

# Extraordinary rendition and obligations of Nigeria under international law: the trial of Mazi Nnamdi Kanu

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**ABSTRACT:** This article examines the practice of extraordinary rendition and its legal implications under international law, focusing on the rendition of Mazi Nnamdi Kanu, the leader of the Indigenous People of Biafra (IPOB). It evaluates the legality of Kanu's rendition from Kenya to Nigeria in 2021 and his subsequent trial by the Nigerian government, and examines whether the Nigerian government's actions comply with its international legal obligations under various international human rights instruments. Through doctrinal legal analysis and case study methodology, the article explores the relevant jurisprudence from international courts and tribunals, regional human rights mechanisms and domestic judicial decisions and laws. Primary sources are collected through court rulings, international legal instruments, while secondary data are drawn from academic literature, media reports and reports of international organisations. The research aims to contribute to the broader discourse on extraordinary rendition by clarifying the legal consequences of state actions that prioritise national security over international human rights norms. It also provides insights into the balance between state sovereignty, national security concerns and human rights protection, and offers recommendations for legal and policy reforms.

## TITRE ET RÉSUMÉ EN FRANÇAIS

### L'extradition exceptionnelle et les obligations du Nigeria au regard du droit international: le procès de Mazi Nnamdi Kanu

**RÉSUMÉ:** La présente contribution analyse la pratique d'extradition exceptionnelle et ses implications juridiques au regard du droit international, en se concentrant sur le transfert de Mazi Nnamdi Kanu, dirigeant du *Indigenous People of Biafra* (IPOB). Elle évalue la légalité de l'extradition de Mazi Nnamdi Kanu du Kenya vers le Nigeria en 2021, ainsi que la légalité de la procédure judiciaire engagée à son encontre par les autorités nigérianes, afin de déterminer si les actes du gouvernement nigérian sont conformes à ses obligations internationales découlant de divers instruments internationaux relatifs aux droits de l'homme. À travers la technique juridique combinée à une méthodologie d'étude de cas, la contribution examine la jurisprudence pertinente émanant des juridictions et tribunaux internationaux, des mécanismes régionaux de protection des droits de l'homme, ainsi que des décisions judiciaires et des normes juridiques internes. Les sources primaires mobilisées comprennent notamment des décisions de justice et des instruments juridiques internationaux, tandis que les sources secondaires sont constituées de la littérature académique, de rapports médiatiques et de publications émanant d'organisations internationales. L'étude vise à contribuer au débat plus large relatif aux restitutions extraordinaires en clarifiant les conséquences juridiques des actions étatiques qui privilégient les impératifs de sécurité nationale au détriment des normes internationales de protection des droits de l'homme. Elle apporte également un éclairage sur l'équilibre délicat entre la souveraineté de l'État, les préoccupations liées à la sécurité nationale et la protection des droits fondamentaux, et formule des recommandations en matière de réformes juridiques et de politiques publiques.

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## TÍTULO E RESUMO EM PORTUGUÊS

### Rendição Extraordinária e Obrigações da Nigéria ao abrigo do Direito Internacional: o caso *Mazi Nnamdi Kanu*

**RESUMO:** Este artigo examina a prática da rendição extraordinária e as suas implicações legais ao abrigo do direito internacional, com foco na entrega de Mazi Nnamdi Kanu, líder dos Povos Indígenas do Biafra (IPOB). Avalia a legalidade da transferência de Kanu do Quênia para a Nigéria em 2021 e o seu subsequente julgamento pelo governo nigeriano e examina se as ações do governo nigeriano cumprem as suas obrigações legais internacionais ao abrigo de vários instrumentos internacionais de direitos humanos. Através da análise doutrinária jurídica e da metodologia de estudos de caso, o artigo explora a jurisprudência relevante proveniente dos tribunais e tribunais internacionais, mecanismos regionais de direitos humanos e decisões e leis judiciais domésticas. As fontes primárias são recolhidas através de decisões judiciais, instrumentos jurídicos internacionais, enquanto dados secundários são retirados de literatura académica, reportagens mediáticas e relatórios de organizações internacionais. A investigação visa contribuir para um discurso mais amplo sobre a rendição extraordinária, clarificando as consequências legais das ações do Estado que priorizam a segurança nacional em detrimento das normas internacionais de direitos humanos. Também fornece perspetivas sobre o equilíbrio entre soberania estatal, preocupações de segurança nacional e proteção dos direitos humanos e oferece recomendações para reformas legais e políticas.

**KEY WORDS:** extraordinary rendition; extradition; rendition; human rights; international abduction

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## 1 INTRODUCTION

The principle of state sovereignty and territorial integrity is foundational to the modern international legal order. However, it is increasingly being challenged by counter-terrorism efforts and transnational security operations, particularly through the practice of extraordinary rendition, which involves the irregular apprehension and transfer of suspects often across borders – without recourse to formal extradition procedures or due process guarantees. This controversial practice raises profound questions concerning the rule of law, human rights protection and the limits of state authority in the international system. While extraordinary rendition has historically been associated

with the security policies of major powers, especially in the context of the post-9/11 global ‘war on terror’, states in the Global South are now increasingly employing it. Thus, the 2021 arrest and subsequent trial of Mazi Nnamdi Kanu (MNK) by the Nigerian government brings this issue into sharp focus.

MNK’s case offers a pertinent and deeply complex case study for interrogating Nigeria’s obligations under international law in relation to the prohibition of extraordinary rendition. Kanu’s apprehension in Kenya and forcible transfer to Nigeria in June 2021, under opaque circumstances, have provoked widespread domestic and international criticism concerning the extent to which Nigeria, a sovereign state and a party to various international legal instruments, is bound to uphold due process and the prohibition against arbitrary arrest, torture and forced transfer. It also raises the issue of whether national security concerns can validly override these international obligations.

This article interrogates the legal and normative dimensions of Nigeria’s actions through the lens of international law. It situates the practice of extraordinary rendition within a broader theoretical and legal framework, examining its compatibility with Nigeria’s obligations under key international instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (African Charter).

The controversy surrounding the rendition and subsequent trial of MNK underscores the growing tension between state security imperatives and adherence to international legal obligations, particularly in politically charged contexts, involving allegations of terrorism, secessionism and national unity.

Through doctrinal, case study and comparative methodology, the article argues that Nigeria’s resort to extraordinary rendition not only undermines its international obligations but also sets a dangerous precedent that threatens regional legal order and human rights protections in Africa.

The study is both timely and significant. Beyond contributing to academic discourse on international law and human rights in Africa, it offers relevant policy insights into the way in which states can respond to security challenges without breaching their international commitments. In so doing, it calls for a reaffirmation of legal norms and the strengthening of accountability mechanisms that can constrain state overreach and reinforce global legal order.

## **2 UNDERSTANDING CERTAIN KEY TERMS**

### **2.1 Extraordinary rendition**

The term ‘extraordinary rendition’ usually involves a state-sponsored abduction from one country, with or without the cooperation of the government of that country, and the extra-judicial transfer to another country for detention and abusive interrogation outside the normal

legal system.<sup>1</sup> The European Court of Human Rights (European Court) defines the term as ‘the 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 is a real risk of torture or cruel, inhuman, or degrading treatment’.<sup>2</sup> *Black’s law dictionary*<sup>3</sup> also defines the term as ‘the transfer, without formal charges, trial, or court approval, of a person to a foreign nation for imprisonment and interrogation on behalf of the transferring nation’.

