

## **THE PRINCIPLE OF NON-REFOULEMENT AS A TOOL TO FIGHT EXTRAORDINARY RENDITION UNDER THE AFRICAN HUMAN RIGHTS SYSTEM**

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### **Abstract**

*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 non-African states have raised the question of the extraterritorial scope of the African Charter. Thus, the primary objective of this article is answering the question of when an African state is involved in extraordinary rendition activities and it affects the lives of individuals outside its sovereign territory, how the principle of non-refoulement will help us to establish extraterritorial responsibility pursuant to the African Charter to which this African state is a party?*

**Keywords:** *Extra-ordinary Rendition, Extra-territorial Obligation, Non-refoulement, African Charter, Human Rights Responsibility*

### **GENERAL INTRODUCTORY REMARKS**

This article addresses the extraterritorial human rights obligations of states and extraordinary rendition by using the principle of *non-refoulement* in African human rights system. In particular, the paper addresses the question: does the African Charter apply extraterritorially and, if so, on what basis and in which circumstances can one use the principle of *non-refoulement* as a tool to fight extraordinary rendition under the African human rights system? Therefore, the first

part of the paper is introducing the issue of extraordinary rendition in general. The second part of this article mainly concerns about the practice of extraordinary rendition in Africa. The third part scrutinizes the extraterritorial scope of human rights obligation and state responsibility. However, this part mainly focuses on extraterritorial obligation and responsibility of states in case of extraordinary rendition. In doing so, personal and spatial controls as modalities of extraterritorial obligation of states are discussed in this part. Finally, the principle of *non-refoulement* as a tool to fight extraordinary rendition under the African human rights system is discussed.

Having said so, 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.<sup>1</sup>Originally, it was termed as just “rendition”.<sup>2</sup>It was carried out on an exceptional basis and it sought to bring suspects before a court of law but, it was not conducted in line with extradition laws.<sup>3</sup>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.<sup>4</sup> 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.<sup>5</sup>In addition, East African states have also created their own extraordinary rendition programs for the

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<sup>1</sup>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

<sup>2</sup>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).

<sup>3</sup>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](http://www.newyorker.com/archive/2005/02/14/050214fa_fact6?currentPage=1) (Retrieved30 April 2019).

<sup>4</sup>Margaret L. Satterthwaite, *Rendered Meaningless: Extraordinary Rendition and the Rule of Law*, 75 THE GEORGE WASHINGTON LAW REVIEW 1333(August 2007).

<sup>5</sup>Open Society for Justice Initiative, *Globalizing torture: CIA secret detention and extraordinary rendition*,Available at <https://www.opensocietyfoundations.org/search?key=globalizing%20torture> Retrieved 30 April 2019

same purpose and are using the so-called enhanced interrogation techniques to get the confession from suspects.<sup>6</sup>

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<sup>7</sup> of the African Charter on Human and Peoples' Rights (ACHPR or the Charter).<sup>8</sup> Under the international and other regional human rights systems, there are controversies on the spatial reach of human rights obligations of states.<sup>9</sup> These controversies originated mainly from the lacunae in international and regional human rights instruments.<sup>10</sup> Some treaties either failed to include the jurisdictional clause or may not mention the extraterritorial applicability of human rights obligation of states.<sup>11</sup> In this regard, similar to some other international human rights instruments, the African Charter is silent on extraterritorial obligation of states.<sup>12</sup>

States like the U.S by citing the silence of the law argue that based on the provisions of the international human rights standards', including International Covenant on Civil and Political (hereinafter ICCPR) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>13</sup> the obligation of states is confined to their own border.<sup>14</sup> They

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<sup>6</sup>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).

<sup>7</sup>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).

<sup>8</sup> The African Charter on Human and Peoples Rights adopted in Nairobi June 27, 1981 and entered into force 21 October 1986.

<sup>9</sup> 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)

<sup>10</sup>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

<sup>11</sup> 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)).

<sup>12</sup>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*.

