

**AN APPRAISAL OF THE LEGAL FRAMEWORK FOR COMBATING  
TERRORISM IN NIGERIA**

**BY**

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## DECLARATION

I declare that the work in this dissertation entitled “**An Appraisal of the Legal Framework for Combating Terrorism in Nigeria**” has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

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**Date**

## CERTIFICATION

This dissertation entitled: AN APPRAISAL OF THE LEGAL FRAMEWORK FOR COMBATING TERRORISM IN NIGERIA by **Innocent Nkemjika EZEUGO** meets the regulations governing the award of the degree of Master of Laws- LL.M of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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## **DEDICATION**

I dedicate this thesis to the victims of terrorism in Nigeria and the world at large.

## **ACKNOWLEDGEMENTS**

With deep sense of humility do I acknowledge the following persons for the imponderable support they rendered to me.

I want to use this rare opportunity to thank my supervisors Dr. Ibrahim Shehu and Dr. A.I. Bappah for their efforts in guiding me aright in the course of this research work. Sirs, your spartan and frank attitude to life endeared you to me. Your deep knowledge of the law is the fountain from which I drew knowledge. All I ask is that God will continue to keep you and order your footsteps.

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Above all, to the sublime God be the glory for given me the wherewithal and will so as to start and accomplish this priceless programme.

## ABSTRACT

*Terrorism has been a scourge both to the government and the people of Nigeria. The human and material loss recorded in recent past is enormous and has been a source of worry to all. The sources of information relied here are relevant text materials, statutes (including international instruments), judicial authorities, articles in journal publications and internet materials. The problem of this research work, therefore, is how to bring terrorism to an end in Nigeria. In view of this, the objectives of this research work, adopting a doctrinal research methodology, is therefore, to examine the legal framework for combating terrorism in Nigeria, to examine the causes of terrorism in Nigeria and to proffer solutions to the menace of terrorism in Nigeria. The major finding of this work is the conflicting role of the National Security Adviser and the Attorney General of the Federation. The 2013 Act stated that the office of the National Security Adviser shall be the coordinating body for all security and enforcement agencies under this Act while it further stated that the AG of the Federation shall be the authority for the effective implementation and administration of this Act. The role of the NSA and AGF under this Act is overlapping and is capable of frustrating the workings of this Act especially where the occupants of these offices want to show the superiority of the offices they occupy. This is a potent danger in the administration of the Act and if not looked into may derail the fight against terrorism. One of the recommendations of this research work, therefore, is the amendment of Section 1A (1) and (2) of Terrorism (Prevention) Act, 2013 which is on the powers of the National Security Adviser and that of Attorney General of the Federation to clearly delineate their roles and functions in order to strengthen the fight against terrorism.*

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1. Background to the Study

On Tuesday 11 September, 2001, four commercial planes were hijacked by terrorists. One hijacked passenger Jet leaving Boston, Massachusetts crashed into the north tower of the World Trade Centre at 8:45am setting the tower on fire. Eighteen minutes later, a second hijacked airline, United Airlines Flight 173 from Boston, crashed into the south tower of the World Trade Centre and exploded: Both airlines caused massive structural damage to the towers. Later that morning both the north and south towers collapsed, plummeting into the streets below. At 9:43am, a third hijacked airliner (American Airlines Flight 93) crashed in Somerset county, Pennsylvania, south east of Pittsburgh<sup>1</sup>. The crashing of these hijacked airliners into buildings and on land was the worst terrorists attack in the history of the United States. This led to the loss of nearly 3000 innocent lives and damaged property running into billions of dollars.

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<sup>1</sup>Information taken from CNN. 11 September 2001: chronology of terrors <http://edition.cnn.com/2001/us/09/11/chronology> attack. Retrieved on 12/08/2013 at 11:40am.

The terrorist attacks not only served as a chilling reminder of the dangers inherent in international terrorism but also sent shock waves all around the world. The attacks were unequivocally condemned by States and by international organizations. On 12 September 2001, the United Nations General Assembly passed a resolution condemning the heinous acts which had resulted in loss of lives and collateral destruction<sup>2</sup>. While showing solidarity with the people of the United States, the United Nations called for international cooperation to bring to justice the perpetrators, organizers and sponsors of the crimes committed on 11 September 2001. On September 12, 2001, the United Nations Security Council also condemned the terrorist acts expressing them as a threat to international peace and security<sup>3</sup>.

The Council called upon all States to work together urgently to bring to justice the perpetrators of the crime, organizers and sponsors of the terrorist attacks. Further, Resolution 1373 was adopted on 28 September 2001. Under the Resolution, the Security Council required States to adopt and implement the existing international legal instruments on terrorism, and to prevent and suppress the financing and the freezing of funds and financial matters.