Extraordinary rendition was popularised immediately after the 9/11 terrorist attacks on the United States (US), following the signing of a classified Presidential Memorandum of Notice by the Bush administration, granting the Central Intelligence Agency (CIA) authority to detain terrorist suspects and to set up secret detention facilities (‘black sites’) outside the US for the purposes of subjecting ‘high-value detainees’ (HVDs) to ‘enhanced interrogation techniques’.<sup>4</sup> It violates the existing international framework for international cooperation, including extradition treaties and mutual legal assistance arrangements entered into by states. It also violates the right to liberty and security of the person; usually involves torture and other cruel, inhuman and degrading treatments;<sup>5</sup> has the effects of enforced disappearance;<sup>6</sup> and violates the principle of *non-refoulement*.<sup>7</sup> While extraordinary rendition is illegal, rendition is legal and involves the lawful transfer or surrender of persons from one country or jurisdiction to another.

## 2.2 Extradition

The term ‘extradition’ has been defined ‘as the official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged, or the return of a fugitive for justice, regardless

1 H Duffy *The ‘war on terror’ and the framework of international law* (2015) 779.

2 The European Court adopted this definition in *Babar Ahmad & Others v United Kingdom* Applications 24027/07, 11948/08 and 36742/08, delivered on 6 July 2012 para 113.

3 *Black’s law dictionary* (2004) 1410.

4 See Presidential Memorandum of Notice, 17 September 2001 and Statement of Michael F Scheuer, former chief of the bin Laden Unit of the CIA, at the United States House of Representatives’ Committee on Foreign Affairs – Extraordinary Rendition in US Counterterrorism Policy: The Impact on Transatlantic Relations, Serial 110-28, 17 April 2007 12.

5 Where a state engages in torture or other ill-treatment of a detainee, with or without the connivance of another state, it becomes responsible for a violation of a peremptory norm. Prohibition against torture is absolute and admits of no derogations or exceptions, irrespective of the alleged offence committed.

6 Illegal rendition has the effect of removing a person from the protections of the law and withholds information about the person held from his family and lawyers.

7 The principle of *non-refoulement* is an obligation on a state to refrain from transferring, removing, deporting, extraditing or surrendering an individual to a state where there is a substantial ground or real fear that they will be subjected to torture or other cruel, inhuman or degrading treatment or punishment, or where there will be a serious violation of their human rights. This obligation is non-derogable.

of his/her consent, by the authorities where the fugitive is found'.<sup>8</sup> It has also been defined<sup>9</sup> as 'the surrender of a criminal by a foreign state to which he has fled for refuge from prosecution to the state within whose jurisdiction the crime was committed, upon the demand of the latter state, in order that he may be dealt with according to its law'. The Nigerian Court of Appeal defined the term as 'the process of returning somebody, upon request, accused of a crime, by a different legal authority to the requesting authority for trial or punishment'.<sup>10</sup>

Thus, extradition is a formal, legal process by which a person accused of committing an offence or convicted of an offence is officially transferred, by another country, to the country where the person is either wanted for trial or required to serve a sentence after being duly convicted by a court of law. The country of origin or residence of the fugitive where the crime was committed cannot exercise criminal jurisdiction over them while they are in the territory of another state, as this will be tantamount to a breach of sovereignty or territorial integrity of that other state. Therefore, in order to bring the fugitive to justice, the host country surrenders the fugitive upon the official request of their country of origin or residence. This is achieved through the principles of reciprocity and mutual legal assistance arrangement which usually govern extradition.

Extradition can be international or inter-state. It is international where it involves the transfer of a wanted criminal or fugitive from one country to another, whilst it is inter-state where it involves a transfer from one state to another within a country where they are found, to the requesting state in that same country. The latter practice is commonplace in truly federating nations such as the US, where the police authority of each state is autonomous.

Certain crimes, such as political crimes, racial, military or religious offences are usually not extraditable offences. A person may not be extradited where there is no guarantee of fair trial or where they are likely to be subjected to torture or other cruel, inhuman and degrading treatment,<sup>11</sup> or where it will not be in the interest of justice for them to be extradited. Before a person can be lawfully extradited from one country or state to another, there must be a formal request for their extradition from the country of origin or residence of the alleged fugitive or criminal to the country or state where they fled to or currently lives or stays.

In Nigeria, extradition cases are governed by the Extradition Act, CAP E25, Laws of the Federation of Nigeria, 2004<sup>12</sup> (Principal Act), the

8 *Black's law dictionary* (n 3) 623.

9 See the US SC case of *Terlinden v Ames* 184 US 270, 22 Sup Ct 484, 46 L Ed 534.

10 See *George Udezor v Nigeria* (2007) LPELR-CA/L/376/05.

11 See the *Terlinden* case (n 9).

12 The Extradition Act was enacted on 31 December 1966 and came into force in January 1967. It initially conferred the magistrate's court with the jurisdiction to determine extradition proceedings. The position, however, changed with the coming into effect of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as sec 251(1)(i) thereof vests the Federal High Court with the exclusive jurisdiction to entertain and determine all extradition-related matters.

Extradition Act (Modification) Order 2014,<sup>13</sup> the Federal High Court (Extradition Proceedings) Rules 2015,<sup>14</sup> and specific extradition treaties entered into between Nigeria and other countries. Persons can only be extradited from Nigeria upon the request of the government of the country with which it has a bilateral treaty on extradition. Also, one can only be extradited to Nigeria, upon the formal request of the Nigerian government to the government of the country where such a person is. The Extradition Act<sup>15</sup> makes provision for a somewhat multilateral treaty among Commonwealth countries, whereby a person who commits an offence in a Commonwealth country can be extradited under the Act without recourse to an extradition treaty or agreement with that country.

### 2.3 International abduction

International abduction usually occurs when agents of a country seize or 'arrest' a person on the territory of another country without first seeking and obtaining the consent of that country or following the legal process of extradition or rendition. Where an act of abduction is effectively carried out, a violation of the sovereignty of the host state or country is committed.<sup>16</sup> The United Nations (UN) Human Rights Committee has held<sup>17</sup> that forcible abduction of an individual from one state to another for the purposes of their rendition to face a criminal trial violates article 9(1) of ICCPR.

13 The Extradition Act (Modification) Order 2014 became necessary following the change in jurisdiction in n 12, which created an apparent conflict as the Extradition Act was not immediately amended to reflect the change of jurisdiction from the magistrate's court to the Federal High Court to align with the new constitutional provisions. To address this conflict, the President of Nigeria, on 23 May 2014, issued this executive order to amend the Extradition Act. Thus, the order is an integral part of the Act and both are read together.

14 The Federal High Court (Extradition Proceedings) Rules 2015 were made by the chief judge of the Federal High Court pursuant to the powers conferred upon him by the 1999 Constitution. The Rules were made to ensure clarity in extradition proceedings and to promote efficient and expeditious hearing and determination of extradition applications.

15 See sec 2 of the Act. They complement the procedural provisions in the Extradition Act.

16 See AF Lowenfeld 'US law enforcement abroad: the Constitution and international law, continued' (1990) 84 *American Journal of International Law* 444.

17 See *Celiberti de Casariego*, UN GAOR, 36th session, Supp 40 185, UN Doc A/36/40 (1981) reported in 68 ILR 41 (1981), where Casariego, a Uruguayan/Italian citizen, was abducted from Brazil by Uruguayan agents with the connivance of Brazilian police, brought to Uruguay, detained and charged with subversive activities. The UN Human Rights Committee determined that the abduction violated art 9(1) of ICCPR and that Uruguay was obligated to release and compensate de Casariego and allow her to leave the country.

