kemp ed. 2016);Rajiv Chandrasekaran & Peter Finn, *U.S. Behind Secret Transfer of Terror Suspects*, (Mar. 11, 2002). P 65 -81

[2]E Nadelmann, *'The evolution of United States Involvement in the International Rendition of Fugitive Criminals'*, 25 NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 813-885(1993).

[3]Jane Mayer, *Outsourcing Torture: The secret history of America's "extraordinary rendition" program*. *The New Yorker* 106 at 109 (14 February 2005). at www.newyorker.com/archive/2005/02/14/050214fa_fact6?currentPage=1 (Retrieved 26 Feb 2017).

[4]Press Release Michael Scheuer, Talk of the Nation: Policy of Extraordinary Rendition (National Public Radio broadcast ed., 2005).

[5]Michael Scheuer, *Extraordinary Rendition in U.S. Counterterrorism Policy: The Impact on Transatlantic Relations*. available at http://foreignaffairs.house.gov/110/sch041707.htm. (Retrieved 26 Feb 2017).

[6]Margaret L. Satterthwaite, *Rendered Meaningless: Extraordinary Rendition and the Rule of Law*, 75 THE GEORGE WASHINGTON LAW REVIEW 1333(August 2007).

[7]Open Society for Justice Initiative, *Globalizing torture: CIA secret detention and extraordinary rendition*, OPEN SOCIETY FOR JUSTICE INITIATIVE (2013). Available at http://www.opensocietyfoundations.org/sites/default/files/globalizingtorture-20120205.pdf Retrieved 23, March 2017

using the so-called enhanced interrogation techniques to get the confession of suspects.[8] Accordingly, by a single extraordinary rendition operation, several human rights are subject to violation.[9] As a result, several human rights activists, UN treaty bodies and other organizations have repeatedly condemned extraordinary rendition.[10] Yet, there is a support from African states for effective implementation of the extraordinary rendition program of U.S. Several recurring justifications have been given as reasons for African states reverting to extraordinary rendition.[11] But the U.S. Administration cooperates with other states by considering the political and financial imperatives of extraordinary renditions.[12]

African states' participation in the U.S led extraordinary rendition program and the creation of a similar approach among African states have raised the question of the extraterritorial scope [13]of the African Charter on Human and Peoples' Rights (ACHPR or the Charter).[14] Under international and other regional human rights systems, there are controversies on the spatial reach of obligations of states.[15] These controversies originated mainly from the lacuna in international human rights instruments.[16] Some treaties either failed to include the jurisdictional clause or may not mention the extraterritorial applicability of human rights obligation of states.[17]

[8]Muslim Human Rights Forum (MHRF), *Horn of Terror Report of US - Led Mass Extra-Ordinary Renditions from Kenya to Somalia, Ethiopia and Guantanamo Bay* Presented to the Kenya National Commission on Human Rights (2007).

[9]David Weissbrodt & Amy Bergquist, *Extraordinary Rendition: A Human Rights Analysis*, 19 HARV. HUM. RTS. J. 123(2006). P. 123

[10] For instance see, U.N. Committee against Torture and the Human Rights Committee (HRC) (2009) In addition see, Amnesty International, 'USA: Crimes and Impunity – Full Senate Committee Report on CIA Secret Detentions Must Be Released, and Accountability for Crimes under International Law Ensured' (Report, April 2015)

[11] Beth Elise Whitaker, *Compliance among Weak States: Africa and the Counter-Terrorism Regime*, 36 REVIEW OF INTERNATIONAL STUDIES 639 (2010). P.645

[12] Several justifications forwarded for extraordinary rendition and its secrecy. For more please read id. at. 680

[13]Takele Soboka Bulto, *Tortured Unity: United States-Africa Relations In Extraordinary Renditions and States' Extraterritorial Obligations, in* JUSTICE BEYOND BORDERS: EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS FROM AN AFRICAN PERSPECTIVE (Lilian Chenwi and Takele Soboka Bulto ed. 2018).

[14] The African Charter on Human and Peoples Rights adopted in Nairobi June 27, 1981 and entered into force 21 October 1986.

[15] For academic debate on this issue see Karen da Costa , *The Extraterritorial Application of Selected Human Rights Treaties* (Brill , 2012). Mark Gibney and Sigrun Skogly (eds), *Universal Human Rights and Extraterritorial Obligations* (University of Pennsylvania Press , 2010). Michał Gondek , *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties* (Intersentia , 2009). Marko Milanovic , *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (OUP , 2011)

[16] Ralph Wilde, *Legal "Black Hole"? Extraterritorial State Action and International Treaty on Civil and Political Rights*, 26 MICHIGAN JOURNAL OF INTERNATIONAL LAW (2005). P 739-806

[17] ICCPR speaks of 'all individuals within its territory and subject to its jurisdiction' (Article 2(1)); the European Convention on Human Rights 1950 (ECHR)speaks of 'everyone within their jurisdiction' (Article 1); the Convention on the Rights of the Child (CRC) speaks of 'each child within their jurisdiction' (Article 2(1)); and the American Convention on Human Rights (ACHR)speaks of 'all persons subject to their jurisdiction' (Article 1(1)).

In this regard, similar to some other international human rights instruments, the African Charter is silence on extraterritorial obligation of states.[18]

Particularly, the language of Article 2 of International Covenant on Civil and Political Rights (ICCPR)[19]concerning territory and jurisdiction gives rise to the central controversy on the applicability of extraordinary rendition.[20]States maintain that apart from *non-refoulement* obligation, international human rights laws only protect individuals within state territory and that extraordinary rendition, which involves extraterritorial transfers, is outside the treaty's scope.[21]Based on the principle of state sovereignty, the obligation of states is principally confined to state territory.[22] But this approach will be in conflict with the principal feature of human rights: universality. Regarding this, the extraordinary rendition was intended to place detainees outside judicial, political, or public oversight, premised on the view that a state was not bound by international human rights law, when engaged outside its own territory.[23]

Specifically, some scholars and states like the U.S argued that based on the provisions of the international human rights standards', including ICCPR and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),[24] the obligation of states is confined to their own border.[25] They also argue that extraordinary rendition is not prohibited under international law and the transferring of suspects from one state to another state is not tantamount to the violation of international human rights obligation of states.[26] Therefore, the state cannot be held responsible for any act relating to extraordinary rendition, including the extraterritorial transfer of suspects.[27]Moreover, they argue that if a state makes a request and gets the diplomatic guarantee for decent treatment from another state, the state will not be held

[18] Similar to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter does not contain a general provision limiting the scope of obligations either *ratione personae* or *ratione loci*.
[19]International Covenant on Civil and Political Rights, *entered into force* Mar.23,1976, S.EXEC. Doc. E, 95-2, 999 U.N.T.S. 171.
[20] Wilde, MICHIGAN JOURNAL OF INTERNATIONAL LAW, (2005). Above note 16 p. 740
[21]Karen Greenberg & Joshua Dratel, *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations*, 286(2003). P. 286
[22]Dr. Vassilis P. Tzevelekos, *Reconstructing The Effective Control Criterion In Extraterritorial Humanrights Breaches: Direct Attribution Of Wrongfulness, Due Diligence, And Concurrent Responsibility*, 36 MICH. J. INT'L L. 129 (2014). P. 36
[23]Sigrun Skogly, *Extraterritoriality: Universal Human Rights Without Universal Obligations., in* RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW (Adam M Joseph S ed. 2010).
[24] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into June 26, 1987), *available at* http://wwwl.umn.edu/humanrts/instree/h2catoc.htm; Retrieved 26 October 2017.
[25] For instance, the language of Article 2 of ICCPR concerning territory and jurisdiction gives rise to the central controversy on the extraterritorial applicability of ICCPR to extraordinary rendition. See Extradition To and From the United States: Overview of the Law and Recent Treaties. (2007).
[26] Wilde, MICHIGAN JOURNAL OF INTERNATIONAL LAW, (2005). Above note 16 p. 742
[27] Id at, p 743

responsible for any violations which take place beyond its border.[28]However, contrary to the arguments outlined above, there are research findings and cases, which call for the extraterritorial responsibility of states.[29] In the same vein, human rights activists have condemned the program of extraordinary rendition as a violation of international human rights laws in the extraterritorial context.[30]

1.2. Statement of the Problem

When an African state is involved in extraordinary rendition activities and affects the lives of individuals outside its sovereign territory, how will be responsible pursuant to the African Charter to which this African state is a party? Answering this query is the primary objective of this thesis. As Michele Nino summarized the position of the U.S. Administration, cooperating for the purpose of extraordinary rendition with other states is a vital strategy for the U.S war against terrorism.[31] In relation to this cooperation, credible reports indicate that currently there are some African states that have made a joint venture with U.S.[32]

As outlined above, extraordinary rendition is accompanied by torture, detention without trial, denial of legal representation, enforced removal from public view and normal surrounding, forcible transfer, arbitrary arrest, and the absence of assurances from receiving states and so on.[33] However, all these acts are directly or indirectly prohibited under international human rights law.[34] But, the covert and complex nature of the program and the various intricate legal arguments raised by the U.S on the applicability of international standards throw a shade of ambiguity over the issue.[35]

As stated in the background section, one of the areas of controversy related to extraordinary rendition is its extraterritorial feature and obligations of states beyond their own territories. Obligation beyond the territory of the state generally involves two important questions: whether

[28]Margaret Satterthwaite Edited By: Second Edition pp., *"Is This Legal? Extra¬ordinary Rendition and International and Human Rights Law" in* CIA EXTRAORDINARY RENDITION FLIGHTS, TORTURE AND ACCOUNTABILITY - A EUROPEAN APPROACH (European Center For Constitutional And Human Rights E.V. (ECCHR) ed. 2008). P. 13
[29] For better understanding See above note 15
[30] Taiyyaba Qureshi & Marianne Twu Paula Kweskin, *The International Legal Landscape Of Extraordinary Rendition: U.S. Obligations Under ICCPR, CAT, and The Nuremberg Principles*. http://www.ncstoptorturenow.org/ Retrieved 23, March 2017
[31] Max Fisher, *A staggering map of the 54 countries that reportedly participated in the CIA's rendition program* WASHINGTON POST, 5 February. 2013.
[32] Id. at. P 2
[33] Globalizing Torture CIA Secret Detention And Extraordinary Rendition. (2013). Above note 7 p. 20
[34] For better understanding see David Weissbrodt & Amy Bergquist, HARV. HUM. RTS. J., (2006). Above note 9
[35] Wilde, MICHIGAN JOURNAL OF INTERNATIONAL LAW, (2005). Above note 16 p. 742

the violation in question falls within the scope of subject matter jurisdiction (*ratione materiae)* of the obligation in question, and whether the link between the state and the violation meets the requirements of the relevant international human rights norms.[36] In light of these questions, the African Charter instead of specifying a provision, which guides the territorial or the jurisdictional application of the Charter, only provides the obligation to recognize and adopt legislative or other measures for effective realization of the rights enshrined under the African Charter.[37] While signatory African states have been widely mocked for participating in America's extraordinary rendition program through acts on their own territories, including acquiescence in allowing the CIA to use their airspace, it is less clear that participation in the form of extraterritorial acts would fall foul of the Charter. Difficult questions remain as to whether the Charter's scope extends far enough to extend jurisdiction in cases where a signatory seizes an individual abroad and renders him to the custody of another country without letting the detainee set foot on African state soil. These questions do not merely delineate the scope of signatory African states' liability; they define the capacity of the African Charter to regulate human rights abuses and thereby raise fundamental issues concerning the Charter's identity.

Extraordinary rendition poses a new, contemporary form of violations that was not envisaged when international human rights treaties and the African Charter were adopted. As a result, as a new challenge to human rights discourse states are trying to get around their treaty obligations through exporting the locus of violations. In light of extraordinary renditions cases, the capture and handing over of individuals usually takes place within the territory of African state and later the victim transfer to another state (African or non-African state), do the obligations in question apply to that African state at all, given the extraterritorial locus of the consequent violations? Therefore, based on the African Charter obligations clause, one may wonder as to the extent of the extraterritorial reach of human rights obligations and responsibility of states in case of extraordinary rendition.

Under the international human rights discourse, both extraordinary rendition and extraterritorial obligation of states are very controversial issues.[38] Even if most research results and literature show the practice of extraordinary rendition in Africa, it is rare to find studies showing the

[36] Id. at. P. 742
[37] Article 1 of the ACHPR Above note 14
[38] Zachary William Carpino, *Terrorizing the Terrorists: Reconstructing U.S. Policy on the Use of Torture in the Global War on Terror*, Volume 4 GLOBAL SECURITY STUDIES 10(2013). P. 12

extraterritorial obligations and responsibilities of states in case of extraordinary rendition under the African human rights system. Most researches focus on the 'tortured unity' between U.S and other States.[39]In addition, researchers focus on the practice, not on the responsibility aspect.[40] Moreover, researchers have scrutinized the practice of extraordinary rendition from the perspective of international criminal law or from the perspective of individual responsibility.[41]

Therefore, extraordinary rendition is a trans-boundary phenomenon that entails/calls for extraterritorial obligations. As a result, studying the obligation and responsibility of the African States and, their extraterritorial obligation more specifically, has a paramount importance to understand the legal grounds for ensuring accountability of implicated states and for stopping unity for the purpose of torture among African States, and U.S and African States. In addition, knowing the role of participant states and the nature of the extraordinary rendition in Africa plays a pivotal role in determining the nature and scope of extraterritorial obligation and responsibility of states under the African Charter.

1.3. Objective of the Study

1.3.1. General Objective

The primary objective of the research is assessing the practice of extraordinary rendition and attendants extraterritorial human rights obligations and responsibilities of states under the African human rights system.

1.3.2. Specific Objectives

Based on the aforementioned principal objective, there are also specific objectives. These include:

- Investigating the implications of the legal frameworks related to the practice of extraordinary rendition in Africa.
- Assessing extraterritorial obligation and responsibility of State in case of extraordinary rendition under the African Charter.

[39] Bulto. 2018. Above note 13
[40] The U.S. Program of Extraordinary Rendition and Secrete Detention: Past and Future (January 2009).
[41] Retief. 2016. Above note 1 p. 78

- Assessing remedies for extraterritorial violation of the human rights related to extraordinary rendition in the African human rights system.
- Investigating the role of the African Commission in averting the practice of extraordinary rendition in Africa.

1.4. Research Question

The research will address the following research questions:

- How do the substantive provisions of the African Charter address the practice of extraordinary rendition in Africa?
- Are there extraterritorial obligations and responsibilities of African states emanating from the African Charter for their involvement in extraordinary rendition? If so, what are the acts/omissions that cause such responsibilities and what are these obligations?
- What remedies, if any, are available to victims of extraterritorial violation of the human rights related to extraordinary rendition in the African human rights system?
- How do the mandates of the African Commission address the practice of extraordinary rendition in Africa?

1.5. Scope of the Study

The study does not address the entire range of extraordinary rendition and extraterritorial obligations and responsibilities of state in Africa; rather it is limited to studying the concept, legal frameworks and the practice of extraordinary rendition in which African states are directly involved. The scope of the study is further limited to the African Charter. In addition, the paper discusses the role of the African Commission on Human and Peoples' Rights (the Commission or the African Commission) to avert the practice of extraordinary rendition in Africa. Thus, a reference to wider debate and jurisprudence in respect to the practice of extraordinary rendition is limited to the extent that they clarify the extraterritorial human rights obligation and responsibility of African states. But in this paper primary emphasis is placed on the extraterritorial human rights obligations of African states and it does not provide detail analysis on the responsibilities of African states. Moreover, the paper does not purport to analyze the extraterritorial human rights obligations of non-state actors. The analysis of the extraterritorial

application of the international humanitarian law and the national laws of African states are also beyond the scope of the research.

1.6. Research Methodology

This research is doctrinal. Therefore, it examines the role of extraterritorial application of human rights instruments as a possible remedy for victims of extraordinary rendition. However, due to the clandestine nature, it is difficult to access full-fledged information about extraordinary rendition in Africa.[42]Therefore, for the purpose of achieving the objective of the research, this study makes an analysis on the relevant and publicly available documents including books, reports, research studies, journals and academic articles, and various internet sites. But the researcher strictly considered the reliability and validity of these sources. International and regional human rights instruments are also used as a primary source to conduct this research, *inter alia* Universal Declaration of Human Rights (UDHR), ICCPR, CAT, ACHPR, ECHR, and ACHR. Moreover, the jurisprudence of international and regional human rights monitoring bodies has also been important sources.

1.7. Significance of the Study

Extraordinary rendition is a clandestine and trans-boundary issue, involving extraterritorial human rights acts of states. Some countries justify the practice of extraordinary rendition as a result; it creates a controversy in the contemporary human rights discourse including the African human rights system. Thus, this study could serve as a springboard for other potential researchers to conduct further investigation on extraordinary rendition and on the extraterritorial obligation of states in the African context. Therefore, this research will have both academic and practical relevance.

In academic terms, it is a contribution to the ongoing debate on the extraterritorial human rights obligations of states in the area of extraordinary rendition. It helps in elaborating the scope of the human rights obligations of states in Africa in case of extraordinary rendition. In terms of its practical significance, fighting human rights violations like extraordinary rendition is critical in

[42]Margaret Satterthwaite, *The U.S. Program of Extraordinary Rendition and Secret Detention: Past and Future*, *in* CIA-EXTRAORDINARY RENDITION FLIGHTS, TORTURE AND ACCOUNTABILITY – A EUROPEAN APPROACH (European Center For Constitutional And Human Rights E.V. (Ecchr) ed. 2009). P. 15

the fight against its proliferation. It also helps to hold those responsible for human rights violations as well as those who organize the practice of extraordinary rendition.[43]Such an analysis of the extraterritorial obligation of states in Africa contributes to the clarification of mechanisms for fighting and stopping the unity of states in human rights violations among African states and the relationship between the African States and U.S.