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<sup>2</sup> G/Res.56/1(12 September, 2001) [www.un.org/documents/ga/docs/56/agresolution.htm](http://www.un.org/documents/ga/docs/56/agresolution.htm) Retrieved on 12/08/2013 at 11:50am.

<sup>3</sup> S/RES/1368 Adopted by the Security Council at its 4370<sup>th</sup> meeting. UNODC: Universal Legal Framework against Terrorism, Publishing and Library Section, United Nations office, Vienna, February, 2012, pg. 2.

It also required that States allow one another assistance for criminal investigations and proceedings relating to the financing or support of terrorist acts<sup>4</sup>. According to the resolution, States are also to prevent the movement of terrorists or their groups by effective border control. The Security Council also determined that States shall intensify and accelerate the exchange of information regarding terrorist actions or movements like traffic in arms and sensitive materials, forged or falsified documents, use of communications and technologies by terrorist groups: and the threat posed by the possession of weapons of mass destruction. In addition, States are required to exchange information and co-operate to prevent and suppress terrorist acts and to take action against perpetrators of such acts. In 2003, the Federal Government of Nigeria in compliance with the United Nations call for urgent and concerted efforts in defeating terrorism, established the Economic and Financial Crime Commission to among other things, suppress the financing and freeze funds meant for terrorism financing. At the time of establishing the EFCC in 2003, Nigeria has not started witnessing terrorism. It was not until 2009 that Nigeria started witnessing terrorism and like an unquenchable fire, continued to ravage the land.

On June 16, 2011, the Nigerian Police Force Headquarters, Abuja was bombed by a group known as '*Jama'atu allus sunna Lildaawati wal Jihad (JALISWAJ)*,' hereinafter referred to as Boko Haram. That of course was the first suicide bombing ever recorded in the history of Nigeria. Following in quick succession was the bombing of the United Nations Building in Abuja on August 26, 2011 also by Boko Haram.

The Executive Director, United Nations Office on Drugs and Crime (UNODC) has this to say:

*On 26 August, 2011, the United Nations Office in Abuja, Nigeria, was the target of a terrorist attack that shocked the world and drew global condemnation. The car bomb that was detonated cut short the lives of twenty-four friends and colleagues working for the betterment of*

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<sup>4</sup> Security Council SC/7158 (4385<sup>th</sup> Meeting) 28 September 2001. Security Council unanimously adopts wide-ranging Anti-Terrorism Resolution calls for suppressing Financing, Improving International Co-operation. Resolution 1373 (2001) Also created the Committee to Monitor Implementation.

*humanity. The attack targeted not only the United Nations presence in Nigeria, but also its universal value and global mission of peace. In the face of such heinous acts, we have responded with strengthened resolve to fight against terrorism and build a safer, more just and peaceful world for all.*<sup>5</sup>

This statement by the executive director of UNODC is a sad commentary on the activities of terrorists in Nigeria in particular and the world at large. The nefarious activities in Nigeria have taken an upsurge dimension in the recent past. It points to the country's growing vulnerability to extremism, a situation that calls for urgent and more concerted response from the Nigerian government and non-state actors as well.

## **1.2 Statement of the Problem**

Nigeria, no doubt, is facing grave security challenges as recorded in the spate of terrorist activities in some parts of the country.

Terrorism activities in Nigeria have continued to decimate our people and disrupt economic activities. The problem of this research, therefore, is how to bring terrorism to an end in Nigeria.

## **1.4. Aim and Objectives of the Research**

1. To examine the legal framework for combating terrorism in Nigeria with a view to ascertaining its adequacy or otherwise.
2. To examine the causes of terrorism in Nigeria.
3. To proffer solutions to the menace of terrorism in Nigeria.

## **1.4 Justification of the Research**

For any meaningful development of any nation to happen, there must be a general atmosphere of peace and security. The justification for this work, therefore, is the peace and security that this research work would engender in our land.

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<sup>5</sup>Fedetov, Y. Criminal Justice Response to Support Victims of Acts of terrorism, United Nations, New York, 2011, p. vi.

### **1.5. Scope of the Research.**

This research is focused on terrorism in North Eastern part of Nigeria. Boko Haram group which has been terrorising this part of the country has international links and its activities goes beyond Nigeria, hence, references were made outside Nigeria with a view to doing a thorough work.

### **1.6. Research Methodology**

Essentially, the research methodology adopted for this study is doctrinal method. Statutes and case laws constitute the primary sources, while the works of legal scholars, journals, newspapers, articles, speeches, seminar papers, dissertations, magazines and periodicals constitute secondary sources of this research.