There is a violation of the sovereignty or territorial integrity of a state when there is an international abduction, and such act amounts to international terrorism. Article 16 of the Draft Convention on Jurisdiction with Respect to Crime<sup>18</sup> states that 'no state shall prosecute or punish any person who has been brought within its territory or a place subject to its authority by recourse to measures in violation of international law or international convention without first obtaining the consent of the state or states whose rights have been violated by such measures'. Where, therefore, an extradition treaty is circumvented in the capture, arrest and return of an alleged criminal or fugitive, the act arising therefrom becomes illegal, unlawful, and amounts to abduction.

It is important to note that a person may be enticed and subsequently arrested without such action constituting abduction. In the case of *Prosecutor v Slavko Dokmanovic*,<sup>19</sup> where it was argued that Dokmanovic had been arrested in a 'tricky way', which can only be interpreted as a 'kidnapping or abduction', thereby violating the sovereignty of the Federal Republic of Yugoslavia (FRY) and international law, the International Criminal Tribunal for the former Yugoslavia (ICTY) ruled that 'the means used to accomplish the arrest of Mr Dokmanovic neither violated principles of international law nor violated the sovereignty of the FRY'. The ICTY focused on the distinction between 'luring' and 'forcible abduction' and held that the former was acceptable while the latter might constitute grounds for dismissal in a charge or future case. Thus, when luring is resorted to, there may not be a violation of a state's sovereignty, as it does not amount to a violation of international law. However, abduction does and, together with its concomitant transfer to secret detention, vitiate the basic legal principles on lawful detention.<sup>20</sup>

## 2.4 Extradition treaties

An extradition treaty is an agreement between two or more countries to extradite a person charged with or found guilty of an extraditable offence. It spells out what acts constitute extraditable and non-extraditable offences and the procedures to be followed before a person accused of committing an extraditable offence can be lawfully surrendered, returned or extradited to the country where they allegedly committed the offence in order to face their prosecution or serve their sentence, in a situation where the person has already been convicted. It is bilateral when it involves only two countries, and multilateral when

18 See Harvard Research in International Law 'The Harvard Draft Convention on Jurisdiction with Respect to Crime' (1935) 29 *American Journal of International Law* 442, 623.

19 Decision on the Motion for Release by the Accused Slavko Dokmanovic IT-95-13a-PT, T, Ch II, 22 October 1977.

20 See *Babar Ahmad & Others v United Kingdom* Applications 24027/07, 11949/08 and 36742/08, 6 July 2012, where the European Court held that extraordinary rendition, by its deliberate circumvention of due process, is anathema to the rule of law and the values protected by the Convention.

it involves more than two countries. Nigeria has bilateral extradition treaties with several countries, including the US<sup>21</sup> and the United Kingdom. However, as provided in section 2 of the Extradition Act, Nigeria has a form of multilateral extradition treaty with the Commonwealth countries, including the Republic of Kenya. Therefore, a person who commits an offence in a Commonwealth country can be extradited under the Act. The Act applies to every separate country within the Commonwealth, that is, each sovereign and independent country within the Commonwealth. A Commonwealth country may still enter into an extradition treaty with Nigeria and, where this is the case, the extradition relationship between Nigeria and that country ceases to be governed by section 2 of the Extradition Act. However, there is no separate extradition treaty between Nigeria and Kenya. Thus, the extradition relationship between Nigeria and Kenya is governed by section 2 of the Extradition Act.

## 2.5 Extradition proceedings

An extradition proceeding or hearing is a proceeding or hearing commenced and conducted for the purposes of returning or surrendering an accused person to the country where they would be prosecuted or tried for an extraditable offence alleged to have been committed by the suspect or for the purposes of returning a convict to a country where they will serve their sentence. In Nigeria, it is usually commenced by a requesting state making a request through the diplomatic channel to the Attorney-General of the Federation. Such a request must show that the person upon whom a request has been made has committed an extraditable offence or has been convicted of an extraditable offence, with the requesting state issuing an authenticated warrant of arrest or certificate of conviction.<sup>22</sup> At the hearing of an application for extradition, the court shall determine whether the offence in the application for extradition is an extraditable offence, whether a bar to extradition applies, whether extradition would be compatible with the fugitive's human rights, or whether it would be unjust or oppressive or too severe a punishment to extradite the fugitive. At the end of the extradition hearing or proceeding, a court can order a discharge of the fugitive or extradition of the fugitive.<sup>23</sup>

## 2.6 Territorial integrity of states

Territorial integrity is the principle, under international law, of freedom from interference in the affairs of one sovereign state by another sovereign state. It gives the right to sovereign states to defend

21 Nigeria signed the Extradition Treaty with the United States on 22 December 1931 and it entered into force on 24 June 1935.

22 See Order V, Rule 1 of the Federal High Court (Extradition Proceedings) Order 2015.

23 See Order VIII of the Federal High Court (Extradition Proceedings) Order 2015.



their borders and all territory in them of another state and extends over land territory, the territorial sea appurtenant to the land, and the seabed and subsoil of the territorial sea. This principle, which has been recognised as customary international law, is enshrined in article 2(4) of the United Nations Charter, which provides as follows: 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.' In essence, the principle prohibits the use of force on the territory of another state, protects states from acts of aggression by other states, upholds the sovereignty of states, prevents interference from external parties, and even includes the inviolability of the territory of another state, including the territory under the effective control and authority of another state.

The duties of non-intervention in the internal and external affairs of another state and respect for territorial integrity are relevant to incursions onto another state's territory without its consent. Thus, where there is an incursion by one state onto the territory of another state without its consent, to effect an arrest or abduction operation, it violates the sovereignty and territorial integrity of that state as well as the principle against the use of force. The international practice of abduction beyond the state's boundaries results in the international responsibility of the abducting state.<sup>24</sup>

### **3 MAZI NNAMDI KANU AND INDIGENOUS PEOPLE OF BIAFRA**

Mazi Nnamdi Kanu (MNK), originally born Nwannekaenyi Nnamdi Okwu Kanu, is a Nigerian-British political activist and freedom fighter, strongly advocating the independence of Biafra,<sup>25</sup> the south-east region<sup>26</sup> of the Federal Republic of Nigeria. He is the founder and leader of Indigenous People of Biafra (IPOB). Coincidentally, MNK was

24 See Eichmann SC Res 138, 23 June 1960, UN Doc S/RES/748 (1960), where Argentina challenged the abduction of the former Gestapo official on its territory by Israeli agents. The UN Security Council condemned the violation of Argentina's sovereignty and territorial integrity by Israel.

25 The Republic of Biafra was first declared in 1967 by the late Chukwuemeka Odumegwu Ojukwu, a former lieutenant-colonel in the Nigerian army. Between 1967 and 1970, Biafra existed as an independent multi-ethnic Republic comprising the Igbo, Ijaw, Efik and Ibibio peoples, among others. They fought a civil war against the Federal Republic of Nigeria in what is today known as the Nigerian/Biafran Civil War. The Federal Republic of Nigeria, with the help of the international community, fought hard to preserve the Republic. In 1970 the Biafran forces were defeated by the Nigerian forces, and they surrendered to the Nigerian government through a truce brokered by the defunct Organisation of African Union (OAU), known today as the African Union (AU). The then military president, General Yakubu Gowon, declared 'No victor, no vanquished' to bring hostilities to an end.