<sup>13</sup>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).

also argue that extraordinary rendition is not prohibited under international law and the transferring of suspects from one state to another state is not a violation of international human rights obligation of states.<sup>15</sup> Therefore, the state cannot be held responsible for any act relating to extraordinary rendition, including the extraterritorial transfer of suspects.<sup>16</sup> 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 responsible for any violations which take place beyond its border.<sup>17</sup> However, contrary to the arguments outlined above, there are research findings and cases, which call for the extraterritorial responsibility of states.<sup>18</sup> 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.<sup>19</sup>

As stated above, 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 the violation in question falls within the scope of subject matter jurisdiction (*rationemateriae*) 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.<sup>20</sup> In the 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.<sup>21</sup> 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

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<sup>14</sup> 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).

<sup>15</sup>Wilde, MICHIGAN JOURNAL OF INTERNATIONAL LAW, (2005). Above note 10 p. 742

<sup>16</sup> Id at, p 743

<sup>17</sup>Margaret Satterthwaite Edited By: Second Edition pp., "*Is This Legal? Extraordinary 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

<sup>18</sup> For better understanding See above note 9

<sup>19</sup>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.ncstoptorturenw.org/>Retrieved 30 April 2019

<sup>20</sup>Wilde, MICHIGAN JOURNAL OF INTERNATIONAL LAW, (2005). P. 742

<sup>21</sup> Article 1 of the ACHPR Above note 8

of another country without letting the detainee set foot on African state soil.<sup>22</sup> 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, a new challenge to human rights protection has emerged as states are trying to get around their treaty obligations through exporting the locus of violations. In light of extraordinary renditions cases, as we have seen above in Alasad's case<sup>23</sup>, the capture and handing over of individuals usually takes place within the territory of African state and later the victim is transferred 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.<sup>24</sup> A research conducted by Takele S. Bulto', shows the practice of extraordinary rendition in Africa. However, it is rare to find studies showing the importance of *non-refoulement* principle for establishing extraterritorial obligations 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.<sup>25</sup> In addition, researchers focus on the practice, not on the responsibility aspect.<sup>26</sup> Moreover, researchers have scrutinized the practice of extraordinary rendition from the perspective of international criminal law or from the perspective of individual responsibility.<sup>27</sup> African government participation in extraordinary

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<sup>22</sup> See Mohammed Al Asad v. Republic of Djibouti, No. 383/2010, Arguments on Admissibility (African Commission on Human and Peoples' Rights Apr.-May 2011), at 2- For instance, in case of Mohammed al-Asad, a Yemeni national, who was held incommunicado and abused in Djibouti for approximately two weeks before being transferred to secret CIA detention in Afghanistan, where he was further abused and held in incommunicado detention.

<sup>23</sup> Ibid

<sup>24</sup> 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

<sup>25</sup> Bulto. 2018. Above note 7

<sup>26</sup> The U.S. Program of Extraordinary Rendition and Secret Detention: Past and Future (January 2009).

<sup>27</sup> Retief. 2016. Above note 1 p. 78

rendition directly contributes to the host of international legal issues created by this practice. However, most of the African governments involved have made no effort to hold anyone accountable for the atrocities committed relating to extraordinary rendition in Africa.<sup>28</sup>

## **THE PRACTICE OF EXTRAORDINARY RENDITION IN AFRICA**

It is true that European states were working together with the U.S. extraordinary rendition program.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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<sup>32</sup> at the Central prison or “Ma’ekellawi”.<sup>33</sup> 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.<sup>34</sup> Egypt<sup>35</sup> and Morocco<sup>36</sup> appear to be the most frequently used receiving countries.<sup>37</sup> Algeria

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<sup>28</sup> Ibid

<sup>29</sup> Monica Hakim, *The Council of Europe Addresses CIA Rendition and Detention Program*. The American Journal of International Law 101, no 2 (2007) 442-52 it can be accessed <http://www.jstor.org/stable/4492899>

<sup>30</sup> Ibid

<sup>31</sup> Globalizing Torture CIA Secret Detention And Extraordinary Rendition. (2013).