### **1.7. Literature Review**

Literature review of other works in this area of research is an important aspect of the research work which helped the researcher to see through what other works have done, and what they did not do in the area of stopping terrorism in Nigeria and how differently the researcher intended to go about his research in order to achieve a result.

Jovan Patrnogic<sup>6</sup> in his work titled, 'Terrorism and International Law: Challenges and Responses,' dwell very much on terrorism and international legal framework in combating terrorism, stating that the existing legal framework should be reframed and interpreted by competent legal authorities, first of all, within the U.N. system. His work draws the researcher's attention to the importance of interpreting relevant terrorism laws in Nigeria by competent legal authorities in order to avoid ambiguity and sentimental execution of the law.

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<sup>6</sup> Patrnogic, J. Terrorism and International Law: Challenges and Responses, Sanremo, Italy, June, 2003, pg 1-3

Tariq Ali<sup>7</sup> in his work, 'The Clash of Fundamentalisms: Crusader; Jihads and Modernity,' vividly narrated the events of September 11, 2001, exposing the negative influence of state terrorism, especially by the so called super powers. It draws the researcher's attention to the fact that States, at times, by their actions and inactions, encourage terrorism as in the case of Nigeria, when they refuse to follow the due process of law and provide the essentials of government.

William Blum<sup>8</sup> in his work titled, 'Rogue State - A Guide to the World's Only Super Power', centres on America (referred to by George Bush as New World Order) and terrorism. He was critical of America's role in fighting terrorism globally. This work gives the researcher an insight into the global politics of terrorism and what should be done to extirpate terrorism in Nigeria in particular and the world at large.

William Balsamo & George Carpozi Jr.<sup>9</sup> in their work titled, 'The Mafia: The First 100 Years- the Deadly Inside Story of Organized Crime', is a historical chronology of how organized crime which include terrorism started 100 years ago in Sicily through the group of Italian immigrants – the Black Hands. The exposition made in this work would have been complete if the work had provided remedies to the gridlock of organized crime. The researcher would provide remedy to the crime of terrorism in Nigeria.

The Universal Legal Framework against Terrorism by the United Nations Office on Drugs and Crime<sup>10</sup> (UNODC) focused on the international legal framework against terrorism, per se. This research not only focuses on the international legal framework in combating terrorism, but also on an appraisal of the legal framework for combating terrorism in Nigeria.

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<sup>7</sup> Ali, T. The Clash of Fundamentalisms: Crusader Jihads and Modernity, Verso, London, 2003, pg.4

<sup>8</sup> Blum, W. Rogue State: A Guide to the World's only Superpower, Zed-books Ltd, London. 2006, pg. 1

<sup>9</sup> Balsamo, W. & Capozzi, G. The Mafia, the first hundred years, Virgin Brooks, London, 1997, pg.2

<sup>10</sup> UNODC: Universal Legal Framework against Terrorism, Publishing and Library Section, United Nations Office, Vienna, February, 2012, pg.1

Sirchi J.P.S<sup>11</sup> in his work titled, 'Criminology and Penology' is on global terrorism and Interpol, Sirchi in his work said, 'to deal with terrorist groups like *Al-Quaida*, Interpol has a task force called 'fusion' in which member countries share the most sensitive information they have about such group. This is a good development but the researcher is of the view that there should be a lead security agency that should coordinate the activities of all other security agencies for effective and proactive tackling of terrorism in Nigeria.

Javaid Rehman<sup>12</sup> in his work titled, 'International Human Right Law' dwells on human rights aspect of terrorism. Though focused on human rights aspect of terrorism, a lot of inference was drawn from the work by the researcher.

Norwitz Jeffrey<sup>13</sup> in his work titled, 'Pirates, Terrorists and Warlords-The History, Influence, and Future of Armed Groups around the World', gives the researcher an insight on the modus operandi of armed groups around the world which enables him to compare and contrast what is obtainable in Nigeria and around the world.

Cooley John K.<sup>14</sup> in his work entitled: 'Unholy Wars- Afghanistan, America and International Terrorism', is an exceptionally brilliant work which exposes how some states advertently and inadvertently sponsor terrorism. Though this research work is on the appraisal of the legal framework for combating terrorism in Nigeria, it helps the researcher to bring to the fore what the State must not do in order not to encourage terrorism.

Cukwurah Oye A.<sup>15</sup> in his work entitled, 'Global Terrorism and the Rule of Law-The Nigeria Experience', focuses on global terrorism and rule of law with Nigeria as its focal point. His work

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<sup>11</sup> Sirchi, J.P.S. Criminology and Penology, Allahabad Law Agency, 2004, pg.5.