26 The south-east region of Nigeria is made up of Abia, Anambra, Ebonyi, Enugu and Imo States. These states are found in the Igbo-speaking tribe of Nigeria, one of the major tribes in the country. The people are famous for their industry and enterprise.

born a few months after the declaration of the Republic of Biafra by the late Dim Chukwuemeka Odumegwu Ojukwu. He attended the University of Nigeria but relocated to the United Kingdom before his graduation. While in the United Kingdom, MNK became the director of Radio Biafra<sup>27</sup> in 2009, thus, starting his activism for the freedom of Biafra. As the director of Radio Biafra, MNK broadcast from London to Nigeria, and called for the independence of the Igbo-speaking people of Nigeria from the Federal Republic of Nigeria. He became famous from his broadcast and political activism on Radio Biafra.

MNK and Uche Mefor<sup>28</sup> founded the IPOB<sup>29</sup> in 2012, as a self-determination movement in Nigeria that aims to restore the defunct Republic of Biafra, a 'country' which seceded from the Federal Republic of Nigeria in 1967. According to Wikipedia,<sup>30</sup> the organisation rose to prominence in the mid-2010s and has gained significant media attention for becoming a frequent target of political crackdowns by the Nigerian government.

Some time in December 2020, MNK also established the Eastern Security Network (ESN), the combatant force of IPOB. According to MNK, the ESN was set up to defend the people of the eastern region from the marauding Fulani herdsmen, terrorists and bandits allegedly trooping in from the north. He blamed the governors of the South-East and South-South states in Nigeria for the upsurge of killings by bandits and Fulani herdsmen in Igboland, and maintained that the ESN was the answer to insecurity and Fulani terrorism.<sup>31</sup> Kanu maintains that the ESN is a vigilante group and security outfit like the Amotekun<sup>32</sup> and Miyetti Allah<sup>33</sup> security outfits in the south-west and northern regions of Nigeria respectively.<sup>34</sup>

27 A United Kingdom-registered radio station for the propagation of the separation of Biafra from Nigeria. It was established by the defunct Biafran government in 1967 with the aim of championing the Biafran cause.

28 Uche Mefor was an ally of Mazi Nnamdi Kanu and deputy director of Radio Biafra.

29 The Indigenous People of Biafra was registered in the United Kingdom in 2012 and has its operational headquarters in Vitoria, Spain, with offices in the United States and many other countries of the world.

30 Wikipedia, the Free Encyclopedia.

31 See Sahara Reporter 'Nnamdi Kanu launches Eastern Security Network, says not different from Amotekun, Miyetti Allah' 13 December 2020, <https://sahara-reporters.com/2020/12/13/nnamdi-kanu-launches-eastern-security-network-says-not-different-amotekun-miyetti-allah> (accessed 16 June 2025).

32 Amotekun (meaning 'leopard' or 'cheetah') is a security outfit established by the governments of the southwestern region of Nigeria, comprising Ogun, Ondo, Osun, Oyo, Ekiti and Lagos States charged with the responsibility for ensuring an end to insecurity in the region. It is also known as the Western Nigeria Security Network (WNSN) and was founded on 9 January 2020.

33 The Miyetti Allah (meaning 'I thank God'), like Amotekun, is an organisation in Northern Nigeria for the welfare and protection of Fulani herdsmen or pastoralists. It was formed in 1979 and its full name is Miyetti Allah Cattle Breeders Association of Nigeria (MACBAN).

34 See 'Nnamdi Kanu launches Eastern Security Network' *Daily Post* 13 December 2020, <https://dailypost.ng/2020/12/13/breaking-nnamdi-kanu-launches-eastern-security-network/> (accessed 17 June 2025).

On 5 September 2015, MNK addressed the World Igbo Congress<sup>35</sup> in Los Angeles, California, US, where he eloquently renewed his agitation for the sovereign state of Biafra and called on the Igbos all over the world, especially those in the diaspora, to join hands with Biafra and members of IPOB to work towards the restoration of Biafra. Kanu reconfirmed that the Biafra land consists of the states in the present-day south-east and south-south except Edo State, as well as Igala in Kogi state and Idoma in Benue state.

Meanwhile, on 20 September 2017, the Nigerian government secured a court order proscribing IPOB and designating it a terrorist group.<sup>36</sup> An application brought by IPOB lawyers to have the order set aside was dismissed by the Federal High Court presided over by Abdu Kafarati J.<sup>37</sup> Consequently, the IPOB legal team filed an appeal against the order of proscription and designation as a terrorist group.<sup>38</sup> In January 2025, the Court of Appeal upheld the proscription of IPOB, warranting a final appeal now pending before the Supreme Court.<sup>39</sup>

#### 4 ARREST, PROSECUTION AND ELOPEMENT OF MAZI NNAMDI KANU

MNK's political activism, global fame and agitation for self-determination and restoration of the Republic of Biafra became a thorn in the flesh of the Nigerian government. Consequently, on 19 October 2015, he was arrested<sup>40</sup> by the Nigerian security forces in his hotel room in Lagos, Nigeria, when he flew into Nigeria from London. He was subsequently arraigned in court for sundry charges, including

35 See live YouTube video of Mazi Nnamdi Kanu's address at the World Igbo Congress, [https://web.facebook.com/biafradigest/videos/mazi-nnamdi-kanus-address-to-the-world-igbo-congress-during-their-zoom-meeting-y/1130459370792627/?\\_rdc=1&\\_rdr](https://web.facebook.com/biafradigest/videos/mazi-nnamdi-kanus-address-to-the-world-igbo-congress-during-their-zoom-meeting-y/1130459370792627/?_rdc=1&_rdr) (accessed 17 June 2025). The World Igbo Congress is the congress or association of all peoples of the Igbo-speaking ethnic groups all over the world.

36 See 'Breaking: court proscribes IPOB, designates it as terrorist organisation' *Vanguard* 20 September 2017, <https://www.vanguardngr.com/2017/09/breaking-court-proscribes-ipob-designates-terrorists-organisation/> (accessed 17 June 2025).

37 See Suit FHC/ABJ/CS/871/2017 – *Attorney-General of the Federation v Indigenous People of Biafra*; 'Court affirms IPOB's proscription, designation as terrorist group' *Punch* 19 January 2018, <https://punchng.com/court-affirms-ipobs-proscription-designation-as-terrorist-group/> (accessed 17 June 2025).

38 See 'IPOB appeals order declaring it a terrorist organisation' *Sahara Reporters* 2 March 2018, <https://saharareporters.com/2018/03/02/ipob-appeals-order-declaring-it-terrorist-organization> (accessed 17 June 2025).

39 See Appeal CA/ABJ/214/2018 – *Indigenous People of Biafra (IPOB) v Attorney-General of the Federation*.

40 See 'Radio Biafra director, Nnamdi Kanu, reportedly arrested' *Vanguard* 18 October 2015, <https://www.vanguardngr.com/2015/10/breaking-radio-biafra-director-nnamdi-kanu-reportedly-arrested/> (accessed 19 June 2025).

treasonable felony.<sup>41</sup> MNK's arrest sparked a wave of protests by his supporters globally, especially among the people of the south-east region. He, however, pleaded not guilty to the charges preferred against him by the Nigerian government and was subsequently remanded in prison pending the hearing of his bail application.