1.8. Limitation of the Study

There were some limitations of the study. Firstly, the research encountered lack of relevant materials on the subject matter under the African human rights system. However, the researcher made an attempt to remedy this problem by resorting to materials written in other international and regional systems and tried to analogize with African human rights system. Extraordinary rendition is a clandestine program and it is very difficult to access full-fledged cases. Therefore, lack of a full-fledged case for conducting the research was also another limitation of the study. However, the researcher addressed this limitation by accessing as many public documents as possible concerning the practice of extraordinary rendition. Moreover, the relative novelty of the jurisprudence of extraordinary rendition adjudication in African human rights system also has a negative impact on the conduct of the research.

1.9. Organization of the Study

This study is organized into five chapters. The first Chapter provides general introduction including the overview of the study and research methodology. The second Chapter is devoted to discussion of some imperative points concerning conceptual framework and human rights instruments relating to extraordinary rendition in general. The extraterritorial obligation of states and extraordinary rendition under human rights laws are examined under the third Chapter. Under Chapter four, extraordinary rendition, problems of attribution and assigning state responsibility and the remedies for victims of extraordinary rendition in African human rights system are discussed. The fifth and the last Chapter focus on conclusions and recommendations.

[43]Wolfgang Kaleck, *Justice and Accountability in Europe: Discussing Strategies in* CIA-EXTRAORDINARY RENDITION FLIGHTS, TORTURE AND ACCOUNTABILITY – A EUROPEAN APPROACH EDITED BY: (European Center For Constitutional And Human Rights E.V. (ECCHR) ed. 2009). P. 27

-Chapter Two-

Conceptual Framework and International Human Rights Instruments on Extraordinary Rendition

2.1. Introduction

This Chapter addresses the conceptual framework and international human rights instruments relating to extraordinary rendition in general. The Chapter discusses the historical emergence and nature of extraordinary rendition. This is followed by discussion of the practice and patterns of extraordinary rendition in Africa. Finally, legal instruments which serve as a means to avert extraordinary rendition and the obligation of states under international human rights system will be examined.

2.2. Meaning and Concepts of Extraordinary Rendition

There is no universally or formally recognized description or definition for the term extraordinary rendition.[44] As a result, scholars have attempted to define extraordinary rendition based on their objectives, but most give emphasis to the absence of formal definition.[45] Therefore, this part of the Chapter clarifies the meaning of extraordinary rendition and discusses different definitions proposed by international organizations and researchers. Moreover, it will discuss the working definition under this thesis.

There is mystification concerning the terminology when distinguishing extradition, rendition and extraordinary rendition.[46]As one mechanism of escapement, criminals cross international borders for the purpose of escaping from the hands of law enforcement agencies to other countries. As a counter measure to this mechanism, states may enter into an extradition agreement.[47] However, unlike extradition, states may use another mechanism,[48]which is an extralegal transfer of individual suspect from another country, for the purpose of putting him on trial.[49] In the earlier stage,

[44] Retief. 2016. Above note 1 P. 65
[45] Id. at. P. 65
[46]David Weissbrodt and Amy Bergquist, *Extraordinary Rendition and the Torture Convention*, 46 VIRGINIA JOURNAL OF INTERNATIONAL LAW 585(2006). P. 590
[47] Retief. 2016. above note 1. P. 66
[48] Id. at. P.66
[49]Kaleck. 2009. Above note 43 P. 27

this program was termed as "rendition".[50] However, the original and ultimate objective of the earlier rendition was bringing suspects to trial. Nevertheless, the rendition takes place without consideration of extradition laws. Similar to rendition, states have increasingly resorted to clandestinely kidnapping and transferring individuals-but contrary to rendition-for the purpose of enhanced interrogation including torture.[51]

Extraordinary rendition is a relatively new introduction in the discourse of human rights and defined by its informality[52]and it is a kind of state-sponsored abduction and extrajudicial transfer of a suspect of a crime from one state to another for the purpose of enhanced interrogation including torture and mostly conducted by the U.S, by cooperating with other states.[53]Extraordinary rendition is defined by the European Court of Human Rights ('ECtHR') as: "An extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there was a real risk of torture, or cruel, inhuman or degrading treatment".[54] It is also referred to as the transfer of terrorist subjects to foreign countries for interrogations that rise to torture outside of normal legal processes in order to gain intelligence for the War on Terror.[55]

Satterthwaite defines extraordinary rendition as ''the transfer of an individual, without the benefit of a legal proceeding in which the individual can challenge the transfer, to a country where s/he is at risk of torture.''[56]Takele in his recent publication defines extraordinary rendition as a handing over of suspects with no legally established procedure, but he further mentions the garnishing elements of extraordinary rendition like 'an arrest without warrant, denial of access to a court, lawyers or family, and detentions in inhuman and degrading conditions usually outside the country of citizenship or residence for indefinite periods of time'.[57]

[50]As Black's Law Dictionary defined rendition as "The return of a fugitive from one state to the state where the fugitive is accused or was convicted of a crime." See Black's Law Dictionary (9th ed. 2009).
[51]Bulto. 2018. Above note 13 P. 6
[52]Kaleck. 2009. Above note 43 P.26
[53]Fisher, WASHINGTON POST, 2013. Above note 31
[54]Babar Ahmad and Others v United Kingdom, para 113., (ECHRt 6 July).
[55]House of Commons Library, *Standard Note on Extraordinary Rendition*, March2006, cited in HELMUT PHILIPP AUST, COMPLICITY AND THE LAW OF STATE RESPONSIBILITY (Cambridge University Press. 2011).P.122
[56]Similarly, Michele Nino explain extraordinary rendition as the transfer of a person from one country to another country, without legally established procedure or incompliance with the practice of legal rendition. Michele Nino, *Extraordinary Renditions: The Role of European Security Services in the Fight Against International Terrorism*, FIRST WORLD CONFERENCE OF PENAL LAW. PENAL LAW IN THE XXIST CENTURY. (2007);Satterthwaite, THE GEORGE WASHINGTON LAW REVIEW, (August 2007). See also Foundations. 2013. Above note 7 P. 212
[57]Bulto. 2018. Above note 13 P. 6

As outlined above, extraordinary rendition is a term that cannot be defined based on a single unlawful act, rather it is a process consisting of multiple and complex series of illegal acts.[58]Therefore, for the purpose of this research, extraordinary rendition is defined as multiple and complex illegal acts made by states, which includes coercive and illegal capturing and transferring of individuals from one state to another state by state agents, or agents acting under the sponsorship of another state. In the process, torture is used as a means of interrogation but it is performed out of public scrutiny and oversight of the law. Basically, it is usually conducted without assurances required from the receiving state. Moreover, subsequent to the transfer, the detainee is kept in 'black sites', denied access to justice, access to legal assistance and treated in an inhuman and degrading manner.[59]

2.3. The Evolution of Extraordinary Rendition

As outlined in the foregoing part, extraordinary rendition is one among the newly emerging human rights violations which is not mentioned by name in the catalogue of human rights instruments.[60] Even if there are controversies related to its evolution, most literature indicates that extraordinary rendition has been considered as a practice that accelerated after the 9/11 terrorist attacks of U.S.[61] Regarding this, the U.S. and African states, particularly Egypt, have engaged in extraordinary rendition prior to this attack.[62] For instance, in 1993, President George H.W. Bush through National Security Directive 77 authorized specific procedures for renditions into the United States.[63]The authorization of rendition of terrorist suspects also continued in the time of the Clinton's Administration since several presidential directives related to renditions were signed by Clinton, including PDD-39[64] and PDD-62.[65] Reports showed that through the approval of the Clinton Administration, for the purpose of dismantling al Qaeda, the CIA expanded its use of extraordinary rendition to send suspects to third countries in the mid-

[58]See Retief. 2016. Above note 1 P.67
[59]Similar definitional approach has been taken by another researcher See id. at. P. 67
[60] David Weissbrodt & Amy Bergquist, HARV. HUM. RTS. J. , (2006). Above note 9 P. 126
[61]For instance, see Shannon McCaffrey, *Canadian Sent to Syrian Prison Disputes U.S. Claims Against Torture*, KNIGHT RIDDER/TRIB. NEWS SERVICE, 2004;Louis Fisher, *Extraordinary Rendition: The Price ofSecrecy*, 57 AM. U. L. REV. 1405,(2008). P.1405
[62]A limited number of renditions reportedly occurred prior to the September 11, 2001 attacks against the U.S. But these renditions have bypassed strict legal procedure normally expected in cases of treaty-based extradition. Based on former CIA Director George Tenet, the CIA took part in over 80 renditions before the 9/11 attacks. See Satterthwaite. 2009. Above note 6
[63]Ingrid Detter Frankopan, *Extraordinary Rendition and the Law of War*, INT.N.C.J. (2008).
[64] See Presidential Decision Directive-39: U.S. Policy on Counterterrorism (June 21, 1995), Available at http://www.fas.org/irp/offdocs/pdd39.htm Retrieved 23, February 2017
[65] See Presidential Decision Directive-62: U.S. Policy on Counterterrorism (May 1998), Available at http://www.fas.org/irp/offdocs/pdd62.htm. Retrieved 23, February 2017

1990s.[66]Therefore, the CIA in 1995 began rendering suspects to foreign governments for prosecution.

One of the earlier extraordinary rendition partnerships was established in 1995. This partnership was made between the CIA and an African state, Egypt. Its ultimate purpose was to detain an Egyptian Al Qaeda suspect, Talaat Fouad Qassem after tracking, capturing, and transporting him across the globe.[67]In 1998, there was collaboration between U.S, Albania, and Egypt to detain and torture five suspected militants.[68] Through the assistance of the U.S, the suspects were captured in Albania, then tortured and faced different inhuman treatments in Egypt.[69]

In 1990s the transfer of suspects from one country to another passed through at least three stages.[70] Firstly, the receiving or the home state will prepare an arrest warrant. Secondly, the government will examine each rendition before senior government officials grant approval. Thirdly, the CIA will notify the local government, and obtain diplomatic assurance from the home or receiving government that it would not ill-treat the individual.[71]However, after the September 11, 2001, terrorist attacks, renditions vastly expanded in number and scope.[72] And CIA mandated to conduct extraordinary renditions by ignoring those three stages of transfer of suspects.[73] Disregarding for the three stages of rendition, the Bush Administration has clearly affirmed extraordinary renditions as a vital instrument for the U.S national security.[74] Secretary of State Condoleezza Rice also acknowledged and defended the rendition program of U.S "as a vital tool in combating terrorism."[75]Similarly, a former CIA official also argued in favor of this

[66] Press release *Scheuer, Talk of the Nation: Policy of Extraordinary Rendition. 2005.*
[67]Talaat Fouad Qassem had been sentenced to death in absentia for the assassination of Anwar Sadat and in Croatia. Initiative, OPEN SOCIETY FOR JUSTICE INITIATIVE (2013). Above note 7.P. 14
[68]Beth Henderson, *From Justice to Torture: The Dramatic Evolution of U.S.-Sponsored Renditions*, 20 TEMP. INT'L & COMP. L.J. (2006). P. 20
[69] Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Tort ure. (2012-2013).
[70]Alan W. Clarke, *Rendition To Torture: A Critical Legal History*, 62 RUTGERS LAW REVIEW (2012). Http://Pegasus.Rutgers.Edu/~Review/Vol62n1/Clarke_V62n1.Pdf . Retrieved 10, March 2017
[71]Robert Johnson, *Extraordinary Rendition: A Wrong Without a Right*, 43 U. RICH. L. REV. 1135 (2009). P. 1165
[72]Mark J. Murray, *Extraordinary Rendition and U.S. Counterterrorism Policy*, Volume 4 JOURNAL OF STRATEGIC SECURITY 1(2011)., Available at: http://scholarcommons.usf.edu/jss/vol4/iss3/3 Retrieved 10, March 2017
[73]Johnson, U. RICH. L. REV., (2009). Above note 71. P. 1167
[74]The Constitution Project. *The Report of the Constitution Project's Task Force on Detainee Treatment.* Washington, DC: The Constitution Project. (2013)
[75]Former Secretary Condoleezza Rice, Remarks (2005)., available at : *http://merln.ndu.edu/archivepdf/terrorism/state/57602.pdf* Retrieved August 23, 2017

assertion and stated that "the rendition program has been the only successful American counterterrorism program since 1995."[76]

After the Bush Administration, President Barack Obama promised to end extraordinary rendition and its *modus operandi* including torture and the use of "black sites."[77]Regarding this, executive order issued by Obama provided for the closure of the Guantanamo Bay Naval Base military prison and to end the use of CIA black sites.[78] In addition, the Obama Administration acknowledged that international law prohibited *refoulement*, extradition, and transfer of people to torture.[79] However, the Obama's Administration established a Task Force to examine the policies on extraordinary rendition.[80] Therefore, the Task Force instead of providing fundamental changes to the extraordinary rendition was concerned about the improvements in the procedures used to transfer detainees.[81]But, it involves in kidnapping people and using diplomatic assurances as a way around the transfer-to-torture prohibition. Donald Trump promised during his campaign to resurrect the CIA's black sites and bring back torture.[82] In addition, after his inauguration, a draft executive order surfaced that was clearly intended to implement the words he promised.[83] As to the Independent reports, America is about to go backwards on torture under Trump Administration.[84] Similarly, Amnesty International also reported that currently the Trump Administration has begun large-scale rendition and outsourcing of torture to foreign governments.[85]

Even though the emergence of extraordinary rendition is related to U.S, currently, there are countries from different parts of the world which are involved in implementing the U.S program of extraordinary rendition. In addition, some of states are creating their own extraordinary rendition programs with their neighboring countries and countries from different continents. In

[76] Scheuer, above note 66
[77]Margaret L. Satterthwaite, *The Legal Regime Governing Transfer of Persons in the Fight Against Terrorism*, (2010). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157583 (citing Exec. Order No. 13,491, 74 Fed. Reg. 4893 (Jan. 22, 2009)). Retrieved 23, August 2017
[78] Id. at. P. 28
[79] Jeff Mason and Randall Mikkelsen, *Obama sets deadline to close Guantanamo*, THE VANCOUVER SUN, Jan. 21. 2009. http://www.vancouversun.com/news/Obama+sets+deadline+close+Guantanamo/1203575/story.html Retrieved 23, August 2017
[80] U.S. Dep't of Justice, Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President (2009).
[81] Satterthwaite, (2010). Above note 28 P. 36
[82] Rupert Stone, *America is about to go backwards on torture under Trump*, INDEPENDENT Thursday 19 January. 2017.
[83]https://www.washingtonpost.com/world/national-security/whitehouse-draft-order-calls-for-review-on-use-of-cia-black-sitesoverseas/2017/01/25/e4318970-e310-11e6-a547-5fb9411d332c_story.html?utm_term=.53068b17aec9.Retrieved 23, March 2017 26
[84] Rupert Stone, above note 82
[85] Id.

this regard, African states are playing a pivotal role for effective realization of the U.S extraordinary rendition program while creating their own rendition programs. Therefore, the next part discusses the practice and pattern of extraordinary rendition in Africa.

2.4. The Practice and Patterns of Extraordinary Rendition in Africa

2.4.1. The Practice of Extraordinary Rendition in Africa

It is true that European states were working together with the U.S extraordinary rendition program. However, due to the active and collaborative investigation and decisions of the Council of Europe and the ECtHR, European countries are becoming legally accountable for their involvement in the U.S extraordinary renditions program. But without the European states willing to aid and abet the policy of extraordinary rendition, the U.S administration would be forced to turn to African states willing and looking for their political and financial advantages to become hosts for secret prisons and be partners in the abduction, transport, transport and abuse of suspected terrorists.

Credible reports indicate that more than a dozen of African states are highly engaged in extraordinary rendition. For instance, over the last 10 years, more than 100 terror suspects are thought to have been arrested in Somalia and Kenya and transferred to Ethiopia to face enhanced interrogation[86] at the Central prison or "Ma'ekelawi".[87] One of the 'black sites' for extraordinary rendition program of U.S in Africa is found in Lemonier, Djibouti, which is operational to this day.[88] Egypt[89]and Morocco[90]appear to be the most frequently used receiving countries.[91]Algeria

[86]*Extraordinary Renditions in Africa: US Interrogates Terror Suspects in Ethiopian Jails*(2007). can be accessed http://www.spiegel.de/ Retrieved March 15, 2017

[87] "Ma'ekellawi" is one of the most notorious police detention center for high political and terrorism detainees. One writer named it 'Mini Guantanamo Bay'. See Bulto. 2018. Above note 13. In the writing of this thesis the Ethiopian government announced that it would close the"Ma'ekellawi" and plans to turn it in to a modern Museum. See www.aljezira.com/news/2018/ethiopia-pardon-political-prisoners-shut-prison-180103114524304.html. Retrieved 4 January 2018

[88] Several reports clearly indicated that Djibouti had been used as a stop-over point and detention center and as a gateway into the wide extraordinary rendition program of U.S. in Africa, particularly in the horn Africa. See more on United Nations Human Rights Council, 13th Session, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, UN Doc A/HRC/13/42 (20 May 2010), paragraph 157. and Fisher, WASHINGTON POST, 2013. Above note 31

[89] Egypt is the earliest friendly intelligence services providing African states for U.S extraordinary rendition program. Foundations. 2013. Above note 7 p. 19

[90] On March 2013, Ben Emmerson, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism requested Morocco to improve its human right situation relating to extraordinary rendition. Because Morocco highly involved extraordinary rendition specifically in detention, torture, transferring and hostage of secret CIA detention and the permission for use of airspace and airports for flight associated with CIA extraordinary rendition operations. Emmerson, Ben. *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.* Geneva: United Nations Office of the High Commissioner for Human Rights (2013)

[91]Torture By Proxy: International And Domestic Law Applicable To "Extraordinary Renditions". pt. 1-123 (2004).

also allowed its airspace and airports for U.S extraordinary rendition flights.[92] Not only these countries, but also countries like Libya,[93] Malawi,[94] South Africa,[95] Mauritania,[96] Gambia,[97] and Zimbabwe[98]are involved in U.S extraordinary renditions. As stated above, extraordinary rendition in Africa is not only contingent on the U.S; rather there are African States who created their own rendition programs. For instance, the East African governments have been trading in high profile terrorist suspects due to intentional ignorance of extradition laws.[99]

2.4.2. Patterns of Extraordinary Rendition in Africa

As Takele clearly identified, extraordinary renditions in Africa have existed with multiple states and in a variety of patterns.[100] As noted above, extraordinary rendition as a program is highly supported by U.S. As a result, most of extraordinary rendition cases are linked with the U.S and its CIA. For instance, Ahmed Agiza and Mohammed Alzery (El Zari) are Egyptian citizens and they were transferred from Sweden to CIA operatives, then to Egypt where they were tortured. This pattern of extraordinary rendition shows the rendition of citizens of African state by the U.S agent from a European state to their country of citizenship, Egypt. The extraordinary rendition process of Mohammed Abdullah Saleh Al-Asad contains another version of extraordinary rendition pattern in Africa. He is a non-African, Yemeni citizen, but rendered by an African State, Tanzania, to U.S agent. In other words, there is a rendition of non-Africans by an African state to the CIA.[101] Furthermore, reports indicate instances of rendition of Africans by a third

[92]Fisher, WASHINGTON POST, 2013. Above note 31

[93] In 2012 Human Rights Watch reported that "showing a close degree of cooperation among the U.S, the UK, and other Western governments with regard to the forcible return and subsequent interrogation of Gaddafi opponents in Libya." Human Rights Watch Report (2013).