<sup>32</sup> *Extraordinary Renditions in Africa: US Interrogates Terror Suspects in Ethiopian Jails*(2007). can be accessed <http://www.spiegel.de/> Retrieved 30 April 2019

<sup>33</sup> "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 7. 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 <https://www.aljazeera.com/news/2018/01/ethiopia-pardon-political-prisoners-shut-prison-180103114524304.html> Retrieved 30 April 2019

<sup>34</sup> 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 Max

also allowed its airspace and airports for U.S. extraordinary rendition flights.<sup>38</sup> Not only these countries, but also countries like Libya,<sup>39</sup> Malawi,<sup>40</sup> South Africa,<sup>41</sup> Mauritania,<sup>42</sup> Gambia,<sup>43</sup> and Zimbabwe<sup>44</sup> 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 have created their own rendition programs. For instance, the East African governments have been transferring terrorist suspects without any extradition laws.<sup>45</sup>

## **EXTRATERRITORIAL SCOPE OF HUMAN RIGHTS OBLIGATION AND STATE RESPONSIBILITY: THE SPECIAL CASE OF EXTRAORDINARY RENDITION**

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

<sup>35</sup> Egypt is the earliest friendly intelligence services providing African states for U.S extraordinary rendition program. Globalizing Torture CIA Secret Detention And Extraordinary Rendition. (2013). Above note 5 p. 19

<sup>36</sup> 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)

<sup>37</sup> Torture By Proxy: International And Domestic Law Applicable To "Extraordinary Renditions". pt. 1-123 (2004).

<sup>38</sup> Fisher, WASHINGTON POST, 2013. Above note 28

<sup>39</sup> 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).

<sup>40</sup> 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 5 P. 95

<sup>41</sup> There are few judicial domestic cases relating to South Africa's participation in extraordinary rendition. See id. at. P. 107

<sup>42</sup> 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

<sup>43</sup> 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

<sup>44</sup> 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 ArifUlusam. 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

<sup>45</sup> 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 6 P. 7

Under the contemporary human rights discourse, there are at least three obligations of states: obligations to respect, protect and fulfill.<sup>46</sup>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.<sup>47</sup>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'.<sup>48</sup>Although, some international human rights instruments do not contain jurisdictional clauses, there are instruments which contain the clause specifying the jurisdictional application of the human rights treaty.<sup>49</sup>

Extraordinary rendition is an extraterritorial transfer of suspects and its garnishing elements have extraterritorial implications.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.<sup>50</sup>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.<sup>51</sup> This would contravene with the basic premises of the universality of human rights treaties.<sup>52</sup>

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<sup>46</sup>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 30 April 2019.

<sup>47</sup> 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);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 634

<sup>48</sup> 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.

<sup>49</sup> For example, see the ACHR, Article 1(1) and the European Convention on Human Rights 1950 (ECHR), Article 1.

<sup>50</sup>Extraordinary Rendition Dictionary N.p., n.d. Web. <http://dictionary.reference.com/browse/extraordinary+rendition>. Retrieved 30 April 2019.

<sup>51</sup>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 at para 55

<sup>52</sup> Many of the norms are also norms of customary law in respect of which shared responsibility may also arise.

Though, conventionally the principle of human rights obligation for a state is territorial,<sup>53</sup> the jurisprudence of both international and regional human rights monitoring bodies clearly show the existence of “exceptional scenarios” called spatial and personal controls.<sup>54</sup>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.<sup>55</sup> 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, International Court of Justice (ICJ),the American Court of Human Rights (ACtHR) and the European Court of Human Rights (ECtHR)jurisprudence 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 (Article 60 ACHPR) and the exceptional standard set by international and regional systems, an African State has been held responsible primarily for human rights violations beyond its territory.<sup>56</sup> Therefore, the following sections analyses the exceptional scenarios in the context of extraordinary rendition.