After initially denying him bail, the Federal High Court, presided over by Binta Nyako J, granted MNK bail on 24 April 2017, 18 months after he was first arrested,<sup>42</sup> on some stringent conditions,<sup>43</sup> including barring him from granting press interviews and ordering him not to participate in any rally or be found in any crowd of more than ten persons.

Meanwhile, while MNK was still at liberty on bail, having met all the bail conditions, the Nigerian military, on 12 September 2017, invaded his country home, allegedly killing many people.<sup>44</sup> MNK miraculously survived the deadly invasion and narrowly escaped. According to MNK in one of his interviews after his escape and elopement,

the Nigerian Army came to my house to kill me. They killed 28 people in the process. My people evacuated me before they could get to me, and they smuggled me out of Nigeria. I would say, I'm relieved that I managed to make it to the only place that I feel safe in the whole world.<sup>45</sup>

Thus, MNK fled Nigeria and stalled his prosecution. This necessitated a revocation of his bail upon the application of the Nigerian government on the ground that MNK had jumped the bail.<sup>46</sup>

41 See 'Nnamdi Kanu pleads not guilty to treason charges' *Vanguard* 20 July 2016, <https://www.vanguardngr.com/2016/01/nnamdi-kanu-pleads-not-guilty-to-tri-son-charges/> (accessed 19 June 2025). According to the charge sheet, Kanu was charged with levying war against the Federal Republic of Nigeria, managing an unlawful society, unlawful possession of firearms, and concealment of an imported radio transmitter.

42 See 'BREAKING: court grants Nnamdi Kanu bail' *Punch* 25 April 2017, <https://punchng.com/breaking-court-grants-nnamdi-kanu-bail/> (accessed 20 June 2025).

43 The Court granted him bail in the sum of NGN 100 million Naira, with three sureties in like sum, one of the sureties must be a highly respected Jewish leader, since MNK claims Judaism as his religion. The next surety must be a respected and highly placed individual of Igbo extraction and in the ranking of a senator, while the third surety must be a respected individual resident in the Federal Capital Territory, Abuja, with proof of ownership of landed property in Abuja.

44 See 'Many feared killed as soldiers lay siege to Nnamdi Kanu's home' *The Guardian* 13 September 2017, <https://guardian.ng/news/many-feared-killed-as-soldiers-lay-siege-to-nnamdi-kanus-home/> (accessed 21 June 2025).

45 See 'How I escaped from Nigeria – Nnamdi Kanu' *Premium Times* 29 October 2018, <https://www.premiumtimesng.com/news/headlines/293192-how-i-escaped-from-nigeria-nnamdi-kanu.html?tztc=1> (accessed 24 June 2025).

46 The Federal High Court presided over by Binta Nyako J on 28 March 2019 revoked Kanu's bail and issued a bench warrant for his arrest.

#### 4.1 Re-arrest of Mazi Nnamdi Kanu in Kenya and rendition to Nigeria

Some time in June 2021, MNK was ‘arrested’ in Kenya and returned to Nigeria a few days later.<sup>47</sup> According to MNK, upon his arrest in Kenya, he was held *incommunicado* and chained to a bare floor in a nondescript private facility in Kenya for eight days and no warrant of arrest was shown to him or even mentioned to him before his arrest. He stated that he had been subjected to torture and other cruel, inhuman and degrading treatments, and his abductors informed him that they abducted him at the behest of the Nigerian government, thereby sparking speculations that his arrest was executed or facilitated by the Kenyan authorities. MNK further narrated that he was blindfolded and driven to the tarmac very close to the aircraft without passing through the Kenyan immigration at the airport and that he was flown to Abuja, Nigeria, on a private jet on 27 June 2021, and was a lone passenger on board the jet.<sup>48</sup>

Thus, there have been allegations that MNK was subjected to extraordinary rendition upon his capture in Kenya and that no extradition proceedings ever took place in Kenya before he was returned to Nigeria.<sup>49</sup> Meanwhile, following allegations that MNK was arrested by the Kenyan authorities and/or through their collaboration with their Nigerian counterpart and extraordinarily renditioned to Nigeria, Kenya has denied any role in the arrest of MNK on its territory.<sup>50</sup> The Kenyan High Commissioner to Nigeria, Mr Wilfred Machage, stated that the allegation was ‘concocted’ to pitch Nigerians in the southeast region against the Kenyan people.

According to a press release by MNK’s brother, Kingsley Kanu, the Kenyan government, in its defence to the suit filed in Kenya, confirmed that Nnamdi Kanu had not undergone extradition proceedings in Kenya and that there was no record in any Kenyan police station showing that Kanu had been legally arrested or detained in the country.

#### 4.2 Re-arraignment of Mazi Nnamdi Kanu and his discharge by the Court of Appeal

While the controversy surrounding the re-arrest of MNK in Kenya and his return to Nigeria raged, the Nigerian government on 29 June 2021

47 See ‘Nnamdi Kanu speaks from detention, reveals how he was arrested in Kenya’ *Premium Times* 15 July 2021, <https://www.premiumtimesng.com/news/headlines/473720-nnamdi-kanu-speaks-from-detention-reveals-how-he-was-arrested-in-kenya-lawyer.html?tztc=1> (accessed 27 June 2025).

48 As above.

49 See ‘Nigerian government has the answers – Kenya denies involvement in Nnamdi Kanu’s arrest’ *TheCable* 2 July 2021, <https://www.thecable.ng/nigerian-government-has-the-answers-kenya-denies-involvement-in-nnamdi-kanus-arrest> (accessed 27 June 2025).

50 As above.

re-arraigned him before the Federal High Court.<sup>51</sup> They filed an amended 15-count charge against MNK and he pleaded not guilty to the charges. Meanwhile, MNK's legal team filed a bail application for the release of MNK pending his trial and another preliminary objection challenging his re-arraignment and further trial on all charges on the grounds that the Nigerian authorities had committed international crimes, including abducting MNK in Kenya, as they violated all known international and human rights laws in his arrest and extradition to Nigeria; thus, arguing that no court in Nigeria had jurisdiction to try MNK on any existing or fresh charges.<sup>52</sup>

Although the Court refused to grant the bail application, on 7 April 2022 Binta Nyako J upheld MNK's preliminary objection and consequently struck out eight of the 15 charges preferred against him on the grounds that they disclosed no valid offences against MNK. The Court, however, ruled that the remaining seven charges disclosed valid offences and that MNK should be tried on those charges, and adjourned for trial.<sup>53</sup>

Dissatisfied with the ruling, MNK filed an appeal before the Court of Appeal and urged the Appellate Court to set aside the judgment of the Federal High Court and grant his application seeking to quash the remaining seven charges against him. In a landmark unanimous judgment delivered on 13 October 2022, the Court of Appeal of Nigeria<sup>54</sup> allowed the appeal and struck out the remaining seven charges. The Court declared as illegal and unlawful the abduction of MNK from Kenya and quashed all charges brought against him by the Nigerian government. The Court held that the rendition of MNK from Kenya was illegal and that, therefore, he should not be tried on any existing or new charges. The Court agreed with MNK that the Nigerian authorities breached all known local and international laws in his forceful rendition to Nigeria without subjecting him to any extradition proceedings in Kenya as required by law. According to the Court, MNK's 'extraordinary rendition and abduction by the Nigerian authorities in Kenya constitute a bar to his further proceedings or trial

51 In Suit FHC/ABJ/CR/383/2015 – *Federal Republic of Nigeria v Nnamdi Kanu*.

52 As above.

53 See 'UPDATED: court strikes out eight of fifteen charges against IPOB leader, Nnamdi Kanu' *Premium Times* 8 April 2022, <https://www.premiumtimesng.com/news/headlines/522611-updated-court-strikes-out-eight-of-15-charges-against-ipob-leader-nnamdi-kanu-full-list.html?tztc=1> (accessed 1 July 2025). The amended 15 count charges against MNK include terrorism, membership and leadership of a proscribed group (IPOB), inciting the public through his broadcast abroad to commit terrorism and kill security personnel, inciting the public through his broadcast abroad to burn down government facilities, inciting members of IPOB and the public, through his broadcast abroad, to manufacture bombs, stop elections in Nigeria, to sit at homes on Mondays, to stage a violent revolution against the government of Nigeria, and to destroy public transport systems.