[94] Malawi has been involved in extraordinary rendition by capturing, detaining, abusing, and transferring of individuals. Malawi involved in extraordinary rendition of Laid Saidi, an Algerian citizen. See Initiative, OPEN SOCIETY FOR JUSTICE INITIATIVE (2013). Above note 7 P. 95

[95] There are few judicial domestic cases relating to South Africa's participation in extraordinary rendition.See id. at. P. 107

[96]Mauritania involving in extraordinary rendition by: capturing, detaining, and interrogating of individuals. As to the report, there were suspects who have been arrested in Mauritania and transferred to U.S. custody. See id. at. P. 96

[97] The Republic of Gambia is a partner of U.S lead extraordinary rendition program and its partnership which allowed the use of airports and airspace for flights. In addition Gambia captured, detained, and interrogated individuals subsequently transferred to secret CIA detention centers. See id. at. P. 77

[98] Zimbabwe is one of the countries which extraordinarily rendered and detained individuals. It also has a link with the arrest of Fahad al Bahli, Ibrahim Habaci, Khalifa Abdi Hassan, Mahmud Sardar Issa, and Arif Ulusam. Because they were arrested in Malawi, by collaboration of CIA and Malawi's government. Then they transferred to Zimbabwe and detained. Finally, they transferred to Sudan where they were released. See id. at. P. 118

[99] There are reports which show the extraordinary rendition club among the horn of Africa States. According to the Muslim Human Right Forum report in 2007 more than one hundred seventeen individuals were rendered from Kenya to Somalia and later on to Ethiopia. See Muslim Human Right Forum (MHRF), (2007). Above note 8 P.7

[100] Bulto. 2018. Above note 13 P.8

[101] Even though Abdullah Saleh Al-Asad allegation was not presented against Tanzania, it was a dry fact that his principal residence was Tanzania. *Mohammed Abdullah Saleh Al-Asad v Djibouti,* Communication No. 383/10, 55th Ordinary Session of

African state to the CIA. For instance, Kenya, an African state, rendered the citizens of Somalia and of Eritrean into the hands of the U.S agency. [102]

African states have taken lessons from U.S extraordinary rendition program. As a result, similar to U.S program, but without the involvement of U.S, African states in collaboration with African and non-Africa states also create distinct patterns of extraordinary rendition programs. For instance, an Ethiopian shepherd, Ishmael Noor, without having any justified ground of suspicion for his involvement in the Ethiopian rebel group Ogaden National Liberation Front (ONLF) and Islamic Courts Union, was rendered from Kenya to a detention facility in Somalia then rendered to Ethiopia. In his incommunicado detention at Ethiopian 'local mini-Guantanamo-Bay', he endured several human rights violations, including torture. However, no human rights group, no journalist, no family member or government ever came – or rather allowed - to visit him.[103]According to the Human Right Watch Report, there is also another pattern of extraordinary rendition, which is a rendition of Kenyans by Kenya to Ethiopia and Somalia.[104] This shows the possibilities of the rendition of Africans by an African state of citizenship into the hands of a third African state. The same report also indicates the rendition of Africans, Ethiopian citizens, by another African state, Somalia, to an African state of citizenship, Ethiopia.[105]In addition, the African states are also participating in the rendition process in collaboration with non-African states. For instance, Andargachew Tsige is a British national who was captured in Yemen by the joint operation of Ethiopian and Yemeni authorities and was transferred to Ethiopia without any involvement of U.S.[106] Similarly, Abdella Ocalan, a Turkish national, who was abducted or detained in Kenya by the joint operation of Kenyan and Turkish agents was transferred to Turkey.

As discussed above, extraordinary rendition is practiced in Africa as well as in other parts of the world. To the contrary, international human rights instruments are not specifically dealing with the issue. However, the garnishing elements of extraordinary renditions are included in the major

---

the African Commission on Human and Peoples' Rights, 28.04–12.05.2014, paras. 176-177. (Mohammed Abdullah Saleh Al-Asad And Djibouti 383/2010, (The African Commission).

[102] See Muslim Human Right Forum (MHRF), (2007). Above note 8 P.7

[103]Human Rights Watch, "'Why Am I Still Here?" The 2007 Horn of Africa Renditions and the Fate of Those Still Missing' (Human Rights Watch 2008) p. 4 https://www.hrw.org/reports/2008/eastafrica1008/eastafrica1008web.pdf Retrieved 6, April 2017

[104] See id, at P. 2-4

[105] id, at P. 2-4

[106]'Andargachew Tsige: Ethiopian brutality, British apathy' https://www.opendemocracy.net/opensecurity/graham-peebles/andargachew-tsige-ethiopian-brutality-british-apathy Retrieved 8, July 2017

international human rights instruments. Therefore, the following part evaluates the elements of extraordinary rendition in the light of international human rights instruments.

2.5. Extraordinary Rendition and International Human Rights Instruments

As outlined above, extraordinary rendition is a clandestine, multiple and complex illegal act made by states. It includes coercive and illegal capturing and transferring of "suspected terrorists" from one state to another state by state agents, or agents acting under the sponsorship of another state. To a large extent extraordinary rendition violates several international human rights instruments,[107]among others, UDHR,[108]ICCPR, ICESCR,[109]CAT and International Convention Against Forced Disappearance.[110]However, extraordinary renditions concern also issues regarding violations of international humanitarian law.[111]

As stated already, extraordinary rendition is a result of concerted acts of two or more states for the purpose of interrogating the detainee; and mostly the detainee will face torture.[112]However, the prohibition of torture and other forms of cruel, inhuman, or degrading treatment or punishment, that is, the right to the physical and mental integrity of the human being are non-derogable human rights of individuals.[113]As a result, not only does it violate the aforementioned rights but also obstructs individual's right to life, liberty, and security.[114] Though the ICCPR does not prohibit extraordinary rendition by name, Article 7 sets out the norm against torture and other forms of cruel, inhuman or degrading treatment or punishment.[115] Article 10 of ICCPR is also concerned about the state obligation to treat all detained persons in a humane and dignified

[107]For more see Leila Nadya Sadat, *Ghost Prisoners and Black Sites : Extraordinary Rendition Under International Law*, 37 WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 309 (2006). P.321

[108]Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., lstplen. mtg., U.N. Doc A/810 (Dec.12, 1948) (UDHR).

[109] International Covenant on Economic, Social and Cultural Rights, *entered into force* Jan. 3, 1976, 993 U.N.T.S. 3.

[110] Regarding this, similar to Articles 3, 9, 10, and 11 of UDHR, ICCPR under Article 9 clearly states that every person "has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Article 9(4) entitles any person deprived of liberty by detention "to take proceedings before a court, in order that that court may decide without delay on the lawfulness" of the detention. Article 9 of ICCPR above note 19

[111] Sadat, WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW, (2006). Above note 107 P. 323

[112] Article 1(1) of CAT, defined torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person." Based on this definition, the Convention the pain or suffering must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

[113]Torture and other forms of cruel, inhuman, or degrading treatment or punishment, that is, the right to the physical and mental integrity of the human being, is one of the few absolute and non-derogable rights under international human rights law. See Article 5 of UDHR, Article 1 of CAT and Article 7 of ICCPR For instance ICCPR stated that; "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

[114]Article 3 of UDHR above note 108

[115] The HRC has interpreted this prohibition to require evidence of "a real risk of abusive treatment" in cases of transfer. David Weissbrodt and Amy Bergquist, Above note 9 P.10

manner.[116] In addition, any torture and other forms of cruel, inhuman or degrading treatment after transfer violates international human rights standards, and the process of abduction and transfer violates a detainee's inherent human dignity.

Extraordinary rendition also violates the non-expulsion, *non-refoulement* and extradition obligation of states. For instance, as per Article 13 of the ICCPR, the expulsion of a non-citizen lawfully present in the territory of a State Party is prohibited. Exceptionally, if there is an expulsion, there has to be a competent authority to review the case. In case of human rights violation, such stringent procedural protection is relevant and appropriate.[117] However, contrary to this stipulation, extraordinary rendition is performed without consideration of laws which provide an effective diplomatic assurance and adequate review.[118] Regarding this, the Special Rapporteur on torture in the case of *Agiza* (he was transferred from Sweden to Egypt) has stated that when a receiving state engages in a systematic practice of torture, "the principle of *non-refoulement* must be strictly observed and diplomatic assurances should not be resorted to."[119] Similarly, the HRC has clearly stated that a state party must not render individuals to the risk of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*.[120] The principle of *non-refoulement* represents an extension of the norm which prohibits torture, and some argue that, the principle of *non-refoulement* is similar to the norm against torture and has acquired the status of *jus cogens*.[121]

Access to justice is fundamental human rights, but extraordinary rendition denies individuals the right to access recognized judicial procedures for extradition.[122] This is because; extraordinary rendition is an illegal transfer of a suspect, including arrest without warrant, denial of judicial

[116] Articles 7 and 10 of ICCPR above note 19
[117] The HRC has determined that "where one of the highest values protected by the Covenant, namely the right to be free from torture, is at stake, the closest scrutiny should be applied to the fairness of the procedure applied to determine whether an individual is at a substantial risk of torture.'" U.N. Human Rights Comm., *General Comment No. 20*, 9, U.N. Doc. A/47/40 (1992).
[118] The procurement of diplomatic assurances did not suffice to protect against this manifest risk Report of the Committee against Torture See Satterthwaite. January 2009. Above note 6 P.24
[119] Special Rapporteur on Torture, above note 90
[120] U.N. HRComm above note 117
[121] *See* Office of the United Nations High Commissioner for Human Rights. 2011. *Interpretation of Torture in the Light of the Practice of Jurisprudence of International Bodie*s. Geneva: United Nations Office of the High Commissioner for Human Rights.
[122] For instance international human rights instruments call for the presumption of innocence and for fair hearing. However, in extraordinary rendition the right to presumed as innocence is neglected and states do not provide any judicial procedural safeguards which secure the protection of individual liberty, security, arbitrary arrest and detention and the detainees are not allowed to come before courts and tribunals. For instance see, Article 8(1) &8(2) the American Convention; Articles 9, 10, 14&15 of the ICCPR) and Article 6(1) ECHR.

guarantee, lawyers, and detentions for indefinite periods of time. Therefore, such acts of states are clear violation of human rights standards, which unambiguously provide individuals access to judicial and legal guarantees.[123] Therefore, it implicitly violates individual rights to equality, particularly "equality before the courts and tribunals."[124] It also violates the right to be recognizing the suspect as a person.[125]In cases of extraordinary rendition, the detainees are also denied access to counsel. In addition, the interrogation is made in a coercive manner and it violates the protection against coercive testimony or confession of guilt.[126] Even though there are people who are wrongly detained and tortured by several states related to extraordinary rendition, it is difficult to get an effective remedy for those victims. However, the right to an effective remedy is by itself a right expressly guaranteed by international human rights standards.[127]

One of the human rights violations related to extraordinary rendition is enforced disappearance. Enforced disappearance as defined in the Disappearance Convention is: "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state''.[128] This is followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.[129] In addition to this, the same Convention under Article 1 clearly states that no "exceptional circumstance", including war, may be invoked as a justification for enforced disappearance. Therefore, acts of extraordinary rendition will fall within the ambit of this Convention.[130]

[123] For instance Article 6 of UDHR and Article 14(3) of ICCPR provides the right to be informed promptly of the charge against the individual.
[124] Article 14 of ICCPR. Above note 19
[125] Regarding this the cases of Qassem, Rashul, and el Masri, clearly show the violation of Article 16 of ICCPR transferring countries rarely, if ever, provide persons subjected to extraordinary rendition with such judicial recognition or access either prior, or subsequent, to the transfer. Indeed, one of the purposes of extraordinary rendition appears to be to hold persons outside of the recognized judicial procedures for extradition and criminal trial. Initiative, OPEN SOCIETY FOR JUSTICE INITIATIVE (2013). Above note 7 P. 14
[126] Article 14 of ICCPR Above note 19
[127] For instance, UDHR under Article 8, states that State has an obligation to provide effective remedy by the competent national tribunals for acts violating the fundamental rights. Arbitrary arrest, detention or exile is clearly prohibited by Article 9 of UDHR and it also violates legally established procedure and guarantees, which assure the right to a fair and public hearing on criminal charges and presumption of innocence. see also Article 10 and 11 of UDHR, Above note 108
[128]International Convention for the Protection of All Persons from Enforced Disappearance, **UN** Doc. E/CN.4/2005/WG.22/WP. I/REV.4 (Sept. 23, 2005),*available at* http://www.ohchr.org/english/issues/disappear/docs/E.CN.4.2005.WG.22.WP. I.REV.4.pdf Article 2
[129] Id.
[130] Moreover, under the same Convention there are obligations which require from States Parties. Firstly, state parties are required to investigate acts as defined in Article 2 of the Convention. Secondly, based on Article 4 of the convention, state parties

Extraordinary rendition is also indirectly associated with other civil and political rights; freedom of thought, opinion, expression, and movements. Even though extraordinary rendition is by its nature highly implicated with civil and political rights of individuals, it also has its own impact on individuals' socioeconomic and cultural rights. Because when government agents abduct and transport a person to another country to face torture and other forms of cruel, inhuman or degrading treatment, that government violates the person's economic, social and cultural rights. For instance, extraordinary rendition violates individual rights including the right to found or maintain a family; adequate as well as rights to health, food, water etc.

2.6. Conclusion

Extraordinary rendition was originally designed by U.S as an anti-terrorism measure but it has become a contemporary threat to human rights laws elsewhere. Even if extraordinary rendition is not mentioned by name under the catalogue of human rights documents, most of its garnishing elements are clear violations of international human rights norms. As discussed in this Chapter, the practice of extraordinary rendition is an emerging problem in Africa that the regional system has to grapple with. In addition to their support to U.S program of extraordinary rendition, African states are creating their own rendition programs. Moreover, the pattern and nature of extraordinary rendition in Africa, as elsewhere, is complex and clandestine. As a result, there is a need to address this problem under the African human rights system.

required to criminalize such behavior based on their domestic law. In relation to this, Article 6 elaborates that those accomplices and those who have given superior orders in respect of such acts shall be criminalized. Id.

-Chapter Three-

Extraterritorial Obligations of States and Extraordinary Rendition under the African Human Rights System

3.1. Introduction

This Chapter addresses extraterritorial human rights obligations of states and extraordinary rendition in Africa. The Chapter starts by describing the meaning and concept of the extraterritorial obligation of the states in international human rights law. In particular, the Chapter addresses the question: does the African Charter apply extraterritorially and, if so, on what basis and in which circumstances? And it evaluates the circumstances for extraterritorial application of international human rights in the context of extraordinary rendition. And it will propose the applications of international and regional human rights recognized principles to fill the gaps of the African human rights system.

3.2. The Content of Extraterritorial Human Rights Obligation of State in General

Under the contemporary human rights discourse, there are at least three obligations of states: obligations to respect, protect, and fulfill.[131]But the question is: can these human rights obligations of states be applied in extraterritorial contexts, and specifically for extraordinary rendition?

Conventionally, the notion of human rights obligation of state is restricted to the territory of the state and the extraterritorial obligation of states is still controversial.[132]The term extraterritorial obligation in international human rights law is used to describe obligations related to the 'acts and omissions of a state, within or beyond its territory, that have effects on the enjoyment of human rights outside of state's territory'.[133]Although some international human rights

[131]HENRY SHUE, BASIC RIGHTS (2nd ed. 1996). See also UN High Commissioner for Human Rights. Guiding Principles for Implementation of the "Respect, Protect, Remedy" Framework, 2011. Retrieved March 4, 2017

[132] See C. Anyangwe, *Obligations of States Parties to the African Charter on Human and Peoples' Rights*, AFRICAN JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW 625 (1998);Tzevelekos, MICH. J. INT'L L. 129 (2014). P 634

[133] UN Human Rights Council, elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, UN Doc A/HRC/26/L.22/Rev.1, 25 June 2014.

instruments do not contain jurisdictional clauses, there are instruments which contain the clause specifying the jurisdictional application of the human rights treaty.[134]

The meaning of the term 'jurisdiction' in case of human rights is not limited to national territory and this can be deduced from the interpretation and decisions of international and regional human rights monitoring bodies.[135]In distinguishing territory from jurisdiction, the Inter-American Commission on Human Rights (ACtHR), has clearly stated that the term 'jurisdiction' in the sense of Article 1(1) of the American Convention is not limited to or merely dependent with the national territory.[136] Rather, a state party to the American Convention can be held responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken extraterritorially.[137]The same understanding can be inferred from the decisions of the ECHR[138] and the HRC.[139]There are ways to determine whether the elements of a violation of human rights carried outside the territory of the state or by agents of the state are tantamount to an exercise of "jurisdiction". Emerging jurisprudence indicates that states are under obligation to secure the human rights and freedoms of all individuals under their actual authority and responsibility.[140]

Therefore, based on case law of international human rights monitoring and quasi-judicial bodies, the state or the state agent that exercises jurisdiction abroad has an obligation to protect and promote human rights of individuals,[141]and those three levels of human rights obligations *mutatis mutandis*, apply in certain extraterritorial contexts.