### **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

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<sup>53</sup> 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,

<sup>54</sup> 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

<sup>55</sup> Article 60 ACHPR

<sup>56</sup> Ibid

its authority and control.<sup>57</sup> Under this scenario, there are several cases and circumstances which show extraterritorial obligation of states.<sup>58</sup> 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.’<sup>59</sup> According 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’.<sup>60</sup> 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’.<sup>61</sup>

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.<sup>62</sup> 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.”<sup>63</sup> 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 Turkey*<sup>64</sup> and *Issa v Turkey* cases,<sup>65</sup> the Court stated that temporary effective overall control of only a particular area

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<sup>57</sup> 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.

<sup>58</sup>Loizidou v. Turkey, (App. No. 15318/89, 310, Sec. A, ), Para. 62., (ECtHR).,Para. 62., See *Cyprus v. Turkey*, 4 586 para. 8., (*European Commission of Human Rights*, ).DR (1975) 125, at para. 8. See also Dem. Rep. Congo. v. Uganda No. 116, *Armed Activities on the Territory of the Congo* at 59 para. 173, (I.C.J. Dec. 19)., (Judgment) at para. 173,

<sup>59</sup> 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

<sup>60</sup> 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.

<sup>61</sup>Dem. Rep. Congo. v. Uganda No. 116., *Armed Activities on the Territory of the Congo*.

<sup>62</sup>Loizidou v. Turkey, (App. No. 15318/89, 310, Sec. A, ).

<sup>63</sup>Hussein v. 21 States, App. No. 23276/04, Eur. H.R. Rep. 223, 224-25 (EHR Ct).(Court Decision on Admissibility).

<sup>64</sup>O \_ calan v Turkey (App no 46221/99), ILM1058. 44 ( ECHR 2005).at Parg.44

<sup>65</sup> Issa and Others v Turkey (App no 31821/96) (ECHR 16 November ). at Parg.48

in question was sufficient to bring individuals present in that area within the jurisdiction of the controlling state.<sup>66</sup>

Generally, if a state occupies territory of another state and uses extraordinary rendition for the purpose of anti-terrorism measures and violates 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.

### **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 (hereinafter called ECoHR) and the Human Rights Committee (HRC) established personal control on different bases. The HRC, by reiterating General Comment No. 31, established it based on universality of human rights.<sup>67</sup>The ICCPR under Article 2(1) provides that-

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>68</sup>In this regard, the HRC, in interpreting this stipulation 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.<sup>69</sup>

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<sup>66</sup> 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 81 See also *Bankovic and Others v Belgium and Others*, Application No. 52207/99 (Admissibility), ECHR, [2001] ECHR 970), paras. 35-35.

<sup>67</sup> *Lopez Burgos v. Uruguay* (Human Rights Committee 29 July). 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

<sup>68</sup> Article 2(1) of the ICCPR

<sup>69</sup> 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

The international human rights bodies in several occasions have 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.<sup>70</sup> Similarly, in the case *Lopez v. Uruguay*, the HRC stated that States are responsible for infringements committed by their foreign diplomatic representative.<sup>71</sup> 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".<sup>72</sup> 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'.<sup>73</sup> 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.<sup>74</sup>

One of the main causes for extraterritorial jurisdiction relates control over persons. This type of extraterritorial obligation established as result of a personal, individual or, state- agent-authority connection with the alleged violation of human rights. This connection has been understood variously as control power or authority. This test has been held to be met, triggering the applicability of human rights obligations, in the context of extraterritorial abductions, lethal physical violence by public agents and detention of individuals, are some of the examples.<sup>75</sup> Therefore, the personal model is very relevant for invoking the applicability of

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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

<sup>70</sup>Martin Scheinin, *Extraterritorial Effect of the International Covenant on Civil and Political Rights, in EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES* (FonsCoomans and Menno Kamminga ed. 2004). p.73.