54 In Suit CA/AB/J/CR/625/2022 – *Nnamdi Kanu v Federal Republic of Nigeria*, per Oludotun Adefope-Okojie J (delivering the lead judgment) with Jummai Hannatu Sankey and Ebioweï Tobi JJ concurring.

in any Court in Nigeria'.<sup>55</sup> Consequently, the Court of Appeal discharged MNK and ordered his immediate release from detention.

The Nigerian government did not comply with the orders of the Court. Rather, it filed an appeal to the Supreme Court of Nigeria and an application before the Court of Appeal seeking to stay the execution of the orders of the Court. MNK vehemently opposed the application for a stay, contending that the right to personal liberty and security of a person cannot be stayed when a court of competent jurisdiction has ordered the release of an accused person or detainee from detention. However, another panel of the Court of Appeal<sup>56</sup> heard the application and granted an order staying its earlier order for the unconditional release of MNK pending the hearing and determination of the appeal filed by the Nigerian government.

On 15 December 2023, the Supreme Court delivered its judgment and overturned the decision of the Court of Appeal. While the Supreme Court found that the Nigerian authorities violated all known laws and procedures in the rendition of MNK to Nigeria from Kenya as well as violated his human rights, it, nevertheless, held that there was no law in Nigeria preventing the Nigerian government from prosecuting MNK simply because the Nigerian government did not comply with the required extradition proceedings before removing MNK from Kenya. The Court justified that a fugitive can be tried before any court in Nigeria notwithstanding the means used in producing them to the court. Thus, the Court ordered that MNK be returned to the Federal High Court for the continuation of his trial, thereby permitting his continued detention in prison.

### **4.3 Mazi Nnamdi Kanu's suits against Nigerian authorities**

Meanwhile, MNK filed several human rights suits against the Nigerian government. One of the suits was filed at the Federal High Court, Umuahia, Abia state (the home state of MNK). On 26 October 2022 (barely a week after the Court of Appeal had ordered his unconditional release), the Court, presided over by the Evelyn Anyadike J, agreed that the extradition of MNK from Kenya without recourse to the required extradition proceedings in Kenya was a flagrant violation of his human rights and held that the Nigerian authorities had abducted him in Kenya. Consequently, the Court entered judgment in favour of MNK and ordered the Nigerian government to either immediately release him or return him to Kenya. The Court also awarded the total sum of 500 million Nigerian Naira (about US \$316 000) against the Nigerian government. Like the Court of Appeal, the Federal High Court also held

55 See the full text of the Nigerian Court of Appeal judgment in Appeal CA/ABJ/CR/625/2022 – *Nnamdi Kanu v Federal Republic of Nigeria* delivered on 13 October 2022 by Oludotun Adefope-Okojie J.

56 A three-member panel led by Haruna Simon Tsammani J.

that having illegally and forcefully rendered MNK, the trial Court, therefore, is stripped of the jurisdiction to continue to try him.<sup>57</sup>

On 19 January 2022, another High Court sitting in Umuahia, Abia state, and presided over by Benson Anya J, held that the invasion of MNK's country home by the Nigerian security agencies in 2017 was unlawful and a violation of his human rights. The Court also held that MNK's arrest in Kenya and his forceful return to Nigeria by the Nigerian authorities constituted an abduction and, therefore, were illegal under local and international laws. Consequently, the Court awarded the sum of N 1 billion Nigerian Naira (about US \$633 000) against the Nigerian government.<sup>58</sup>

Also, on 24 June 2025, the High Court of Kenya, presided over by EC Mwita J, held that the rendition of Nnamdi Kanu from Kenya to Nigeria in 2021 was unlawful, unconstitutional, and constituted a violation of his fundamental human rights. The Court ruled that the Kenyan government had failed in its constitutional duty to protect MNK, who lawfully entered Kenya, and instead colluded with external actors in a covert operation that resulted in MNK's illegal detention and transfer to Nigeria. The Court further held that MNK's abduction, *incommunicado* confinement, torture and denial of access to food, water, medication and legal representation constituted serious violations of his rights as protected under the Kenyan Constitution. According to the Court, 'the Constitution is clear that the Bill of Rights binds not only state organs, but every person within the territory of Kenya. In that regard, Mr Nnamdi Kanu's rights were recognised and protected by our Bill of Rights.'<sup>59</sup>

Also, the Court found the Kenyan government liable when it concluded that the covert operation to abduct and forcibly remove Nnamdi Kanu from the territory of Kenya was done with the knowledge, connivance, complicity and tacit approval of not only the Kenyan government but also those in charge of the security of the country. Consequently, the Court awarded the sum of Kshs 10 000 000 (equivalent to US \$77 396) in favour of MNK against the Kenyan government.

#### **4.4 United Nations Working Group on Arbitrary Detention's order for release of Mazi Nnamdi Kanu**

On 23 July 2022, the United Nations Working Group on Arbitrary Detention found both the Nigerian and Kenyan governments in violation of the ICCPR for the arrest, torture and extraordinary

57 See the decision in Suit FHC/UM/CS/30/2022 – *Nnamdi Kanu v Federal Government of Nigeria & 2 Others*.

58 See the decision in Suit HIN/FR/14/2021 – *Nnamdi Kanu v Federal Government of Nigeria & 7 Others*.

59 See the decision in [2025] KEHC 8967 (KLR) – *Nwannekaenyi Nnamdi Kenny Okwu-Kanu v Cabinet Secretary, Ministry of Interior & 4 Others*.



rendition of MNK. Consequently, the Working Group urged the Nigerian government to 'immediately release MNK unconditionally and adequately compensate him for the arbitrary violation of his human rights'. The Working Group also recommended that the government officials responsible for the torture of MNK be immediately investigated and prosecuted, and directed the Nigerian government to report, within six months of transmission of its opinion on MNK's case, the steps taken to comply with the recommendations of the Working Group.<sup>60</sup> The UN body later referred the case to the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment for further consideration, and resolved to take further actions to ensure that the Nigerian government complies with the Working Group's recommendations, since Nigeria and Kenya are state parties to ICCPR.<sup>61</sup>

The Working Group found that there was no evidence that international laws were observed in the arrest and rendition of MNK from Kenya and concluded that his continued deprivation of liberty violated his rights under articles 3 and 9 of the Universal Declaration of Human Rights (Universal Declaration), article 9 of ICCPR, and other international human rights instruments.<sup>62</sup>

With respect to MNK's detention in Nigeria, the Working Group found as follows:

Finally, turning to Mr Kanu's pre-trial detention in Nigeria, the Working Group recalls that according to international human rights law, in particular article 9(3) of the Covenant, any person detained while awaiting trial is entitled to trial within a reasonable time, or otherwise shall be released. Article 14(3)(c) of the Covenant also guarantees the right of anyone charged with a criminal offence to be tried without undue delay. In the absence of a substantive response from the government of Nigeria, the Working Group finds no legitimate grounds for the delays in the trials against Mr Kanu. Consequently, the Working Group finds that the Government of Nigeria failed to establish a legal basis for the detention of Mr Kanu. His detention is thus arbitrary under category I. The Working Group wishes once again to underscore the collusion between the governments of Kenya and Nigeria in the rendition of Mr Kanu and reiterates that both governments bear joint responsibility for any violations of Mr Kanu's rights in Kenya and Nigeria.