---

[134] For example see the ACHR, Article 1(1) and the European Convention on Human Rights 1950 (ECHR), Article 1.

[135] Skogly. 2010. Above note 23

[136]Saldan_ o v Argentina (Report no 38/99), at 17, (Inter-American Commission on Human Rights 11 March). The Commission has made it clear that this applies in relation to the application of both the ACHR and the American Declaration of the Rights and Duties of Man (American Declaration) See Coard et al v United States (Report no 109/99), at 37, (Inter-American Commission on Human Rights 29 September).

[137] Saldan O v Argentina (Report no 38/99). At Parg. 37

[138] Drozd and Janousekv France and Spain (App no 12747/8) 91, (EHRR). In addition, under the ECHR, states can choose to extend the obligations under the Convention to their colonies or other overseas territories.

[139]Whilst Article 2(1) of the ICCPR refers to both territory and jurisdiction, the HRC has clarified that the state's obligation extends to both individuals within a state's territory as well as to those who are not within the state's territory but who are subject to its jurisdiction: HRC, General Comment No 31(80) Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13, 26 May 2004 at Parg. 3

[140] For instance in the case between Drozd and Janousekv France and Spain (App no 12747/8) In addition, under the ECHR, states can choose to extend the obligations under the Convention to their colonies or other overseas territories. See also the HRC, General Comment No 31(80) Parg. 3

[141] Cyprus v. Turkey, 4 586 Para. 8., (European Commission of Human Rights,). Reproduced in European Human Rights Reports, Vol. 4, 1982, p.586

3.3. Extraterritorial Scope of Human Rights Obligation and State Responsibility: The Special Case of Extraordinary Rendition

Extraordinary rendition is an extraterritorial transfer of suspects and its garnishing elements have extraterritorial implications. Because it is a process by which a state or its agent seizes a person assumed to be involved in terrorist activity and then transports him for interrogation to a state where due process of law is unlikely to be respected.[142] Therefore, it was designed to put detainees beyond any kind of legal oversight, premised on the view that the involved government was not bound by international human rights law when acting outside its own territory.[143] This would contravene with the basic premises of the universality of human rights treaties.[144]

Though conventionally the principle for State's human rights obligation is territorial,[145] the jurisprudence of both international and regional human rights monitoring bodies clearly show the existence of "exceptional scenarios" called spatial and personal controls.[146]It is true that the jurisprudence, standard setting and findings of UN and regional systems provide useful insights into the development of African human rights system. In particular, Article 60 of the African Charter mandated the African Commission to take inspiration from international and regional human rights systems. Therefore, the jurisprudence of international and regional systems concerning extraterritorial human rights obligation of state can be an important source of African human rights system. As many of the human rights contained in the African Charter reflect rights contained in the UN and other regional human rights instruments, there is a degree of cross-pollination in interpreting the African Charter so that, for example, JCJ, ACtHR and ECtHR judgments which expand the principles in the spatial reach of human rights may be used as tools for interpreting the parallel extraterritorial human rights obligation of states in the African Charter. The international and regional human rights systems possibly justify the human rights obligation of States beyond territories. Pursuant to the inspirational clause and the exceptional standard set by international and regional systems, an African State has been held responsible

[142]Extraordinary Rendition *Dictionary* N.p., n.d. Web. http://dictionary.reference.com/browse/extraordinary+rendition.Retrieved 12 July 2016.
[143] See U.N. Human Rights Council, *Joint Study* above note 88 at para 55
[144] Many of the norms are also norms of customary law in respect of which shared responsibility may also arise.
[145] W. VANDENHOLE, 'Obligations and Responsibility in a Plural and Diverse Duty-Bearer Human Rights Regime' in W. VANDENHOLE (ed.), *Challenging Territoriality in Human Rights Law: Building Blocks for a Plural and Diverse Duty-Bearer Regime*, Routledge, Abingdon, UK 2015, p. 115,
[146] The extraterritorial human rights obligation of state concerning the spatial reach began since the 1990s. MARGOT SALOMON, GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT OF INTERNATIONAL LAW (2007). P. 190

primarily for human rights violations beyond its territory. Therefore, the following sections analyses the exceptional scenarios in the context of extraordinary rendition.

3.3.1. Extraordinary Rendition and Spatial Control

One of the scenarios for extraterritorial human rights obligation of states is when a state's conduct is performed outside its national territory and occurs in an area over which it exercises its authority and control.[147] Under this scenario, there are several cases and circumstances which show extraterritorial obligation of states.[148] For instance, the International Court of Justice (ICJ) in its Advisory Opinion on The Wall observed that 'Israel as the occupying power had exercised its territorial jurisdiction over the occupied Palestinian territories.'[149]As to the ICJ explanation, international human rights instruments are applicable in respect of acts done by a state in the exercise of its jurisdiction outside its own territory, particularly in occupied territories'.[150] The Court affirmed this decision in *Congo v. Uganda* where it held that international human rights instruments are applicable 'in respect of acts done by a state in the exercise of its jurisdiction outside its own territory', particularly in occupied territories'.[151]

Similarly, the ECtHR has also established the application of human rights treaties where states act outside their respective territories. For example, the Court asserted that areas of Northern Cyprus occupied by Turkey incurred Turkey's responsibility in upholding human rights of local citizens.[152] Such occupation, or effective control, is established when the occupying power "exercises all or some of the public powers normally to be exercised by the occupied Government."[153] Thus, these cases only apply to the situation where a government has established control of territory such that it has the responsibility to uphold the customary norm of *non-refoulement* when acting outside its territory. Furthermore, in *Abdella Ocalan v*

[147] For detail please see Ralph Wilde, *Triggering State Obligations Extraterritorially: The Spatial Test in Certain Human Rights Treaties*, 40 ISRAEL LAW REVIEW 503(2007).p. 503.
[148] Loizidou v. Turkey, (App. No. 15318/89, 310, Sec. A,), (ECtHR)., Para. 62., See *Cyprus v. Turkey.* DR (1975) 125, at para. 8. See also Dem. Rep. Congo. v. Uganda No. 116,, Armed Activities on the Territory of the Congo (I.C.J. Dec. 19).), (Judgment) at para. 173,
[149] See also Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, (Advisory Opinion on July 9, 2004), I.C.J; at par. 136, 179
[150] Id. at, p. 180: "The Court considers that the ICCPR is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.
[151] Dem. Rep. Congo. v. Uganda No. 116,, Armed Activities on the Territory of the Congo.
[152] Loizidou v. Turkey, (App. No. 15318/89, 310, Sec. A,
[153] Hussein v. 21 States, App. No. 23276/04, Eur. H.R. Rep. 223, 224-25 (EHRCt).(Court Decision on Admissibility).

Turkey[154]and *Issa v Turkey* cases,[155]the Court stated that temporary effective overall control of only a particular area in question was sufficient to bring individuals present in that area within the jurisdiction of the controlling state.[156]

Generally, if a state occupies another state's territories and uses extraordinary rendition for the purpose of anti-terrorism measures and violating individual human rights including the prohibition of torture, incommunicado detention, transfer, extradition, *non-refoulement* and any other human rights violation, the state shall have extraterritorial obligation within that occupation.

3.3.2. Extraordinary Rendition and Personal Control

In case of personal control, a state without exercising sufficient control over a space, a state or state agents may perform temporary operations in the territory of another state and exercise control over an individual. The European Commission on human rights (ECoHR) and the HRC established personal control on different bases. As to the European Commission, the personal control derived from the authority and control exercised by states over individuals'. The HRC, by reiterating General Comment No. 31, established it on the basis of universality of human rights.[157] Even though ICCPR has no any implication, the HRC, in interpreting Article 2(1) stated that similar to the state obligation for the act of its agent within its own territory the state has an obligation for the acts of its agent in the territory of another state.[158]

The international human rights bodies in several occasions accepted and reaffirmed the theory on effective control. For instance in *Cyprus v. Turkey* the ECtHR clearly accepted the extraterritorial application of human rights in cases where state agent's exercised authority and control over individuals.[159] Similarly, the case *Lopez v. Uraguay* stated that States are

[154] O _ calan v Turkey (App no 46221/99), ILM1058. 44 (ECHR 2005). at Parg.44
[155] Issa and Others v Turkey (App no 31821/96) (ECHR 16 November). at Parg.48
[156] The Court ultimately found there was insufficient evidence to substantiate the claim that Turkish forces were operating in the area in question: It also rejected the view in Bankovich that the operation of the ECHR was limited to the territory of state parties to the ECHR: id. at.74 and 81See also *Bankovic and Others v Belgium and Others,* Application No. 52207/99 (Admissibility), ECHR, [2001] ECHR 970), paras. 35-35.
[157] Lopez Burgos v. Uruguay (HRC Paras. 12.1–12.3, p. 176. See GC31, Supra note , See also Loizidou v. Turkey, (App. No. 15318/89, 310, Sec. A,).; See Issa and Others v Turkey (App no 31821/96) at Parg.49
[158] General Comment No. 31 above note 139 Par. 21
[159]Martin Scheinin, *Extraterritorial Effect of the International Covenant on Civil and Political Rights*, *in* EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES (Fons Coomans and Menno Kamminga ed. 2004). p.73.

responsible for infringements committed by their foreign diplomatic representative.[160] Moreover, the HRC in General Comment No. 31 has also stated that a State must provide for the Covenant's rights to anyone within its power or effective control, even if that person is not ''within its respective national borders and regardless of the circumstance in which such power or effective control was obtained''.[161] Similarly, the ECoHR stated that 'the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad'.[162]Similarly, under the Inter-American human rights system, the ACtHR has stated that, if there is an exercise of control over individuals, it may be sufficient to find that a matter is within a state's jurisdiction, whether or not there is effective control of the territory in question.[163]

The personal model is very relevant for invoking the applicability of human rights norms to situations where state agents detain and extraordinarily render individuals from one state to another state and interrogate them in the custody of another state, whatever the degree of that state's operations in the foreign territory.[164]

3.3.3. Extraordinary Rendition and *Non-Refoulement*

One distinct class of scenario for obligation beyond state territory is *non-refoulement*, which involves acts committed within the territory of the State that have extraterritorial human rights implications on another state. Basically, the principle of *non-refoulement* originates from Article 33 of the Convention relating to the Status of Refugees.[165] However, it is clearly included in other international human right instruments like CAT.[166] While the violation of the *non-refoulement* principle is a territorial violation of a person's rights, the violation of the rights in the receiving state, to the extent it was foreseeable before his or her extradition, entails the

[160] Lopez Burgos v. Uruguay , above note.157. at Parg.156
[161] General Comment No. 31, above note 139.
[162] *Cyprus v. Turkey.*, 2 above note 141 at para. 8. *,*
[163] Coard et al v United States (Report no 109/99). at Parag [37]. See also Detainees at Guantanamo Bay, Cuba (Precautionary Measures), ACtHR, 41 ILM532 (2002). D. Cassel, *Extraterritorial Application of Inter-American Human Rights Instruments', in* EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES (F. Coomans and M. Kamminga ed. 2004). P. 23
[164] See e.g. D. van Natta and S. Mekhennet, *German's claim of kidnapping brings investigation of US link*, NEW YORK TIMES, 9 January 2005. See also C. Whitlock, *A secret deportation of terror suspects*, WASHINGTON POST,, 25 July 2004.,
[165] The Convention relating to the Status of Refugees, Geneva, 28 July 1951, UNTS, Vol. 189
[166] See e.g. Article 3 of the CAT above note 24

extraterritorial responsibility of the extraditing state for facilitating such violations in spaces beyond its own.[167]

In case of extraordinary rendition, participant states are violating their international obligations by handing over a person to another state where there are reasonable grounds to believe that there is a "well-founded fear" that he or she will suffer a violation of his or her human rights in the receiving state.[168] There is no doubt that the actual breach of human rights occurred outside the territory of the state and under the jurisdiction of another State. But without showing sufficient degree of control either over an area as a whole or over particular individuals, based on the principle of *non-refoulement*, a State may be considered responsible for a breach of its human rights obligations.[169] As the ECtHR clearly stated, "[a] State's responsibility may also be engaged on account of acts which have sufficiently proximate repercussions on rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction."[170] Similarly, the HRC by creating a relation between the principle of *non-refoulement* and Article 2(1) of the ICCPR has argued in favor of the above assertion.[171] The Committee also in its General Comment stated that Article 2 of ICCPR provides an obligation that States Parties to respect and to ensure the human rights recognized for all persons in their territory and all persons under their control.[172] Therefore, such obligation contains an obligation not to extradite, deport, expel or otherwise remove a person from their territory, if there are substantial grounds for believing that there is a real risk of irreparable harm, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.[173]

In rendering of individuals from one state to another state, states have resorted to the practice of diplomatic assurances for the purpose of excluding extraterritorial responsibilities.[174] However, there are cases which clearly show the ineffectiveness and unreliable nature of such

[167] Bulto. 2018. Above note 13 P. 21
[168] See Soering v. United Kingdom Series A, No. 161 paras. 88-91.See, in general, G. Gilbert, Kluwer, *Aspects of Extradition Law*, DORDRECHT (1991).; C. Van den Wyngaert, *Applying the European Convention of Human Rights to extradition: Opening Pandora's box?*, 39 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY (1990).; C.J.R. Dugard and C. Van den Wyngaert, *Reconciling extradition with human rights*, 92 AMERICAN JOURNAL OF INTERNATIONAL LAW 187(1998).; S. Borelli, *The rendition of terrorist suspects to the United States: Human rights and the limits of international cooperation*, *in* ENFORCING INTERNATIONAL LAW NORMS AGAINST INTERNATIONAL TERRORISM (A. Bianchi ed. 2004).
[169] Skogly. 2010. Above note 23
[170] Ilascu and Others v. Moldova and Russia, para. 317, (4 July). para. 317 (citing Soering v. United Kingdom Series A, No. 161 ;Ilascu and Others v. Moldova and Russia. Paras. 88-91.
[171] Kindler v. Canada (Comm. No. 470/1991), para. 6.2.
[172] General Comment No. 31 above note139 Parg.136
[173] Id. at para. 12.
[174] Satterthwaite. January 2009. Above note 28 P. 19

assurances.[175] The other argument concerning to extraordinary rendition and *non refoulement* is related to its extraterritorial nature. For instance, U.S. in its second periodic report argued that the *non-refoulement* obligation did not extend to a person detained outside its territory, such as in Guantánamo Bay.[176] However, the Committee against Torture responded that the protection provided under Article 3 of CAT extends to all territories under the effective control of the state party's authority and the "rendition" of individuals from Guantánamo Bay to Egypt, Jordan, or any other state is a violation to Article 3 of CAT or the prohibition of *refoulement*.[177] Therefore, by taking into consideration the ultimate objective of article 3 of CAT, the phrase "another state" in fact needs to be interpreted as "another jurisdiction."

There are substantial grounds for believing that there is a real risk of irreparable harm in case of extraordinary rendition or extraterritorial transfer of suspects. Even if the actual breach of human rights occurred in case of extraordinary rendition is under the jurisdiction of another state, a transferee state shall be considered responsible for a breach of its human rights obligations. Therefore, by taking the logic of *non-refoulement*, we can argue that states are prohibited to transfer individual from their territory to any other part of the world for the purpose of extraordinary detention.

3.4. Extraterritorial Obligations of States under the African Human Rights System in Cases of Extraordinary Rendition

As already pointed out in the preceding sections, international and regional human rights monitoring bodies exceptionally extend the states' human rights obligation beyond borders. However, under the African human rights system, there are little things which have been discussed about extraterritorial human rights obligation.[178] The African Charter contains general obligation clause.[179]But it does not contain an explicit jurisdictional clause which limits or extends the states parties' spatial obligations.[180]In relation to this, there are controversies on

[175]Id. at. P. 19
[176] Second periodic report of U.S to CAT
[177] UN Committee against Torture, Conclusions and Recommendations, United States of America, UN Doc.CAT/C/USA/CO/2, 25 July 2006, para. 15.
[178]Takele Soboka Bulto, *Patching The 'Legal Black Hole': The Extraterritorial Reach Of States' Human Rights Duties In The African Human Rights System*, 27 SAJHR 249((2011)).
[179] Article 1 of ACHPR above note 14
[180] Based on the Article 1 of the African Charter "[t]he Member States of the African Union, parties to the Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them." Id.

whether the lack of an explicit provision renders the African Charter always applicable to African states anywhere in the globe, or whether some sort of spatial test for applicability should be read into them and, if so, what constitutes the limits of that test. As stated above, based on article 60 of the African Charter the African Commission is mandated to draw inspiration from international and regional human rights systems to extend the applicability of the Charter in case of extraterritorial transfer of individuals and to provide remedies for victims of extraordinary rendition.[181] In relation to this, the Commission has stated that, due to the sovereignty of states, the African Charter applies principally within the territorial jurisdiction of states.[182] However, based on spatial and personal models of jurisdiction, a state assumes obligations beyond its territorial jurisdiction. Similarly, the UN CAT has developed an interpretation of 'territory under its jurisdiction' which includes effective control over an individual as well as over territory.[183] Therefore, in the following part, the African Charter and its jurisprudence, with respect to the need for extraterritorial obligation of states in case of extraordinary rendition, will be analyzed.