<sup>71</sup>See HRC *Lopez Burgos v. Uruguay* Paras. 12.1–12.3, p. 156

<sup>72</sup> General Comment No. 31, above note 69 **Error! Bookmark not defined.**

<sup>73</sup> *Cyprus v. Turkey*,<sup>2</sup> above note **Error! Bookmark not defined.** at para. 8. **Error! Reference source not found.**

<sup>74</sup>Coard et al v United States (Report no 109/99), 37, (Inter-American Commission on Human Rights 29 September).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

<sup>75</sup> See the *Celiberti de Casariego* and *LopezBurgos* decisions by the UN Human Rights Committee and the *Öcalan* decisions by the European Court of Human Rights (*Celiberti de Casariego* , para. 10.3; *Lopez Burgos*, para. 12.3 (n.

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.<sup>76</sup>

### **THE PRINCIPLE OF NON-*REFOULEMENT* AS A TOOL TO FIGHT EXTRAORDINARY RENDITION UNDER THE AFRICAN HUMAN RIGHTS SYSTEM**

As already pointed out in the preceding parts, international and regional human rights monitoring bodies exceptionally extend the human rights obligation of the states beyond borders. However, under the African human rights system, there is less discussion on extraterritorial human rights obligation.<sup>77</sup> The African Charter contains general obligation clause.<sup>78</sup> But it does not contain an explicit jurisdictional clause which limits or extends the states parties' spatial obligations.<sup>79</sup> In relation to this, there are controversies on 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. 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.<sup>80</sup> 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.<sup>81</sup> However, based on spatial and personal models of jurisdiction, a state assumes obligations beyond its territorial jurisdiction. Similarly, the CAT has developed an interpretation

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12); *Öcalan* (GC), para. 91) and the *Isaak* decision by the European Court of Human Rights, *Isaak v Turkey*, ECtHR, App. No. 44587/98, 28 Sept 2006, Admissibility, page 21 (*Isaak*);

<sup>76</sup> 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.,

<sup>77</sup> 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) .

<sup>78</sup> Article 1 of ACHPR above note 8

<sup>79</sup> 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.

<sup>80</sup> 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](http://www.zaoerv.de/68_2008/68_2008_1_a_128_154.pdf)) Retrieved 30 April 2019.

<sup>81</sup> *Democratic Republic of Congo v. Burundi, Rwanda, Uganda*, (The African Commission).

of ‘territory under its jurisdiction’ which includes effective control over an individual as well as over territory.<sup>82</sup>

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.<sup>83</sup> Basically, the principle of *non-refoulement* originates from Article 33 of the Convention relating to the Status of Refugees.<sup>84</sup> However, it is clearly included in other international human rights instruments like the CAT.<sup>85</sup> 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 extraterritorial responsibility of the sending or extraditing state for facilitating human rights violations in spaces beyond its own.<sup>86</sup>

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.<sup>87</sup> 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.<sup>88</sup>

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<sup>82</sup>UN Committee against Torture, Conclusions and Recommendations, United States of America, UN Doc.CAT/C/USA/CO/2, 25 July 2006, para. 15.

<sup>83</sup>Bulto. 2018. Above note 7

<sup>84</sup> The Convention relating to the Status of Refugees, Geneva, 28 July 1951, UNTS, Vol. 189

<sup>85</sup> See e.g. Article 3 of the CAT above note 13

<sup>86</sup>Bulto, Tortured Unity: United States-Africa Relations In Extraordinary Renditions and States’ Extraterritorial Obligations. 2018. Above note 7 P. 21

<sup>87</sup> 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).

<sup>88</sup>Sigrun Skogly, *Extraterritoriality: Universal Human Rights Without Universal Obligations.*, in RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW (Adam M Joseph S ed. 2010).