Meanwhile, the Nigerian authorities are yet to comply with the orders of the United Nations Working Group on Arbitrary Detention more than three years after the international human rights body had issued its report and order.

60 See the full text of the United Nations Working Group on Arbitrary Detention's Report marked Opinion 25/2022 Concerning Mr Nwannekaenyi Nnamdi Kenny Okwu-Kanu (Nigeria and Kenya) dated 20 July 2022. The report was adopted on 4 April 2022 at the Working Group's 93rd session held between 30 March and 8 April 2022; see also the Full Report in 'UN Working Group tells Nigeria to unconditionally release, compensate Nnamdi Kanu' *Vanguard* 23 July 2022, <https://www.vanguardngr.com/2022/07/un-working-group-tells-nigeria-to-unconditionally-release-compensate-nnamdi-kanu/> (accessed 1 July 2025).

61 As above.

62 As above.

## 5 OBLIGATIONS OF NIGERIA UNDER INTERNATIONAL LAW AND IMPLICATIONS OF NON-COMPLIANCE

Before his capture in Kenya and forcible return to Nigeria, MNK was standing trial for sundry charges, including treasonable felony, preferred against him by the Nigerian government. Following the invasion of his country home by the Nigerian security agencies while he was still out on bail, MNK fled to Israel and later to the United Kingdom, where he is also a citizen. He travelled to Kenya, where he was later arrested under controversial circumstances.<sup>63</sup> Upon his arrest, the Nigerian government ought to have formally requested for the extradition of MNK to Nigeria to face his trial. As explained in part 2.2 above, extradition is a formal, legal process by which a person accused of committing an offence or convicted of an offence is officially transferred, by another country, to the country where the person is either wanted for trial or required to serve a sentence after having been duly convicted by a court of law. Before a person can be lawfully extradited from one country to another, there must be a formal request for their extradition from the country of origin or residence of the alleged fugitive or criminal to the country to where they fled or currently live or stay. Where, therefore, an extradition treaty is circumvented in the capture, arrest and return of an alleged fugitive, the act arising therefrom becomes illegal, unlawful, and amounts to international abduction.

The Republic of Kenya does not have an extradition treaty with Nigeria. However, by virtue of section 2 of the Extradition Act,<sup>64</sup> Nigeria has a form of multilateral extradition treaty with the Commonwealth countries, including the Republic of Kenya. Therefore, a person who commits an offence in a Commonwealth country can be extradited under the Act.

According to the provisions of section 6(1) of the Extradition Act, the Nigerian government should have made a request in writing to the Attorney-General of the Republic of Kenya by a diplomatic representative or consular officer for the official surrender of MNK, which shall be accompanied by a duly authenticated warrant of arrest. The request must disclose extraditable offence(s). Thereafter, a formal extradition proceeding would follow in the appropriate court in Kenya, giving MNK the opportunity to defend himself before a decision would

63 While MNK accuses the Kenyan government of collaborating with Nigerian authorities to abduct him in Kenya and forcibly return him to Nigeria, the Kenyan authorities, however, have severally denied any involvement in MNK's capture in Kenya and return to Nigeria.

64 The Act applies to every separate country within the Commonwealth, that is, each sovereign and independent country within the Commonwealth. A Commonwealth country may still enter into an extradition treaty with Nigeria. Where this happens, the extradition relationship between Nigeria and that country ceases to be governed by sec 2 of the Extradition Act. However, there is no separate extradition treaty between Nigeria and Kenya. Thus, the extradition relationship between Nigeria and Kenya is governed by sec 2 of the Extradition Act.

be made either granting or declining the extradition request. At the hearing of an application for extradition, the court shall determine whether the offence in the application for extradition is an extraditable offence,<sup>65</sup> whether a bar to extradition applies,<sup>66</sup> whether extradition would be compatible with the fugitive's human rights,<sup>67</sup> or whether it would be unjust or oppressive or too severe a punishment to extradite the fugitive.<sup>68</sup> At the end of the extradition proceedings, a court can order a discharge or extradition of the fugitive. These are compulsory requirements that must be complied with, a violation of which results in an extraordinary rendition.

According to MNK, upon his arrest in Kenya, he was 'held *incommunicado* and chained to a bare floor in a nondescript private facility in Kenya for eight days' and that no warrant of arrest was shown to him or even mentioned to him before his arrest. He alleged that he was subjected to torture and other cruel, inhuman and degrading treatment, was blindfolded and driven to the tarmac very close to the aircraft without passing through the Kenyan immigration at the airport and flown to Nigeria.

The Kenyan government has denied any role in the arrest and return of MNK to Nigeria. Thus, MNK did not undergo any extradition proceedings in Kenya. The Nigerian government has disclosed no facts to establish that it duly activated any extradition proceedings in Kenya before returning MNK to Nigeria. It must be emphasised that in any case where extradition treaty is circumvented, the act that results therefrom is illegal. Since there are no established facts that the Nigerian government neither made any formal request for the extradition of MNK nor subjected itself to any extradition proceedings in Kenya, the only reasonable conclusion that can be inferred is that the Nigerian government engaged in the extraordinary rendition of MNK. If this is the case, it implies that the Nigerian authorities abducted MNK in Kenya.

This article will now delve into the legal implications of engaging in extraordinary rendition and/or abducting an accused fugitive on the territory of another state without its consent or approval. It is trite that where abusive conduct exists in cases where the regular machinery of extradition is bypassed and where the executive participates in an unauthorised and unlawful removal of criminal suspects from a foreign jurisdiction, a domestic court should decline jurisdiction to try the suspect.<sup>69</sup> Thus, there is a norm of customary international law that there is a legal bar to the exercise of jurisdiction where a state circumvents extradition proceedings and engages in the forcible return or extraordinary rendition of a suspected fugitive to its territory.