As noted above, even though it is not a unique feature, the African Charter does not expressly limit its territorial and/or jurisdictional application *(ratione loci)*. Scholars are arguing on the exclusion and inclusion of extraterritorial human rights obligation under the African Charter.[184] The writer strongly argues that the Charter's silence on extraterritorial obligation of states is not an exclusion of extraterritorial obligation of the Charter. Even if there is no a concept referring territory or jurisdiction under Article 1 of the African Charter, from the wording of Article 1 there is no intent which precludes the extraterritorial applicability of the Charter. Similarly, the ILC has avowed that 'the acts or omissions of organs of the state are attributable to the state as a possible source of responsibility regardless of whether they have been perpetrated in national or in foreign territory'.[185] Consequently, in relation to extraordinary rendition, there is no explicit

[181] Antoine Buyse, *Lost and Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law*, 68 (2008). Available at: (http://www.zaoerv.de/68_2008/68_2008_1_a_128_154.pdf) Retrieved 12 July 2017.
[182] Democratic Republic of Congo v. Burundi, Rwanda, Uganda, (The African Commission).
[183] CAT Committee above note 177
[184] Scholars like Carlson Anyangwe argue that owing to the African Charter, the African state has no obligation and responsibility beyond its territory. Contrary to this argument, some other scholars argued that in principle the African state is responsible for human and people's rights violations that occur within its territory but exceptionally, if there is a state control over space or person, it may assume responsibility beyond territory. Regarding this Fatsah Ouguergouz also stated that the Charter's silence will not prohibit human rights responsibilities of state that can be attributed to an African state although they occurred outside that African state's territory. F. OUGUERGOUZ, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*, Martinus Nijhoff Publishers, The Hague/London/New York 554(2003). Frances Viljoen, *Admissibility under the African Charter, in* THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS: THE SYSTEM IN PRACTICE 1986-2000 (M Evans & R Murray ed. 2002). See the detail in Bulto above note 178
[185] Article 1 of International Law Commission(ILC)'s *Draft Articles on Responsibility of States for Internationally Wrongful Acts*,2001 (Draft Articles on Responsibility of States)

rejection for creating an extraterritorial obligation for the attendant African states. The Commission also follows the same logic and in several occasions stated that Article 1 of the African Charter does not expressly limit the application of the Charter within the territory and jurisdiction of State Parties.[186]

In addition, the African Charter under its substantive provisions, specifically under Chapter II provides for substantive extraterritorial human rights guarantees that have the effect of extending a state's obligation beyond its territory.[187] For instance, the Charter under Article 12(2) provides that individuals have the right to return to their country of origin. In such a case logical interpretation can be used to include extraordinary rendition under the ambit of this provision. Even if the Charter is silent regarding violations related to extraterritorial transfer of individuals, it can be completed by logical reasoning using analogy. Since the person's right to return to his country of origin is provided to the individuals who are in the custody of another state territory, it is the duty of the state to allow the same to return home; this applies extraterritorially too. In addition, there are other substantive provisions which have extraterritorial implications, including; 'the right to national and international peace and security', 'equality and the prohibition of discrimination'.[188]As Takele argued, even though it is argumentative, the presence of these provisions shows the intention of the drafter to extend the obligation of states beyond territory.[189]

Likewise, recently the African Commission adopted authoritative interpretations, General Comment on the right to life (General Comment No. 3) and General Comment on the prohibition of torture (General Comment No. 4) under the African Charter.[190] These General Comments expressly outline the extraterritorial scope of application of the right to life and the prohibition of torture respectively.[191]Even though the African Charter does not explicitly guarantee the prohibition of *refoulement,* based on the aforementioned General Comments, violating human

[186]Mohammed Abdullah Saleh Al-Asad And Djibouti 383/2010 above note 101 at.Para.134
[187] Bulto, SAJHR, ((2011)). Above note 178 p. 258
[188] As Takele stated the African Charter provides several provisions which specify the substantive extraterritorial human rights that have extraterritorial effect. Among others; Article 12(2) of the Charter, which provides right to return to country of origin; Article 23, which stated for 'the right to national and international peace and security'; and Article 27 of the Charter which provides 'individual duties towards family and society, the state and other legally recognized communities and the international community'. Id. at.260
[189] Id.
[190] African Commission on Human Peoples' Rights, General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), adopted during its 57th Ordinary Session, held in Banjul, The Gambia, in November 2015, para. 40. And General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5) they can be accessed at www.achpr.org
[191]General Comment No. 3 id at para. 14

rights within a state's territory or by a state's agents in a third state or rendition to torture brings the victim under a state's jurisdiction and engages the state's responsibility.[192] They also clearly stated that states 'should not violate the principle of *non-refoulement*, through extradition or other mechanisms, by transferring or returning individuals to circumstances where their lives might be endangered'. Similarly, Article 2(3) of the Convention Governing the Specific Aspects of Refugee Problems in Africa also specifies that states may not subject individuals to measures including, return or expulsion, which would compel them to return to or remain in a territory where their life, physical integrity or liberty would be threatened.[193] Moreover, the OAU Convention on the Prevention and Combating of Terrorism and its subsequent subordinate instruments also accepting the same understanding and reaffirming the extraterritorial obligation of states under the African Charter.[194] *Non refoulement* is not only prohibits African states to surrender individuals under their jurisdiction to states where there is a substantial risk that they will be subjected to violations of their fundamental rights, but also prohibits their surrender to countries which are likely, in turn, to surrender them to States where their fundamental rights may be breached.[195]

However, some African states may reject the application of the rule of *non-refoulement* in relation to extraterritorial transfers, they may emphasize that they obtain assurances from receiving states before transferring individuals to places where they face a risk of torture. By pointing to "diplomatic assurances," the African states may seek to exploit an area of the Charter that has been less than fully developed under the African human rights system. The relationship between substantive norms, such as the *non-refoulement* rule, and the procedural mechanisms required to implement and safeguard those rules, is not specified in the African Charter. But international and other regional human rights systems have developing norms about procedural guarantees in case of diplomatic assurance.*[196]* For instance the CAT Committee and HRC in the

[192] Id. Par. 14

[193] Organization of African Unity(OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, Adopted Sept. 10, 1969, and 8 I.L.M. 1288 (entered into force 20 June, 1974)

[194] OAU Convention on the Prevention and Combating of Terrorism, adopted in the OAU Summit, Algiers, June 14, 1999;

[195] This principle of non-refoulement has been recognized by the Committee against Torture in the following terms: "the phrase 'another State' in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited" (Committee against Torture, General Comment No. 1, Implementation of Article 3 of the Convention in the Context of Article 22 (1996), UN Doc. A/53/44, annex IX, para. 2). See also Human Rights Committee, General Comment No. 31, op. cit. (note 66), para. 12

[196] *Conclusions and Recommendations of the Committee Against Torture, Canada*, U.N. Doc. CAT/C/CR/34/CAN (July 7, 2005) ("Given the absolute nature of the prohibition against refoulement contained in article 3 of the Convention, the State party should provide the Committee with details on how many cases of extradition or removal subject to the receipt of 'diplomatic assurances' or guarantees have occurred since 11 September 200.").

case of Egyptian nationals Ahmed Agiza and Mohammed Alzery underlined the importance of both the rule against *non-refoulement* and the procedural guarantees needed to safeguard that prohibition. The Swedish government had got assurances that the men would not be tortured, and that Swedish authorities would have access to the men once they were in Egyptian custody.[197] Regardless of these safeguards, both men have alleged that they were tortured upon return to Egypt.[198] Ahmed Agiza was also subjected to electric shocks during interrogation.[199]

In addition, though the African Court has never pronounced on extraterritorial obligations, the investigation of the practice of the African Commission can be an opening point to address the problem. The interpretative work so far of the Commission provides some basic lines of approach towards a systematic view on extraterritorial obligations under the African Charter. For instance, the African Commission concerning the case of the *Armed Activities on the Territory of The Congo*[200] has importance in clarifying the scope of the extraterritorial applicability of the ACHPR. As to the final report of this case, the African Commission attempts to interpret the notion of 'effective control' and it does not preclude the theory of an extraterritorial applicability of the Charter.[201]

In the context of extraordinary rendition, attendant African states may violate human rights by detaining individuals by their agents outside their territories. In such scenario, the state party does not exercise detailed control over the policies and actions of the authorities in the area situated outside its national territory. But, to lowering the possibilities of state impunity, recently international and regional human rights adjudicative and quasi-adjudicative bodies have extended the more localized spatial control theory.[202] As to this theory, spatial control includes, the space controlled by the peacekeepers,[203] prisons[204] or vessels[205], including vessels flying the flag[206]of other nations.[207] Therefore, attendant African states must be held responsible for acts of

[197] Human Rights Watch, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture* (2005)(Sweden); 67-72.
[198] Id. at p.68
[199]*Agiza v. Sweden*, U.N. Comm. Against Torture, Communication No. 233/2003, U.N. Doc. CAT/C/34/D/233/13.4 (2005)
[200] African Commission on Human and Peoples' Rights, *Democratic Republic of The Congo v Burundi, Rwanda and Uganda*, application n. 227/99, report of May 29th 2003;
[201] Id
[202]*See* Concluding Observations of the Human Rights Committee, Belgium, U.N. Doc. CCPR/CO/81/BEL (8 Dec. 1998).
[203]Al-Jedda v. the United Kingdom, (ECoHR 7 July).
[204] See id. at. (Judgment);
[205] See also; Jamaa v. Italy, App. No. 27765/09, (ECtHR).See also Medvedyev v. France, App. No. 3394/03, (ECtHR.).
[206] See also O _ calan v Turkey (App no 46221/99), ILM1058.(Judgment).
[207] However, some scholars like Wilde, argue that if spatial control has been construed as small size of the area, it will likely overlap with the personal control See Wilde, MICHIGAN JOURNAL OF INTERNATIONAL LAW, (2005)., above note 16 p. 503.

extraordinary rendition which occur outside of their territory even though effective control of that territory might note established.

Sometimes, it may be doubtful whether the attendant African States had effective control of the territory where an individual was extraordinarily rendered. But, it does appear that attendant African States official had a significant degree of control over capturing and transferring individual to detention in third countries where he was subject to improper treatment. Where it appears that a state has such a degree of control over a person in custody outside that state's territory, the state should still be obligated to uphold human rights obligations and refrain from *refoulement* of persons who will be subject to torture. Therefore, personal control model is exclusively fit to cases of extraterritorial transfer and detention, which comprise physical custody of individuals by state agents. This interpretation safeguards that the African Charter fulfills its object and purpose to shield those individuals who are at the risk of extraordinary rendition. On the other hand, Takele argues that the African Commission report on the case of the *Embargo Measures against Burundi*[208] can demonstrate the extraterritorial applicability of the Charter.[209] As to Takele, based on the African Commission's view, the exercise of the 'effective control' on individuals would not be necessary to define the personal model. Because the source of the extraterritorial applicability of the Charter could sometimes not be represented by the control on the territory rather it may be from the 'indirect control' on individuals suffering the consequences of measures adopted by states which are external to the territory where the injured subjects are physically set.[210]

Generally, though the African Charter failed to provide the jurisdictional clause, there are way outs to expand the obligation of states beyond territories under the African human rights system. Based on the substantive provisions of the African Charter, there is an implication for extraterritorial obligations of states. Through the mandates of the African Commission which are provided under Articles 30 and 45 of the Charter it is possible to extend the spatial reach of the Charter and have a potential to govern extraordinary rendition in Africa. And this can be inferred from the subsequent General Comments on the provisions of the African Charter. In addition, based on Article 60 of the same Charter the writer argues that the African human rights system

[208] African Commission on Human and Peoples Rights, *Association pour la Sauvegarde de la Paix au Burundi v Ethiopia, Kenya, Rwanda, Tanzania, Uganda, Zaire and Zambia*, application n. 157/96, report of May 29th 2003)
[209] Takele Soboka "Towards Rights-Duties Congruence: Extraterritorial Application of the Human Right to Water in the African Human Rights' System", in *Netherlands Quarterly of Human Rights* 2011, p. 491 ff., pp. 509-514
[210] Id. at p. 513

may not exist without the help of international and other regional human rights system in governing extraterritorial obligation of states relating extraordinary rendition rather through the commission mandated to draw inspiration from these systems shall deal with extraordinary rendition. Therefore, based on the above analysis the Commission may receive and adjudicate cases of extraterritorial violations including extraordinary rendition and states shall not get defenses on the territorial limits of the African Charter.

3.5. Conclusion

Asking about the extraterritorial scope of the African Charter is tantamount to asking about obligations of an African state party towards individuals and groups outside its territory. This Chapter tried to address the question; does the African Charter give rise to extraterritorial obligations in case of extraordinary rendition? In relation to this question, the Chapter examined the concept of extraterritorial obligation of states under the African Charter. Thus, it discussed the exceptional scenarios that need to be fulfilled for extraterritorial human rights obligations and responsibilities of states be called into question in cases of extraordinary rendition. As has been discussed, even though the Charter is devoid of a jurisdictional clause, based on Article 60 of the Charter and teleological interpretation, arguably the obligations imposed by the Charter have extraterritorial reach.

-Chapter Four-

Extraordinary Rendition, Problems of Attribution and Extraterritorial Remedies in African Human Rights System

4.1.Introduction

This Chapter analyzes the problem of attribution in case of extraordinary rendition and extraterritorial remedies in African human rights system. It will also assess the provisions of the African Charter which are dealing with elements of extraordinary rendition. Accordingly, some of the mechanisms to provide remedies for victims of extraordinary rendition will be dealt in this Chapter. Lastly, this Chapter will propose applications international and regional human rights principles to fill the gaps of the African human rights system

4.2. Problem of Attribution and Extraordinary Rendition in Africa

In the discussion of extraordinary rendition and the attribution of states responsibility there are legal and practical problems. It is clear that the human rights obligation and responsibility of state is related to the degree of each state's participation and contribution in the human rights violation.[211] However, the role and degree of participation of states in the case of extraordinary rendition in Africa is varied and complicated. This raises intractable difficulties for attribution of states responsibility in Africa. African states have been participating in extraordinary rendition with African states and with states from other continents in various ways. They have been hosting black sites on their territories.[212] They have also been participating in the capture, detention, interrogation and torturing of victims. African states have been involved in permitting the use of domestic air space and airports for secret flights transporting detainees and interrogating suspects who were secretly being held in the custody of other states.[213] For instance, the U.N. Joint Study report on the rendition of an Algerian citizen, Laid Saidi, indicates that there were at least six states from three continents with different degree of participation.[214]

[211] Bulto, Tortured Unity: United States-Africa Relations In Extraordinary Renditions and States' Extraterritorial Obligations. 2018. Above note 13
[212] Foundations. 2013. Above note 7 p. 32
[213] Id. at. P. 45
[214]As to the report, he was arrested by Tanzanian police and handed over to Malawian authorities. Then, he transferred to one of US's black sites in Afghanistan and another unidentified prison. A year after being seized, he was rendered to Tunisia and

In this case, the majority of the states were African including Malawi, Tanzania, Tunisia and Algeria. However, identifying the type of contributions and degree of participation of each state is a very difficult task. As a result, attributing state responsibility and identifying the level of participation of home state, transiting state and recipient state will be difficult.

The clandestine nature of extraordinary rendition in Africa also creates a problem for attributing responsibility to the participant states. Because, initially, the participant states have a tendency to conceal and eradicate any evidence related to their involvement. In addition, the information of rendition and flights are not completely known and the main actors and suspects remain largely unknown. There is also a problem in obtaining information from victims of extraordinary rendition. Because many victims remain largely unknown and victims who still remain in detention are not allowed or may not be interested to be interviewed about the details of their treatment. Generally, access to information is very limited since most states are not interested to allow and/or to conduct effective investigations into their cases.[215] Thus, in most of the cases, providing evidence for cases becomes the toughest task for victims of extraordinary rendition. Furthermore, the testimony of victims of extraordinary rendition will be the only source of evidence. It is apparent that seeking recourse against the African states is highly problematic. The fundamental difficulty encountered by the victims of extraordinary rendition is that the entire operation remains masked in secrecy. The problem of adducing evidence in these cases emanates from three interconnected reasons. Initially, extraordinary rendition is a covert process, and the attendant African states have redacted evidence and undertaken measures to conceal and eradicate any related evidence. In addition, the participatory African states have denied involvement or failed to conduct effective investigations into their cases, which restricts access to information. Moreover, significant obstacles preclude the victims from communicating with legal representation. These issues must be considered in light of the interest of producing a decision based on strong argument and verifiable evidence. However, the standard of proof required by tribunals and monitoring bodies is too rigorous for victims of extraordinary rendition. Consequently, the evidence produced by victims of extraordinary rendition will not be

detained for 75 days before being returned to Algeria where he was released. See U.N. Joint Study on Secret Detention at para 133; Craig S. Smith and Souad Mekhennet, *Algerian Tells of Dark Term in U.S. Hands*, NEW YORK TIMES July 7. 2006.

[215] In one hand extraordinary rendition is process established and depends on a secret network of states and states are not willing to disclose and investigate extraordinary rendition which takes place within their territory. On the other hand, to attribute responsibility there has to be evidence which shows the role of participant states within a single extraordinary rendition case.

admissible.[216] In Mohammed *Abdullah Saleh Al-Asad v Djibouti,* for instance,[217] the Commission stated that the presence of Al-Asad's in the territory of Djibouti or that he was otherwise under the effective control or authority of Djibouti is not clearly established.[218] However, the writer argues that if there was sufficient evidence which showed the presence of Al-Asad in the territory of Djibouti or had his allegation been initially instituted against Tanzania, then Djibouti and Tanzania would have been responsible for their extraterritorial action or omission before the African Commission.