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.”<sup>89</sup> 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.<sup>90</sup> 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 for all persons under their control.<sup>91</sup> Therefore, such obligation contains an obligation not to extradite, deport, expel or otherwise remove a person from their territory, if there are substantial grounds of risk of irreparable harm.<sup>92</sup>

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. The author argued that here 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.

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.<sup>93</sup> However, there are cases which clearly show the ineffectiveness and unreliable nature of such assurances.<sup>94</sup> The other argument concerning the 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.<sup>95</sup> However, the Committee against Torture responded that

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<sup>89</sup>*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.

<sup>90</sup>*Kindler v. Canada* (Comm. No. 470/1991), para. 6.2., (CCPR/C/).

<sup>91</sup> General Comment No. 31 above note 60 Parg.136

<sup>92</sup>*Id.* at para. 12.

<sup>93</sup>*Satterthwaite*. January 2009.Above note 17 P. 19

<sup>94</sup>*Id.* at. P. 19

<sup>95</sup>Second periodic report of U.S to CAT

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*.<sup>96</sup> 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. The author strongly argued that 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.

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.<sup>97</sup> These General Comments expressly outline the extraterritorial scope of application of the right to life and the prohibition of torture respectively.<sup>98</sup> Even though the African Charter does not explicitly guarantee the prohibition of *refoulement*, based on the aforementioned General Comments, violating human 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.<sup>99</sup> 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'.<sup>100</sup> 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

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<sup>96</sup>UN Committee against Torture, Conclusions and Recommendations, United States of America, UN Doc.CAT/C/USA/CO/2, 25 July 2006, para. 15.

<sup>97</sup>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](http://www.achpr.org)

<sup>98</sup>General Comment No. 3 id at para. 14

<sup>99</sup> Id. Par. 14

<sup>100</sup> Id.

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.<sup>101</sup>Moreover, the OAU Convention on the Prevention and Combating of Terrorism and its subsequent subordinate instruments have also accepted the same understanding and reaffirmed the extraterritorial obligation of states under the African Charter.<sup>102</sup>*Non-refoulement* does not only prohibit 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.<sup>103</sup>

However, some African states may reject the application of the rule of *non-refoulement* in relation to extraterritorial transfers, they may emphasize that they have obtained 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 developed norms about procedural guarantees in case of diplomatic assurance.<sup>104</sup>For instance, Ahmed Agiza requested asylum in Sweden, but was excluded from refugee status based on evidence that he was linked with terrorist groups. The Swedish government sought “diplomatic assurances” from the Egyptian government that Agiza would not be tortured when returned to Egypt. Despite these assurances, Agiza was transported aboard a CIA plane and tortured upon return. In this regard, the HRC in

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<sup>101</sup>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)

<sup>102</sup> OAU Convention on the Prevention and Combating of Terrorism, adopted in the OAU Summit, Algiers, June 14, 1999;

<sup>103</sup>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

<sup>104</sup>*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.”).

this case underlined the importance of both the rule against *non-refoulement* and the procedural guarantees needed to safeguard that prohibition.<sup>105</sup> However, the CAT Committee found that Sweden had breached its obligations under articles 3 and 22 of CAT when it transferred Agiza to Egypt on the basis of the diplomatic assurances and without providing Agiza an opportunity to contest the expulsion.<sup>106</sup>

Generally, though the African Charter had failed to provide the jurisdictional clause, there are tools to expand the obligation of states beyond territories under the African human rights system in case of extraordinary rendition. 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 which contains the principle of *non-refoulement*. Therefore, based on the above analysis the Commission may receive and adjudicate cases of *non-refoulement* violations including extraordinary rendition.

## 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 Article 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.

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<sup>105</sup> See *Alzery v. Sweden*, U.N. Human Rights Committee, No. 1416/2005, U.N. Doc. CCPR/C/88/D/1416/2005, (Nov. 10, 2006).

<sup>106</sup> See *Agiza v. Sweden*, U.N. Comm. Against Torture, Communication No. 233/2003, U.N. Doc. CAT/C/34/D/233/¶ 13.4 (2005)