65 Order VIII Rule 1(a) of the Extradition Proceedings Rules 2015.

66 Order VIII Rule 1(b) of the Extradition Proceeding Rules 2015.

67 Order VIII Rule 1(c) of the Extradition Proceeding Rules 2015.

68 Order VIII Rule 1(d) of the Extradition Proceeding Rules 2015.

69 See the Australian case of *Levinge v Director of Custodial Services* 9 NSW 546 (Ct App 1987); South African case of *State v Ebrahim* 31 ILM 888, where the South African Supreme Court held that 'a South African court has no jurisdiction

The UN Human Rights Committee has consistently held that forcible abduction of a person from one state to another for the purpose of their rendition to face a criminal prosecution or trial violates article 9(1) of ICCPR.<sup>70</sup> The basic factors that courts should consider in determining whether or not abduction should vitiate criminal proceedings are (a) whether there has been a violation of customary international law or an extradition treaty; and (b) whether there has been any gross violation of human rights.<sup>71</sup> Furthermore, the abduction must have been executed by state agents, amounting to executive lawlessness that attracts the international responsibility of the state. Where it is established that the return of the fugitive to face prosecution violates the fugitive's rights to liberty and security of their person as well as freedom from arbitrary arrest and detention, there should be a bar to their prosecution, especially where there is evidence that the fugitive was subjected to torture or other forms of ill-treatment during their forcible abduction.<sup>72</sup>

Where there is a state-sponsored international abduction and the host state protests the abduction and demands the return of the individual abducted from its territory, the abducting state is under an international legal obligation to return the individual to the state where they were abducted. Unfortunately, the abducted individual cannot independently claim that a state's sovereignty has been violated.<sup>73</sup> Where there is failure by the abducting state to comply with a request for the repatriation of the abducted individual, such a state commits a further violation of international law. This failure constitutes a separate international wrongful act, which is quite independent of the original

to try a person abducted by the state from foreign territory'; the English case of *Regina v Horseferry Road Magistrate's Court (Ex Parte Bennett)* (1994) 1 App Cas 42 (Eng HL 1993), where the House of Lords held that 'a transnational forcible abduction that circumvents extradition proceedings is an abuse of process such that a court should exercise its discretion to enter a stay of proceedings against the fugitive'; and the Zimbabwean case of *State v Beahan* 1992 (1) SACR 307 (A), where the Zimbabwean Supreme Court held that 'a court should decline to compel an accused person to undergo trial in circumstances where his appearance before it has been facilitated by an act of abduction undertaken by the prosecuting state'.

70 See *Lilian Cerlibeti de Casriego* UN GAOR, 36th session, Supp 40, at 185, UN Doc A/36/40 (1981), where the HRC held that the abduction of the applicant, a Uruguayan/Italian from Brazil by Uruguayan agents with the connivance of Brazilian police, violated art 9(1) of ICCPR and directed Uruguay to release and compensate the applicant. See also the case of *Sergio Ruben Lopez Burgos* UN GAOR, 36th session, Supp 40, at 76, UN Doc A/36/40 (1981), where the HRC also held that the forcible abduction violated art 9(1) of ICCPR and thus ordered that Lopez Burgos be released, compensated and allowed to leave Uruguay. Lopez Burgos was abducted from Argentina by Uruguayan agents with the collaboration of Argentine officials and subsequently brought to Uruguay, detained and tortured. His wife brought the application before the HRC.

71 See P Michell 'English-speaking justice: evolving responses to transnational forcible abduction after *Alvarez-Machain*' (1996) 29 *Cornell International Law Journal* 383.

72 See *United States v Toscanino* 500 F 2d 267 (2nd Cir 1974) and *United States v Yunis* 859 F. 2d 953 at 955 (DC Cir. 1988).

73 See JA Gluck 'The customary international law of state-sponsored international abduction and United States courts' (1994) 44 *Duke Law Journal* 612.

international wrongful act of abduction.<sup>74</sup> It must, however, be emphasised that although the Kenyan government has denied any role in the capture and forcible return of MNK, it has not yet held Nigeria accountable for violating its sovereignty and territorial integrity, nor made any claims regarding the international wrongful acts committed by Nigeria on its territory, and has not demanded the return of MNK to Kenya.

Where an act of international abduction is effectively established, it results in a violation of the sovereignty of the host state. The Harvard Draft Convention on Jurisdiction with respect to Crime<sup>75</sup> states the following:

No state shall prosecute or punish any person who has been brought within its territory or a place subject to its authority by recourse to measures in violation of international law or international convention without first obtaining the consent of the state or states whose rights have been violated by such measures.

Thus, there is a legal bar to prosecution under international law where it is established that a state engaged in extraordinary rendition of a suspected fugitive or criminal on the territory of another state without the consent or approval of that state.

## 6 CONCLUSION

With respect to the learned justices of the Supreme Court of Nigeria, I disagree with their ruling and justification that a fugitive can be tried before any court in Nigeria notwithstanding the means used in producing them to the court. Under domestic or national law, this position could be correct. However, under international law, it is not, as Nigeria is under an international legal obligation to comply with extradition laws and proceedings before returning a fugitive to the country for prosecution in any court in Nigeria. International law frowns at extraordinary rendition especially when torture is alleged and proved. I also do not agree with the learned justices of the Supreme Court that there is no law in Nigeria preventing the Nigerian government from prosecuting MNK simply because the Nigerian government violated the required extradition proceedings before removing MNK from Kenya. A collective interpretation of the Extradition Act, CAP E25, Laws of the Federation of Nigeria, 2004, the Extradition Act (Modification) Order 2014, the Federal High Court (Extradition Proceedings) Rules 2015, alongside the specific extradition treaties Nigeria has entered into with other countries, obliges Nigeria to adhere to extradition laws and proceedings before any rendition of a fugitive or accused person will be legal and lawful. Thus, one can only be extradited to Nigeria upon the formal request of the Nigerian government to the government of the country where such

74 See FA Mann 'Reflections on the prosecution of persons abducted in breach of international law' in Y Dinstein (ed) *International law at a time of perplexity* (1989) 411.

75 See art 16 of the Harvard Draft Convention (n 18).

a person is. Any non-compliance with these provisions and international law results in an extraordinary rendition. Where, therefore, an extradition treaty is circumvented in the capture, arrest, and return of an alleged criminal or fugitive, the act arising therefrom becomes illegal, unlawful, and amounts to abduction.

The Court of Appeal of Nigeria, however, was right when it held that the Nigerian government breached all known local and international laws in its forceful rendition of MNK to Nigeria without subjecting him to any extradition proceedings in Kenya as required by law. According to the Court, MNK's 'extraordinary rendition and abduction by the Nigerian authorities in Kenya constitute a bar to his further proceedings or trial in any Court in Nigeria'.<sup>76</sup> This is a trite principle of international law, and I completely align myself with this decision and those of the High Courts and the United Nations Working Group that held that the rendition of MNK from Kenya was illegal and that he should not be tried on any existing or new charges.

Where there is no mutual co-operation or assistance between a host country and a receiving country in the removal of an alleged fugitive, such rendition becomes illegal and, thus, is prohibited under international law. It is a norm of customary international law that there is a legal bar to the exercise of jurisdiction where a state circumvents extradition proceedings and engages in the forcible return or extraordinary rendition of a suspected fugitive to its territory. The action of the Nigerian authorities in Kenya amounts to international abduction and not extradition as the incursion onto the territory of Kenya by the agents of Nigeria, without the former's consent, violated the sovereignty and territorial integrity of Kenya. This results in the international responsibility of Nigeria to Kenya.

Although Kenya has denied any roles in the capture and illegal rendition of MNK from its territory, the Kenyan High Court has found it responsible for assisting or aiding the extraordinary rendition, especially since it was aware of the circumstances of the wrongful acts of Nigeria on its territory but failed to take necessary measures to prevent these.

Where the Kenyan government protests the abduction of MNK from its territory and demands his return to Kenya, the Nigerian government is under an international obligation to return him to Kenya. However, the Kenyan government is yet to make any formal demand or claims against the Nigerian government. Unfortunately, MNK cannot personally make the demand or claims for the Kenyan government.

In light of the foregoing, the Nigerian government cannot legally prosecute Nnamdi Kanu on any existing or new charges as the international wrongful act of extraordinary rendition constitutes a legal bar to further prosecution. It may, however, take the option of returning MNK to Kenya for compliance with the required extradition laws. We hope that the Supreme Court of Nigeria would uphold this

trite position of international law when it is presented with another opportunity.