4.3. Extraordinary Rendition and the Substantive Provisions of the African Charter: The Divergence of Rhetoric and Reality in Africa

Though almost all of the African states are signatories of the African Charter,[219] violation of human rights is as omnipresent in every corner of the continent as elsewhere. As we have seen above, extraordinary rendition cannot takes place without assistance and cooperation of at least one other state. However, based on Article 1 of the Charter concerning extraordinary rendition, the African states have three obligations. Firstly, the state has obligation to refrain from participating in or facilitating torture. Secondly, the duty to refrain from transferring an individual when there is a risk that the individual may face torture. Thirdly, the state has the duty to prevent such violations and remedy them once they have occurred. However, as outlined above, the African states, by ignoring these obligations, have been actively involved in extraordinary rendition by detaining, interrogating, torturing and abusing suspects. They are also involved in capture of victims and permit the use of domestic airspace and airports for secret flights. Therefore, in addition to the above violations, extraordinary rendition violates numerous provisions of the African Charter.

The prohibition against torture is absolute, and state parties may not derogate from the obligation to prohibit torture and other ill-treatment in any circumstance, including in emergency situations.[220] Therefore, the participation of African states in extraordinary rendition amount to a

[216] See the reasoning of the African Commission on the issue of admissibility in Mohammed Abdullah Saleh Al-Asad And Djibouti, , 383/2010. Above note 101 Parg. 66
[217] Id. at Parg 67
[218] Id. at Parg. 68
[219] AU, List of Countries which have signed, ratified/acceded to the ACHPR available at: (https://www.au.int/en/sites/default/files/treaties/7770-slafrican_charter_on_human_and_peoples_rights_0.pdf) Retrieved 12 July 2017.
[220] General Comment No. 4 above note 190 at para. 62.

breach of their obligation to refrain from engaging in acts that amount to complicity or participation in torture which is prohibited under Article 5 of the African Charter. No exceptional circumstances whatsoever may be invoked as a justification for violating these prohibitions.[221]

As discussed above, the guarantee of non-refoulement is not expressly recognized under the African Charter. However, as outlined above, prohibition against torture has been interpreted as implicitly incorporating the prohibition of *refoulement* that is also applicable in the African Charter.[222] Under the African human rights system, the Commission further extended the principle of *non-refoulement* for other rights. Based on General Comment No. 3, the African States should not violate the principle of *non-refoulement*, through extradition or other mechanisms, by transferring or returning individuals to circumstances where their lives might be endangered.[223] Similarly, the African Commission recently launched General Comment No. 4 on the right to redress for victims of torture and other cruel, inhuman, or degrading punishment or treatment.[224] This provides an authoritative interpretation of the scope of the right to redress, and States parties obligations, under Article 5 of the African Charter. The General Comment addresses the obligations to provide prompt, full, and effective redress; to ensure rehabilitation; and to protect against intimidation and reprisals. Therefore, state parties to the ACHPR are obliged to refrain from expelling or returning (*refoul*) any person to a place where they are likely to be subjected to slavery, slave trade, torture, cruel, inhuman and degrading punishment and treatment. The OAU Convention on the Prevention and Combating of Terrorism identified areas of cooperation. Therefore, based on this Convention states are required to extradite suspects in accordance with the procedure provided under Article 8 up to 13 of the Convention or extradition laws. In addition, failure to remedy, these abuses once they have occurred amounts to a violation of the African Charter. As a result, the African States' involvement in the process of extraordinary rendition directly violates their *non-refoulement* obligation which is built in the African human rights system.

The African Charter under Article 6 states that every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and

[221]Africa Charter on Human and Peoples' Rights; ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; ACHPR, Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.
[222] Marina Sharpe, Engaging with Refugee Protection:The Organization of African Unity and African Union since 1963 (2011)
[223] General Comment No. 4 above note 190
[224] Id

conditions previously laid down by law. In particular, no one may be arbitrarily arrested or secretly detained. States also have a duty to register individual deprived of his liberty and held in an officially recognized place of detention and basic information to be recorded and made available to family members, the detainee's representatives or counsel, or to other persons having a legitimate interest in the information with due regard for the detained individual's rights, in particular his or her right to privacy.[225] The detention center should also be subject to independent oversight to ensure compliance with international standards.[226] Moreover, states shall prohibit practices that violate human dignity such as solitary confinement, using instruments of restraint as punishment, and withholding as punishment or otherwise food, water, and other such items necessary for respecting humanity and dignity.[227] But these rights are not observed at the time of extraordinary rendition.

States also have obligations to provide effective legislative, administrative, judicial, or other measures to prevent all acts of disappearances by their agents and all such acts that occur in their territory or under their jurisdiction. This includes ensuring that enforced disappearance constitutes an offence under criminal law. In instances where a disappearance occurs, States have a responsibility to ensure accountability; to provide an effective remedy; and to provide reparation.[228] However, contrary to this protection, extraordinary rendition violates individual's right to liberty and security. In addition, without legally established procedure it deprives the freedom of individuals. And the interrogation is made in coercive manner and violates Article 14 which provides a guarantee against coercive testimony or confession of guilt.[229] As part and parcel of human rights, the African Charter under article 7(1) clearly provides the right to be heard, including individuals who are under black sites.

Pursuant to Article 7(1) of the Charter any individual arrested or detained shall be granted the right to a fair trial. However, in extraordinary rendition detainees are not allowed to come before

[225] See Comm. Nos. 27/89, 46/91, 49/91, and 99/93, Organisation Contre la Torture and Others v. Rwanda ., 1996 para. 28, (The Commision)
[226] See, Comm. 250/02, Liesbeth Zegveld and Mussie Ephrem v. Eritrea, para. 55, (The Commision).;Comm. 204/97, Movement Burkinabé des Droits de l'Homme et des Peuples/ Burkina Faso, para. 44, (The Comission).; see also above note 221 at 40-41;
[227] ACHPR, Principles and Guidelines, above note 221; Comm. 250/02, Liesbeth Zegveld and Mussie Ephrem v. Eritrea.; U.N. Standard Minimum Rules for the Treatment of Prisoners, Rules 9-26 and 31-34; African Charter Article 8 above note 14
[228] U.N. Convention for the Protection of All Persons from Enforced Disappearance, Article 1, 2, 3, 4, 8(2), and 24; Comm. 204/97, Movement Burkinabé des Droits de l'Homme et des Peuples/ Burkina Faso (2001), para. 44; and Comm. 250/02,Liesbeth Zegveld and Mussie Ephrem v. Eritrea (November 2003), para. 55.
[229]Article 14 (1). Every individual shall have the right to have his cause heard. African Charter, above note 14

courts and tribunals.[230] Because once a suspect is rendered to another state and detained, he is often denied access to the recognized judicial procedures of that country. Individual right to equality, particularly "equality before the courts and tribunals," is recognized under Article 3 of the Charter.[231]Similarly, it prohibits discrimination on the ground of race, sex, language, religion, nationality, colour, political opinion or inclination and others.[232] However, extraordinary rendition in Africa discriminating individuals based on their race, political opinion and religion. Regarding this, the HRC by considering the possibilities of discrimination, recognizes the vulnerability of people of Islamic and Arabic descent and calls on the protection of the Arabs and Muslims during counterterrorism operations.[233]

4.4. The Role of the African Commission in Averting Extraordinary Rendition in Africa

As it is set out in Articles 30 and 45 of the African Charter, the African Commission is mandated to perform three main functions which directly or indirectly are related to extraordinary rendition. That includes activities and measures for protection and promotion of human and peoples' rights; investigating human rights violations; considering member states treaty report; and interpreting provisions of the Charter upon request by a state party, organs of the AU or individuals.[234] The African Commission also mandated to undertake studies and research on African problems in the field of human and peoples' rights, organizing seminars, symposia and conferences, disseminating information, encouraging national and local institutions concerned with human and peoples' rights, and, where necessary, giving its views or making recommendations to governments**.**

Where there is a human rights violation related to extraordinary rendition which takes place within the African state territory or extraterritorially, when there is spatial or personal control by

[230] African Charter on Human and Peoples' Rights, Articles 3 and 7(1); and, generally, ACHPR, Principles and Guidelines Africa above note 221

[231]Article 3(1) stated that every individual shall be equal before the law and entitled to equal protection of the law, above note 14

[232] Article 2 of ACHPR. Id

[233] UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations: Sweden, 24 April 2002, CCPR/CO/74/SWE, para. 12 http://www.refworld.org/docid/3d04bcda2html Retrieved 12 July 2017.; UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Republic of Moldova*, 21 May 2002, CERD/C/60/CO/9, para. 15 http://www.refworld.org/docid/3d5a73c515.html Retrieved 12 July 2016.; CERD, *Report of the UN Committee on the Elimination of Racial Discrimination, Sixtieth Session (4-22 March 2002) and Sixty-first Session (5-23 August 2002)*, 1 November 2002, A/57/18, para. 338 http://www.refworld.org/docid/3f52f7aa4.html Retrieved 12 July 2017.

[234]Arts 30 & 45 of the Charter, above note 14. For an analysis of the Commission; R Murray, *The African Commission on Human and Peoples. Rights and international law in* DOCUMENTS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES (R Murray & M Evans ed. 2000)..

the African state, based on Article 45(1) of the African Charter individuals and NGOs are allowed to submit their petition to the African Commission and to seek remedies. The Commission has been criticized for being toothless guardian of human rights in Africa.[235] But as one of its protective mandates the Commission is competent to consider communications from individuals and NGOs alleging human rights violations including extraordinary rendition.[236]

In relation to individual and NGOs communications, the African Commission will/may decide on cases related to extraordinary rendition. However, as outlined above the Commission is criticized for being a weak enforcement organ. As a result, states may not comply with the decisions of the Commission. In such situations, based on African Commission's Rules of Procedure 118 (1), the African Commission can refer cases to the African Court.[237]

The African Commission, as its primary function, has a mandate to study the situation of human rights in Africa and give its views or make general recommendations to the member states of the African Union.[238] Through issuance of resolutions and press releases, the Commission shall also condemn extraterritorial human rights violations related to extraordinary rendition. It shall express concern on the situation of human rights and states what ought to be done to rectify the problem of human rights violations linked to extraordinary rendition.[239] Regarding this, resolutions are very important in the development of soft law by the Commission for further development of guidelines and general principles and comments concerning extraordinary rendition.

---

[235] See Communication 25/89 Free Legal Assistance Group v Zaire, 4 para 39, (The Commission). See further CA Odinkalu, *The individual complaints procedures of the African Commission on Human and Peoples. Rights: A preliminary assessment*, 8 TRANSNATIONAL LAW & CONTEMPORARY PROBLEMS 359 (1998). It has been suggested that the Charter does not expressly authorize the Commission to consider individual communications. Murray. 2000 id. .But Rule 114 of the original Rules of Procedure explicitly stated that individuals and communications could petition the Commission. In any case, this procedure is now well established in the Commission's practice. See Communications 147/95&149/96 Sir Dawda K Jawara v The Gambia paras 41.42, (The Commission).

[236] Individual and interstate communication is one mechanism used by the Commission to monitor member states compliance to the ACHPR. In accordance to articles 48, 49 and 55 of the ACHPR and its rule of procedure, the commission is mandated to receive such communications. Above note 14

[237] African Commission's Rules of Procedure 118 (1). For instance, African Commission referred to the African Court after receiving complaint from NGOs on human rights situation in Libya following 16 February 2016. See African Commission on Human and Peoples' Rights vs. The Great Socialist People's Libyan Arab Jamahiriya Application 004/2011 available at: http://arcproject.co.uk/wpcontent/uploads/2013/04/CSW-004-2011.pdf Retrieved 12 July 2017.

[238] Based on Article 45(1)(a) the African Charter the Commission has a mandate to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights. Above note 14

[239] The African Commission has recently issued resolutions 264, 265, 266, and 267 on the situation of human rights in the Federal Republic of Somalia, Republic of South Sudan, Central African Republic, and Federal Republic of Nigeria. By these resolutions the commission condemned human rights violations committed in the countries and called upon government authorities, parties to the conflicts, and regional authorities for cessation of ongoing violations, and requested member states to investigate violations committed and hold perpetrators accountable.

Even if the system of state reporting is less effective, the African Commission has the mandate to investigate state reporting as one mechanism of assessing states' compliance to their obligation under the Charter.[240] State reporting process offers an opportunity for the African Commission to review challenges related to extraterritorial human rights violations linked to extraordinary rendition.[241] It will also identify factors that impede implementation of the Charter and assess the failure in compliance in the extraterritorial obligation concerning respect and enforcement of human rights in Africa.

The African Charter does not provide for the institution of Special Rapporteurs. However, through the inspirational provision of the African Charter, the African Commission has created subsidiary mechanisms, such as Special Rapporteurs and Working Groups in order to strengthen its promotional and protectional roles of human and people's rights. These mechanisms have a direct or an indirect link with extraordinary rendition. As a subsidiary mechanism the Commission has established 15 Special Rapporteurs and working groups. One among the Special Rapporteurs which engages on prisons and conditions of detention can investigate and provide information related to extraordinary rendition in Africa. The African Commission also has a mandate to carry out on-site visits and to prepare country reports on the situation of human rights in the member states, and then to examine and take decisions on individual petitions. In relation to extraordinary rendition, the Commissioners of the African Commission may perform several functions. One of the functions is visiting member states and such visits make recommendations for necessary changes and improvement in the law and practice of the country visited. Such visits are also used to gain picture of the situation of human rights in the country visited and indicate issues of concern in their report.

4.5. Remedies for Victims of Extraordinary Rendition in the African Human Rights System

Extraordinary rendition violates several human and peoples' rights recognized under the African Charter. Thus, remedies must be available to victims of extraordinary rendition irrespective of

[240] In this process, states are required to submit periodic report on legislative and other measures taken to give effect to provisions of the Charter and other regional human rights treaties such as the African Protocol on the Rights of Women. See Article 62 of the ACHPR. African Charter Above note 14

[241] State report on the ACHPR must be submitted every two years and shall provide information regarding measures taken to give effect to the provisions of the Charter, progress made so far, and challenges affecting implementation of the charter. African Charter article 62 Above note 14

the place where the violation occurred. Even though under international law the right to a remedy is fundamental,[242] the African Charter does not provide a framework of remedy for violation of human rights, including extraordinary rendition.[243]However, the Commission, through its interpretative mandate has provided remedial frameworks for violation of the Charter.[244] In addition, based on article 60 of the African Charter, the African Commission also is entitled to draw inspiration from international and regional human rights systems to provide remedies for victims of extraordinary rendition.[245] For instance, the Vienna Declaration set out effective principles which redress human rights violations.[246] Therefore, it provides judicial or other mechanisms guarantee of full reparation to the victims of extraordinary rendition and to their families. This includes restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition[247]separately or in combination.[248]

4.5.1. The Right to Restitution and Extraordinary Rendition

All attendant African governments shall be liable under the international law of state responsibility for transfers at the hands of their agents, for hosting CIA agents and for the ill-treatment that occurs in states to which individuals are transferred. This gives rise to the international legal obligation to immediately cease the practice and to remedy such abuses through restitution. In the case at hand, the ultimate purpose of restitution is to restore the victims of extraordinary rendition to the original situation before he or she is extraordinarily rendered. Some international human rights instruments like the Convention on Enforced Disappearance provide that restitution can be applicable for material and moral damages.[249] Similarly, General Comment No. 4 notes that the goal of reparations, including restitution is to make the victim of torture and ill-treatment whole; and, thus, reparations include physical, psychological, social,

[242] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147.
[243]The only provision which deals about compensation under the African Charter is article 21 (2). African Charter Above note 14 However, absence of compensation clause under the African Charter doesn't mean that victims of extraordinary rendition to remain without claim. African Court Protocol and ACHR under their articles 27 and 63 respectively provide remedies that are appropriate, for the payment of fair compensation to the injured party and for the possibility to adopt provisional measures in cases of extreme gravity. African Charter Above note 14
[244]For instance see General Comment No. 4 above note 190
[245] Art 60 of ACHPR Above note 14
[246] Vienna Declaration and Program of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993
[247] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Section IX (Reparation for harm suffered), U.N.A/RES/60/147, (21 March 2006), Principle 18-23
[248]Draft Articles on Responsibility of States for International Wrongful Acts, above note, 185 Article 34
[249] International Conventions on Enforced Disappearance, above note 128, article 24 (5) (a).

cultural, and spiritual aspects.[250] Therefore, restitution in the context of extraordinary rendition can be taken as restoration of liberty, enjoyment of human rights, identity, family life and citizenship; return to one's place of residence, restoration of employment and return of property.[251] As far as restitution is concerned, the African Commission in *Malawi African Association and Others vs. Mauritania*[252] and *Sudan Human Rights Organisation et al. vs. Sudan*[253] cases recommended victims to restitution of the rights violated. Thus, similarly victims of extraordinary rendition can claim restitution as reparation.[254] And the violator states are obliged to provide restitution for the victims of extraordinary rendition.[255] However, those individuals who die as a result of extraordinary rendition are not entitled to restitution for they no longer exist.[256]

4.5.2. The Right to Compensation and Extraordinary Rendition

Extraordinarily rendered individual, similar to any other victims of human rights violations, has the right to recourse compensation from any of African states participating in his or her rendition.[257] Indeed, the importance of compensation as a remedy for human rights violations and abuses is provided in Article 38 of the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa[258] and in the general principles of the Principles on Guidelines on Human and Peoples' Rights while Countering Terrorism.[259] Similarly, the Special Rapporteur to CAT clearly recognizes that the state shall provide reparation to victims of extraordinary rendition and secret detention.[260]Thus, the state should provide victims of extraordinary rendition with compensation. But this is not always true because sometimes we may not proportionate compensation to irreversible

[250] General Comment No. 4 above note 190 par. 12
[251] Basic Principle and Guide line, above note 247, Principle 19.
[252]Malawi African Association and Others vs. Mauritania, Communication Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98 (2000) Parg. 68
[253] Sudan Human Rights Organization and Another vs. Sudan, African Commission, AHRLR 153 (2009) para.299 (4).
[254] Synhaeve, Timothy. 2011. "Taking the War on Terror to the Court - A Legal Analysis on the Right to Reparation for Victims of Extraordinary Rendition." *Vienna Journal on International Constitutional Law*. 5 (September 2011): 439-493. .
[255]Id. at p.439
[256]ICJ, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Merits) (Bosnia and Herzegovina vs. Serbia and Montenegro), (26 February 2007), para.460.
[257]Protection of Human Rights in Africa: African Human Rights in a Comparative Perspective available at: http://www.leganet.cd/Doctrine.textes/DroitPublic/DH/ProtectionofHR.Kabange.htmRetrieved 12 July 2017..
[258] Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 2010
[259] African Commission Principles and Guidelines on Human and Peoples‟ Rights while Countering Terrorism in Africa, adopted by the African Commission on Human and Peoples‟ Rights during its 56th Ordinary Session in Banjul, Gambia (21 April to 7 May 2015) „ Principle 18-23
[260] See, Prime Minister of Canada, "Letter of apology to Maher Arar and his family", 2007; United Kingdom Ministry of Justice Memorandum, "Joint Committee on Human Rights inquiry into Justice and Security Green Paper", 2011.

harm done like torture, and this is understandable.[261] But states are required to provide fair and adequate compensation, to any violation related to extraordinary rendition.[262]

However, anyone can understand from the perspectives of human rights, that the rights of victims of extraordinary rendition to reparation can only be directed against a state that can be held responsible for the acts linked with rendition. In most of the cases, the responsibility is directed to the territorial state; it may also be the state of nationality of the perpetrator, but certainly not the state of nationality or residence of the victim. For example an Ethiopian citizen, Biniam Mohammed was extraordinarily rendered and tortured in Pakistan, Morocco and Guantanamo Bay (which is under the effective control of U.S), and in such scenario he cannot claim redress and compensation from Ethiopia. But he may initiate civil (tort) litigation against the states of Pakistan, Morocco and U.S.

4.5.3. The Right to Satisfaction and Extraordinary Rendition

Satisfaction is also another remedy for victims of extraordinary rendition. The Convention on Enforced Disappearance stated that satisfaction includes restoration of dignity and reputation of victims.[263] On the other hand, as to the basic Principle and Guide line, satisfaction encompasses different measures such as apologies, victim memorials and full and public disclosure of the truth. It also includes judicial and administrative sanctions against the responsible parties.[264] In this regard, the African Commission in the case of *Malawi African Association and Others vs. Mauritania* ordered satisfaction for victims and recommended arrangement of independent inquiry to clarify the fate of disappeared persons and to identify the responsible party.[265] Therefore, the order and recommendation of the African Commission shall similarly applicable to the victims of extraordinary rendition.[266]

[261] Committee against Torture, Conclusions and Recommendations on Saudi Arabia, CAT/C/CR/28/5, (on 28 May 2002), para.8; see also Committee against Torture, Conclusions and Recommendations on Brazil, A/56/44, paras.115-122, 16 May 2001.
[262]The African Commission declared grave violation of human rights from 1989-1992 in Mauritania and recommended compensation to victims. Similar approach shall also applicable for victims of extraordinary rendition. See Malawi African Association and Others vs. Mauritania, parg 399, (African Commission)
[263] The Convention on Enforced Disappearance Above note 128 Article 24 (5) (c)
[264] Basic Principle and Guide line, above note 247, Principle 22.
[265] Malawi African Association and Others vs. Mauritania. Above note 252 Parg. 56
[266] Id. parg.78

4.5.4. The Right to Rehabilitation and Extraordinary Rendition

Due to several and severe interrogation techniques such as attention grasp, walling, facial hold, facial slap, abdominal slap, wall standing, stress positions, and water dousing many of the victims of extraordinary rendition have faced different psychological problems.[267] For instance Habib was captured in Pakistan in October 2001.[268] The Pakistanis took him to an airport and handed him over to the United States, who rendered him to Egypt where he was tortured. And he was naked, hysterical, handcuffed, and had his feet tied. Later he was being flown to Guantanamo Bay in May 2002.[269]Finally, he was released without charge in 2005. He alleges that he suffered both physical and psychological abuse throughout his detention.[270] Similar to Habib, most of them face different psychological problems and require rehabilitation. Rehabilitation, as one of the remedies for human rights violation is included in several international conventions and declarations. For instance, as provided in article 14 (1) of CAT, the victim of an act of torture obtains compensation, including the means for as full rehabilitation as possible. It should be noted that rehabilitation is required for physical or psychological damages. Rehabilitation can also be of a social nature, such as rehabilitation of their dignity, their social situation and their legal situation.[271] Even if rehabilitation is not expressly included in the African Charter, the African Commission under General Comment No. 4 clearly provides that the right to reparation includes rehabilitation.[272]Similarly, General Comment No. 3 states that those who have suffered violence or trauma should benefit from consideration to avoid re-traumatisation.[273]

As far as rehabilitation is concerned, the African Commission, in several communications declared rehabilitation as reparation for violation of human rights committed by states as well as non-states actors.*[274]* In addition, the African Commission, Resolution on Guidelines and

[267] Initiative, OPEN SOCIETY FOR JUSTICE INITIATIVE (2013). Above note 7 P.66 &73
[268] Id. at. P. 66
[269] Id. at. P. 66
[270] Id. at. P. 73
[271] General Comments on Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, E/CN.4/1998/43, (12 January 1998), para.75, which provides that „legal and social rehabilitation" such as legal rehabilitation through rectification of criminal records, or invalidation of unlawful convictions; see also Basic Principle and Guide line, cited above at note, 247 Principle 21; International Convention on Enforced Disappearance, above note , article 24 (5) (b).
[272]*See* General Comment No. 4 above note 190 at para. 10.
[273] See General Comment No. 3, above note 190
[274]Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) vs. Nigeria, Communication No. 155/96, Para.69 Purohit and Moore vs. Gambia Communication No. 241/01, para.85 (3). Sudan Human Rights Organization and Another vs. Sudan, above note, para.298 (5).

Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) requires states to ensure that all victims of torture and their dependents be offered proper medical care, have access to proper social and medical rehabilitation, and are provided with proper levels of compensation and support.[275] Therefore, rehabilitation as one of the remedies shall also be applicable for victims of extraordinary rendition in Africa.

4.5.5. The Right to Guarantees of Non-Repetition and Extraordinary Rendition

As stated in the General Comment, full and effective reparation to address the harm suffered by victims, including their family and dependents should include the implementation of guarantees of non-repetition.[276] Thus, the right to non-repetitive can also be taken as the other form of remedy for victims of extraordinary rendition. The guarantee of non-repetition is incorporated in several human rights instruments including Convention of Enforced Disappearance[277] and the UN Basic Principle of Reparation.[278] Concerning the guarantees of non-repetition, the African Commission on several occasions recommended and concluded reparation as guarantees of non-repetition.[279] Accordingly, victims of extraordinary rendition can claim non-repetitive of the acts committed. However, as to Basic Principle of Reparation guarantees of non-repetition comprise broad structural measures of a policy nature such as institutional reforms aiming at civilian control over military and security forces, strengthening judicial independence, the protection of human rights defenders, the promotion of human rights standards in public service, law enforcement, the media, industry and psychological and social services.[280]

4.6. Conclusion

Just about all African states are a state party to the African Charter. The Charter explicitly prohibits the constituting elements of extraordinary rendition. But, in violation of the Charter and international human rights norms several African states are involved in extraordinary rendition.

[275] African Commission, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, (October 2002) (http://www.achpr.org/files/sessions/32nd/resolutions/61/achpr32_robben_island_guidelines_eng.pdf Retrieved 10 Nov. 2017.
[276] General Comment No. 4 above note 190
[277] The Convention on Enforced Disappearance, above note128 Article 24 (5) (d)
[278] Basic Principle and Guide line, cited above note 247, Principle 23.
[279] African Commission General Comment No.3 above note, 190 para.19.
[280] Basic Principle and Guide line, cited above note 247, Principle 23.

Therefore, due to their involvement in extraordinary rendition, individuals faced serious violations of human rights. Accordingly, states that have directly or indirectly participated in the program should be responsible for violation of the African Charter. In this regard, the African Commission is mandated to perform three main functions which directly or indirectly are related to extraordinary rendition. However, the African Charter does not contain a provision speaking to the issue of remedy. Unlike the African Charter, international and regional human right instruments provide remedy for violation of human rights in the form of compensation, restitution, rehabilitation, non-repetition and satisfaction. Therefore, based on Article 60 of the Charter, the African Commission is entitled to draw inspiration from these international and regional systems and shall provide remedies for victims of extraordinary rendition.

-Chapter Five-

Conclusions and Recommendations

5.1. Conclusions

Extraordinary rendition is the transfer of individuals from one state to another state without any legally established procedure and protection of human rights. As is the case in other continents, extraordinary rendition in Africa is a clandestine and complex act, which depends on the collaborations of two or more states. Over the past three decades, African states have been working in the interest of U.S, and just dancing again to the U.S music called 'War on Terror'. Africa has also hosted and transferred several victims of extraordinary rendition to other continents. In addition, African states are creating their own rendition programs amongst themselves without the involvement of the U.S. Specifically, they are highly engaged in extraordinary rendition by hosting black sites on their territories by capturing, detaining, interrogating and torturing of victims. In addition, they also allow the use of their air space and airports for secret flights transporting detainees and interrogating suspects who were secretly being held in the custody of other states. Most of the patterns of extraordinary rendition in Africa depend on the interests of the U.S and highly guided and supervised by U.S agent, CIA. There is also another pattern of extraordinary rendition which is conducted without the involvement of U.S. In both patterns of extraordinary rendition, at least one African state is involved and the rendition may be among African states or it includes one or more non-African states.

Extraordinary rendition has both territorial and extraterritorial dimensions. In relation to the extraterritorial obligation of states, the African Charter does not provide a clear provision which shows the territorial or jurisdictional extent of the rights enshrined in the Charter. Therefore, it is relevant to incorporate different approaches towards extraterritorial application of the African Charter. Accordingly, this paper has analyzed three different extraterritorial approaches. Firstly, it analyzed extraterritorial obligation of states from the perspective of spatial control, which it referred as spatial approach. Secondly, it analyzed from the point of view of personal control, which is known as the personal approach. Lastly, it analyzed from the point of view of the principle of *non-refoulement*. These approaches reflect the practice of international and regional human rights systems in relation to extraterritorial application of human rights in general.

Therefore, as a lasting solution to this problem, the African Commission through its mandate provided under Article 60 of the Charter by taking inspiration shall apply the already established approaches to extraterritorial application of the African Charter towards the issue of extraordinary rendition.

Almost all of African states are state parties to the African Charter as well as international human rights instruments that recognized the prohibition of the accompanying elements of extraordinary rendition. As clearly identified by this study, due to their participation in extraordinary rendition there are several African states which fail to comply with their human rights obligations specified in the Charter. Among others it violates the norm against torture, the right to liberty, the right to privacy, the right to get adequate remedy, the right to fair trial, equality before the law, presumption of innocence, the right to health, the right to movement and etc. However, the African Charter does not explicitly guarantee the *non-refoulement.* In addition, the analysis has revealed that there is a problem in proving extraordinary rendition: as the practice is clandestine and complex, it creates difficulty to adduce evidence leading to a wide basis of liability for participatory African states. This represents a 'cause and effect' situation reflecting the extraterritorial nature of extraordinary rendition.

As to the analysis of this thesis, even if the Charter has no remedial clause, the African Commission, through its interpretative mandate has provided remedial frameworks for violation of the Charter. It is true that the African Commission has a mandate to entertain matters relating to extraordinary rendition. But the problem with the African Commission is that its decisions are non-binding. Furthermore, unlike the African Charter, international and regional human rights instruments provide remedies for violation of human rights including extraordinary rendition. Therefore, based on Article 60 of the Charter, the African Commission is entitled to draw inspiration from these international and regional systems and shall provide remedies for victims of extraordinary rendition.

5.2. Recommendations

Based on the analyses and the gaps identified under this paper, the researcher recommends the following with the aim of ending human rights violations that are attributed to extraordinary rendition in Africa:

- As identified in this paper, the African Charter does not contain provisions which deal with the extraterritorial obligation of states relating to extraterritorial transfer of individuals. However, the international and regional human rights systems had the case law related to extraterritorial obligation of states in case of extraordinary rendition. Based on the analysis of the paper, there are attempts to extend the extraterritorial states obligation in Africa. For instance in Embargo Measures against Burundi case and in Armed Activities on the Territory of The Congo case, the African Commission's interpretation indicated that the exercise of the 'effective control' on individuals would not be necessary to define the personal model of extraterritorial obligation of states. Because the source of the extraterritorial applicability of the Charter could sometimes not be characterized by the control on the territory rather it may be from the 'indirect control' on individuals suffering the consequences of measures adopted by states which are external to the territory where the injured subjects are physically set. Therefore, the writer recommends that in addition to such attempt, the African Commission ought to incorporate other modalities laid down by international and regional systems as inspirational sources and try to develop the African extraterritorial approach in case of extraordinary rendition;
- As per the investigation of this paper, extraordinary rendition violates numerous provisions of the African Charter and international human rights norms. Therefore, with a pretext of war on terrorism, attendant African states must stop violation of individual rights through clandestine agreements. In addition, the Assembly of Head of State and Government (AHSG) of AU, instead of turning a blind eye to what is going on in Africa, shall give special attention to the overwhelming problem of extraordinary rendition in Africa and thereby issue a specific and binding treaty which strongly addresses extraordinary rendition in the continent;
- As to the analysis of the paper, the African Commission is mandated to protect and promote human and peoples' rights in Africa. Therefore, the African Commission is recommended to undertake studies and researches on extraordinary rendition in Africa and making recommendations to attendant African states. Because, resolutions are very important in the development of soft law by the Commission for further development of guidelines and general principles and comments concerning extraordinary rendition;

- As examined under this paper the inaccessibility of evidences and the clandestine nature of extraordinary rendition in Africa create a problem for attributing responsibility to the participant states. Accordingly, providing evidence for extraordinary rendition cases becomes difficult for victims of extraordinary rendition. Conversely, the standard of proof required by the African commission is too rigorous for victims of extraordinary rendition. Consequently, the evidence produced by victims of extraordinary rendition will not be admissible. In this regard, the experience of Mohammed Abdullah Saleh Al-Asad's case provides indications for states how to cover evidence and adopt increasingly covert operations. (The Mohammed Abdullah Saleh Al-Asad v Djibouti as referred above in 4.2.). Therefore, the African Commission is recommended to adopt approaches to evidence and attribution that provides strong burden of proof to the alleged attendant African states;
- Even if the African Charter does not provide for the institution of Special Rapporteurs, the African Commission included it in order to strengthen its promotional and protectoral roles of human and peoples' rights. Therefore, the Special Rapporteur which engages on prisons and conditions of detention recommended to investigate and provide information concerning black sites or secret detention centers in Africa. In addition, as argued in this paper, state reporting system provides a forum for the Commission to review challenges related to extraterritorial human rights violations linked to extraordinary rendition. Therefore, by strengthening the state reporting system the Commission is recommended to assess the failure in compliance in the extraterritorial obligation concerning respect and enforcement of human rights in Africa; and
- As clearly assessed under 4.5 of this paper, the African Charter does not explicitly provide remedies for extraterritorial violation of the human rights related to extraordinary rendition in the African human rights system. As a result, in addition to the jurisprudence of the African human rights system, the African Commission enjoined to draw inspiration from other international or regional human rights systems regarding all remedies for victims of extraordinary rendition.

5.3. Suggested Areas for Further Studies

Eventually, it is reasonable to conclude that in relation to extraordinary rendition the African human rights system has significant gaps when examined from the perspective of the general human rights systems. Therefore, there are areas related to extraordinary rendition which need to be investigated. Pursuant to the analysis of this research, the author has identified major areas that necessitate to be investigated in order to explore a comprehensive research options that informs the extraterritorial obligation of states and extraordinary rendition in Africa.

- In some countries, there are few investigations on cases of private companies which are accused of abusing of human rights and of assisting the CIA in the running of its extraordinary rendition program. But there are few studies that have explored the extraterritorial obligation of states and non-state actors in relation with extraordinary rendition in Africa.
- Consistency of the domestic laws and policies of African states concerning extraordinary rendition in the light of international and regional standards needs further research.
- The U.S. and other states are conducting a war against terrorism. For these countries this war often takes the form of conventional military operations. Under this war countries have arranged a system of transferring the so called enemy combatant for the purpose of interrogation. Thus extraordinary rendition exists in a legal vacuum; hovering between international human rights law and the law of armed conflict. This defense of rendition is therefore one strand of the broader argument that the "War on Terror" is a new type of armed conflict. Therefore, the interplay of human rights and international humanitarian laws and extraterritorial obligation of states need further research in case of extraordinary rendition.
- Most of the human rights violations related to extraordinary rendition are correlated to civil and political rights. However, this study also suggests comprehensive and empirical studies on the impact of extraordinary rendition and extraterritorial obligation of states on economic, social and cultural rights.

Bibliography

Books and Book Sections:

D. Cassel, *Extraterritorial Application of Inter-American Human Rights Instruments', in* EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES (F. Coomans and M. Kamminga ed. 2004).

F. OUGUERGOUZ, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*, Martinus Nijhoff Publishers, The Hague/London/New York 554(2003).

Frances Viljoen, *Admissibility under the African Charter*, *in* THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS: THE SYSTEM IN PRACTICE 1986-2000 (M Evans & R Murray ed. 2002).

G. Prunier, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*, Oxford, 2011)

HELMUT PHILIPP AUST, COMPLICITY AND THE LAW OF STATE RESPONSIBILITY (Cambridge University Press. 2011).

HENRY SHUE, BASIC RIGHTS (2nd ed. 1996).

Jeanne-Mari Retief, *Foreign Aid Toward Extraordinary Rendition: An African Perspective*, *in* INTERNATIONAL CRIMINAL JUSTICE IN AFRICA ISSUES, CHALLENGES AND PROSPECTS (HJ van der Merwe and Gerhard Kemp ed. 2016).

Karen da Costa , *The Extraterritorial Application of Selected Human Rights Treaties* (Brill , 2012).

Margaret Satterthwaite *"Is This Legal? Extra¬ordinary Rendition and International and Human Rights Law" in* CIA EXTRAORDINARY RENDITION FLIGHTS, TORTURE AND ACCOUNTABILITY - A EUROPEAN APPROACH (European Center For Constitutional And Human Rights E.V. (ECCHR) ed. 2008).

Margaret Satterthwaite, *The U.S. Program of Extraordinary Rendition and Secret Detention: Past and Future*, *in* CIA- EXTRAORDINARY RENDITION FLIGHTS, TORTURE AND ACCOUNTABILITY – A EUROPEAN APPROACH (European Center For Constitutional And Human Rights E.V. (Ecchr) ed. 2009).

MARGOT SALOMON, GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT OF INTERNATIONAL LAW (2007).

Mark Gibney and Sigrun Skogly (eds), *Universal Human Rights and Extraterritorial Obligations* (University of Pennsylvania Press , 2010).

Marko Milanovic , *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (OUP , 2011)

Martin Scheinin, *Extraterritorial Effect of the International Covenant on Civil and Political Rights, in* EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES (Fons Coomans and Menno Kamminga ed. 2004).

Michał Gondek , *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties* (Intersentia , 2009).

R Murray, *The African Commission on Human and Peoples. Rights and international law in* DOCUMENTS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES (R Murray & M Evans ed. 2000).

S. Borelli, *The rendition of terrorist suspects to the United States: Human rights and the limits of international cooperation, in* ENFORCING INTERNATIONAL LAW NORMS AGAINST INTERNATIONAL TERRORISM (A. Bianchi ed. 2004).

Sigrun Skogly, *Extraterritoriality: Universal Human Rights Without Universal Obligations., in* RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW (Adam M Joseph S ed. 2010).

Takele Soboka Bulto, *Tortured Unity: United States-Africa Relations In Extraordinary Renditions and States' Extraterritorial Obligations*, *in* JUSTICE BEYOND BORDERS: EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS FROM AN AFRICAN PERSPECTIVE (Lilian Chenwi and Takele Soboka Bulto ed. 2018).

Wolfgang Kaleck, *Justice and Accountability in Europe: Discussing Strategies in* CIA-EXTRAORDINARY RENDITION FLIGHTS, TORTURE AND ACCOUNTABILITY – A EUROPEAN APPROACH EDITED BY: (European Center For Constitutional And Human Rights E.V. (ECCHR) ed. 2009).

Journal Articles:

Alan W. Clarke, *Rendition To Torture: A Critical Legal History*, 62 RUTGERS LAW REVIEW (2012).

Antoine Buyse, *Lost and Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law*, 68 (2008).

Beth Elise Whitaker, *Compliance among Weak States: Africa and the Counter-Terrorism Regime,* 36 REVIEW OF INTERNATIONAL STUDIES 639 (2010).

Beth Henderson, *From Justice to Torture: The Dramatic Evolution of U.S.-Sponsored Renditions*, 20 TEMP. INT'L & COMP. L.J. (2006).

C. Anyangwe, *Obligations of States Parties to the African Charter on Human and Peoples' Rights*, AFRICAN JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW 625 (1998).

C. Van den Wyngaert, *Applying the European Convention of Human Rights to extradition: Opening Pandora's box?*, 39 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY (1990).

C.J.R. Dugard and C. Van den Wyngaert, *Reconciling extradition with human rights*, 92 AMERICAN JOURNAL OF INTERNATIONAL LAW 187(1998).

CA Odinkalu, *The individual complaints procedures of the African Commission on Human and Peoples. Rights: A preliminary assessment*, 8 TRANSNATIONAL LAW & CONTEMPORARY PROBLEMS 359 (1998).

David Weissbrodt & Amy Bergquist, *Extraordinary Rendition: A Human Rights Analysis*, 19 HARV. HUM. RTS. J. 123(2006).

David Weissbrodt and Amy Bergquist, *Extraordinary Rendition and the Torture Convention*, 46 VIRGINIA JOURNAL OF INTERNATIONAL LAW 585(2006).

Dr. Vassilis P. Tzevelekos, *Reconstructing The Effective Control Criterion In Extraterritorial Humanrights Breaches: Direct Attribution Of Wrongfulness, Due Diligence, And Concurrent Responsibility*, 36 MICH. J. INT'L L. 129 (2014).

E Nadelmann, *'The evolution of United States Involvement in the International Rendition of Fugitive Criminals'*, 25 NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 813-885(1993).

G. Gilbert, Kluwer, *Aspects of Extradition Law*, DORDRECHT (1991).

Ingrid Detter Frankopan, *Extraordinary Rendition and the Law of War*, INT.N.C.J. (2008).

Jane Mayer, *Outsourcing Torture: The secret history of America's "extraordinary rendition" program*.

Karen Greenberg & Joshua Dratel, *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations*, 286(2003).

Leila Nadya Sadat, *Ghost Prisoners and Black Sites : Extraordinary Rendition Under International Law*, 37 WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 309 (2006).

Louis Fisher, *Extraordinary Rendition: The Price of Secrecy*, 57 AM. U. L. REV. 1405,(2008).

Margaret L. Satterthwaite, *Rendered Meaningless: Extraordinary Rendition and the Rule of Law*, 75 THE GEORGE WASHINGTON LAW REVIEW 1333(August 2007).

Margaret L. Satterthwaite, *The Legal Regime Governing Transfer of Persons in the Fight Against Terrorism*, (2010).

Mark J. Murray, *Extraordinary Rendition and U.S. Counterterrorism Policy*, Volume 4 JOURNAL OF STRATEGIC SECURITY 1(2011).

Michael Scheuer, *Extraordinary Rendition in U.S. Counterterrorism Policy: The Impact on Transatlantic Relations*.

Michele Nino, *Extraordinary Renditions: The Role of European Security Services in the Fight Against International Terrorism*, FIRST WORLD CONFERENCE OF PENAL LAW. PENAL LAW IN THE XXIST CENTURY. (2007).

Rajiv Chandrasekaran & Peter Finn, *U.S. Behind Secret Transfer of Terror Suspects*, (Mar. 11, 2002).

Ralph Wilde, *Legal "Black Hole"? Extraterritorial State Action and International Treaty on Civil and Political Rights*, 26 MICHIGAN JOURNAL OF INTERNATIONAL LAW (2005).

Ralph Wilde, *Triggering State Obligations Extraterritorially: The Spatial Test in Certain Human Rights Treaties*, 40 ISRAEL LAW REVIEW 503(2007).

Robert Johnson, *Extraordinary Rendition: A Wrong Without a Right*, 43 U. RICH. L. REV. 1135 (2009).

Taiyyaba Qureshi & Marianne Twu Paula Kweskin, *The International Legal Landscape Of Extraordinary Rendition: U.S. Obligations Under ICCPR, CAT, and The Nuremberg Principles*.

Takele Soboka Bulto "Towards Rights-Duties Congruence: Extraterritorial Application of the Human Right to Water in the African Human Rights' System", in *Netherlands Quarterly of Human Rights* 2011

Takele Soboka Bulto, *Patching The 'Legal Black Hole': The Extraterritorial Reach Of States' Human Rights Duties In The African Human Rights System*, 27 SAJHR 249((2011)).

Zachary William Carpino, *Terrorizing the Terrorists: Reconstructing U.S. Policy on the Use of Torture in the Global War on Terror*, Volume 4 GLOBAL SECURITY STUDIES 10(2013).

Reports:

Amnesty International, 'USA: Crimes and Impunity – Full Senate Committee Report on CIA Secret Detentions Must Be Released, and Accountability for Crimes under International Law Ensured' (Report, April 2015)

Amnesty International, "Rendition" and Secret Detention: A global system of Human Rights violationsQuestionsandAnswers5,POL30/003/2006.

Emmerson, Ben. *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.* Geneva: United Nations Office of the High Commissioner for Human Rights (2013).

Extradition To and From the United States: Overview of the Law and Recent Treaties. (2007).

Human Rights Watch Report (2013).

Human Rights Watch, "'Why Am I Still Here?" The 2007 Horn of Africa Renditions and the Fate of Those Still Missing' (2008)

Human Rights Watch, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture* (Sweden) (2005);

Muslim Human Rights Forum (MHRF), *Horn of Terror Report of US - Led Mass Extra-Ordinary Renditions from Kenya to Somalia, Ethiopia and Guantanamo Bay* Presented to the Kenya National Commission on Human Rights (2007).

Obligations and Obstacles: Holding North Carolina Accountable for Extraordinary Rendition and Torture. (2012-2013).

Open Society for Justice Initiative, *Globalizing torture: CIA secret detention and extraordinary rendition*, OPEN SOCIETY FOR JUSTICE INITIATIVE (2013).

The Constitution Project. *The Report of the Constitution Project's Task Force on Detainee Treatment.* Washington, DC: The Constitution Project. (2013).

Torture By Proxy: International And Domestic Law Applicable To "Extraordinary Renditions". pt. 1-123 (2004).

Newspapers and Press Releases:

Andargachew Tsige: Ethiopian brutality, British apathy' https://www.opendemocracy.net/opensecurity/graham-peebles/andargachew-tsige-ethiopian-brutality-british-apathy

C. Whitlock, *A secret deportation of terror suspects*, WASHINGTON POST,, 25 July 2004.

Craig S. Smith and Souad Mekhennet, *Algerian Tells of Dark Term in U.S. Hands*, NEW YORK TIMES July 7. 2006.

D. van Natta and S. Mekhennet, *German's claim of kidnapping brings investigation of US link*, NEW YORK TIMES, 9 January 2005.

Director Hayden CIA, Transcript of Director Hayden's Interview with Charlie Rose (Charlie Rose' ed., 2007).

Former Secretary Condoleezza Rice, Remarks (2005).

Jeff Mason and Randall Mikkelsen, *Obama sets deadline to close Guantanamo*, THE VANCOUVER SUN, Jan. 21. 2009.

Max Fisher, *A staggering map of the 54 countries that reportedly participated in the CIA's rendition program* WASHINGTON POST, 5 February. 2013.

Michael Scheuer, *Extraordinary Rendition in U.S. Counterterrorism Policy: The Impact on Transatlantic Relations*.
Michael Scheuer, Talk of the Nation: Policy of Extraordinary Rendition (National Public Radio broadcast ed., 2005).

Press Release, U.S. Dep't of Justice, Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President (Aug. 24, 2009)

Rupert Stone, *America is about to go backwards on torture under Trump*, INDEPENDENT Thursday 19 January. 2017.

Shannon McCaffrey, *Canadian Sent to Syrian Prison Disputes U.S. Claims Against Torture*, KNIGHT RIDDER/TRIB. NEWS SERVICE, 2004.

U.S. Dep't of Justice, Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President (2009).

International and Regional Laws:

International Laws:

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Section IX (Reparation for harm suffered), U.N.A/RES/60/147, 21 March 2006

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for Signature, Ratification and Accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987

Convention on the Right of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entered into force on 2 September 1990

Convention relating to the Status of Refugees, adopted 28 July 1951and entered in to force 22 April 1954) 189 UNTS 137

International Convention for the Protection of All Persons from Enforced Disappearance adopted on December 20, 2006 and entered in to force on 23 December 2010

International Covenant on Civil and Political Rights, *entered into force* Mar. 23, 1976, S. EXEC. Doc. E, 95-2, 999 U.N.T.S. 171

International Covenant on Economic, Social and Cultural Rights, *entered into force* Jan. **3,** 1976, **993** U.N.T.S. 3.

International Law Commission(ILC)'s Draft Articles on Responsibility of states for International wrongful Acts, considered by the UN General Assembly Resolution 56/83,UN Doc A/RES/56/83(28 January 2002)

Universal Declaration of Human Rights, UNGA Res. 217A (III), Dec. 10, 1948

Vienna Convention on the Law of Treaties (1969), Adopted on 22 May 1969

Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993

Regional Laws:

African Charter on Human and Peoples Rights Adopted in Nairobi June 27, 1981 and Entered into Force October 21, 1986

African Commission Principles and Guidelines on Human and Peoples‟ Rights while Countering Terrorism in Africa, adopted by the African Commission on Human and Peoples‟ Rights during its 56th Ordinary Session in Banjul, Gambia (21 April to 7 May 2015)

African Commission's Rules of Procedure 118

African Commission's Rules of Procedure 114

American Convention on Human Rights (1969|)

European Convention on Human Right (1950)

OAU Convention on the Prevention and Combating of Terrorism, adopted in the OAU Summit, Algiers, June 14, 1999;

Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, Adopted Sept. 10, 1969, and 8 I.L.M. 1288 (entered into force 20 June, 1974)

General Comments Concluding Observations and Cases:

International:

Agiza v. Sweden, Communication No. 233/2003, U.N. Doc. CAT/C/34/D/233/13.4 (2005) (U.N. Comm. Against Torture,)

Colcusions and Recommendations, United States of America, UN Doc.CAT/C/USA/CO/2, 25 July 2006 (UN Committee against Torture)

General Comment No. 20, *G*, U.N. Doc. A/47/40 (1992) HRC

General Comment No.31, 80, U.N Doc CCPR/C/21/Rev.1/Add.13, 26May 2004 HRC,

Kindler v. Canada (Comm. No. 470/1991) (CCPR/C/).

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, (Advisory Opinion on July 9, 2004), I.C.J;

Lopez Burgos v. Uruguay (HRC 29 July).

Office of the United Nations High Commissioner for Human Rights. 2011. *Interpretation of Torture in the Light of the Practice of Jurisprudence of International Bodie*s. Geneva:

United Nations Human Rights Council, 13th Session, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, UN Doc A/HRC/13/42 (20 May 2010),

United Nations Office of the High Commissioner for Human Rights.

Regional:

Africa:

African Commission on Human and Peoples' Rights vs. The Great Socialist People's Libyan Arab Jamahiriya Application 004/2011 (The African Court of Human and peoples' Rights)

Democratic Republic of The Congo v Burundi, Rwanda and Uganda, application n. 227/99, report of May 29th 2003; (The Commission).

Free Legal Assistance Group v Zaire, 4 Communication 25/89 (The Commission).

General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), adopted during its 57th Ordinary Session, held in Banjul, The Gambia, in November 2015 (The Commission)

General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5) (The Commission)

Liesbeth Zegveld and Mussie Ephrem v. Eritrea, Comm. 250/02, (The Commission).

Malawi African Association and Others vs. Mauritania, Communication Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98 (2000) (The Commission).

Mohammed Abdullah Saleh Al-Asad And Djibouti 383/2010, (The Commission).

Movement Burkinabé des Droits de l'Homme et des Peuples/ Burkina Faso, Comm. 204/97, (The Comission).

Purohit and Moore vs. Gambia Communication No. 241/01 (The Commission)

Sir Dawda K Jawara v The Gambia Communications 147/95&149/96 (The Commission).

Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) vs. Nigeria, Communication No. 155/96 (The Commission)

Sudan Human Rights Organization and Another vs. Sudan (2009) AHRLR 153 (ACHPR 2009)

Europe:

Al-Jedda v. the United Kingdom, (ECoHR 7 July).

Babar Ahmad and Others v United Kingdom, (ECtHR 6 July).

Jamaa v. Italy, App. No. 27765/09, (ECtHR).

Issa and Others v Turkey (App no 31821/96) (ECoHR).

Ilascu and Others v. Moldova and Russia, (4 July). (ECoHR).

Hussein v. 21 States, App. No. 23276/04, Eur. H.R. Rep. 223, 224-25 (EHRCt).

Drozd and Janousekv France and Spain (App no 12747/8) (EHRR).

Loizidou v. Turkey, (App. No. 15318/89, 310, Sec. A,), (ECtHR).

Medvedyev v. France, App. No. 3394/03, (ECtHR.).

O _ calan v Turkey (App no 46221/99), ILM1058. (ECoHR).

Öcalan v Turkey (Merits), Application No. 46221/99, Chamber Judgment of 12 March 2003, (ECtHR.)

Soering v. United Kingdom Series A, No. 161 (ECtHR.)

Cyprus v. Turkey, 4 586 (ECoHR,).

Inter-American:

Coard et al v United States (Report no 109/99) (Inter-American Commission on Human Rights 29 September).

Saldan_ o v Argentina (Report no 38/99) (Inter-American Commission on Human Rights 11 March).

National Legislations and Others:

Black's Law Dictionary (9th ed. 2009).

Extraordinary Renditions in Africa: US Interrogates Terror Suspects in Ethiopian Jails(2007).

Marina Sharpe, Engaging ith Refugee Protection:The Organization of African Unity and African Union since 1963 (2011)

U.S. Presidential Decision Directive-39: U.S. Policy on Counterterrorism (June 21, 1995)

U.S. Presidential Decision Directive-62: U.S. Policy on Counterterrorism (May 1998)

Website and Hyperlinks:

http://arcproject.co.uk/wpcontent/

http://dictionary.reference.com

http://foreignaffairs.house.gov

http://www.achpr.org/

http://www.aljezira.com/news/2018/ethiopia-pardon-political-prisoners-shut-prison-180103114524304.html.

http://www.fas.org/irp/offdocs/pdd39.htm

http://www.ncstoptorturenow.org/

http://www.ohchr.org/

http://www.opensocietyfoundations.org/sites

http://www.refworld.org/docid/3d04bcda2html

http://www.spiegel.de/

http://wwwl.umn.edu/humanrts/instree/h2catoc.;

https://www.amnesty.org/en/documents

https://www.au.int/en/sites/def

https://www.cia.gov/news-information/press-releases-statements/

https://www.hrw.org/reports/