<sup>12</sup> Rehman, J. International Human Rights Law, Pearson, London, 1993, pg. 879.

<sup>13</sup> Norwitz, J. Pirates, Terrorists and Warlords: The History, Influence and Future of Armed Groups around the World. Skyhorse Publishing Inc. New York, 2009, pg. 26.

<sup>14</sup> Cooley, J.K. Unholy Wars, Afghanistan, America and International Terrorism, Pluto Press, London, April, 2000, p.2

<sup>15</sup> Chukwurah, A.O. Global Terrorism and the Rule of Law: The Nigeria Experience, Orient Press, Abuja, 2011, pp. 1 & 2.

though a catalyst to the research work did not proffer solution to end this endemic crisis called terrorism.

Dakas C.J. Dakas<sup>16</sup> in his work titled: ‘Terrorism in the Aviation Sector: The Human Rights Dimension of Use of Body Scanners’ strongly emphasized the need to respect the inalienable rights of the people by the law enforcement agencies while fighting terrorism, stating the need to ensure that counter-terrorism measures, including the use of body scanners, and the protection of human rights are not treated as trade-offs, but complimentary and mutually reinforcing goals. This research shares Dakas view on the sacrosanct of human rights and proffered a measure towards its sustenance.

Terwase Sampson<sup>17</sup> in his work titled: ‘Legal Framework for the Punishment of Terrorism in Nigeria: A Critique of the EFCC Establishment Act’ seeks to interrogate the appropriateness and sufficiency of the EFCC Establishment Act in the administration of cases of terrorism. It argues that our criminal legislation have sufficient offences that possess similar elements with the offence of terrorism in the EFCC Act. The researcher is uncomfortable with this view. Terrorism is relatively new in Nigeria and being a sophisticated and syndicate crime equally needs a sophisticated and wholistic legislation in combating it.

However, this research analysed all the legislations on terrorism like the EFCC Establishment Act, Anti Money Laundering & Terrorism Act with a view to proffering amendment of certain Sections to give teeth to the fight against terrorism. The efforts put into reading these materials indeed exposed the researcher to new frontiers of knowledge in the area of terrorism and widen his intellectual horizon to do exploit in the field. It is his firm belief that the level of research he has made will go a long way in assisting him to do justice in appraising the legal framework for combating terrorism in Nigeria.

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<sup>16</sup> Dakas, C.J.D. Terrorism in the Aviation Sector: The Human Rights Dimension of the use of body scanners, round table organized by National Institute of Advanced Legal Studies (NIALS), Lagos Campus, January 19, 2009, pp. 1-3.

<sup>17</sup> Terwase, S. Legal Framework for the Punishment of Terrorism in Nigeria: A Critique of the EFCC Establishment Act, 2004, The Army Quarterly Journal, Vol. 4, No.3 (2008), pp. 1 & 2.

Olusegun Adeniyi's<sup>18</sup> in his work titled: *Power, Politics and Death*, a front-row account of Nigeria under the late president Yar'adua dwell on Mutallab, a young Nigerian man who had tempted to blow up a United States Delta Airlines flight en route to Detroit from Amsterdam on December 25, 2009 vis-à-vis *Boko Haram* whose activities back home is of serious concern to the people. He succinctly gave a historical analysis of the sect, *Boko Haram*. How it started and how it got to where it is today. His work indeed helped the researcher in knowing the history of the sect.

The review of some of the works this area of research enriched the knowledge of the researcher and sharpened his analytical mind. The researcher identified some gaps in other works and this work is set to fill the lacuna.

## **1.8. Organizational Layout**

This thesis is divided into five chapters; the first chapter is on general introduction showing amongst other things, scope of the research. It also highlights the statement of the problem, objectives, justification, literature review, scope and limitation, research methodology and organizational layout of the study.

Chapter two deals with the conceptual clarifications of key terms, concept of terrorism, concept of terrorist financing, concept of money laundering, terrorist financing through money laundering and concept of crime under Domestic and International law.

Chapter three deals with the causes of terrorism in Nigeria, analysis of causes of terrorism, impact of terrorism on national development, peace and security, international legal framework in combating terrorism and international legal regime against terrorism.

Chapter four is on the Domestic Legal Framework in Combating Terrorism in Nigeria and is divided into the following sub parts: Introduction, the Economic and Financial Crime Commission Establishment Act of 2004, Terrorism (Prevention) Act 2011, Terrorism (Prevention) (Amendment)

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<sup>18</sup>Adeniyi, O. *Power, Politics and Death*, A front-row Account of Nigeria under the Late President Yar'adua, Kachifo Limited, Lagos – Nigeria, 2011, pp. 102 – 114.

Act 2013, The Constitution of the Federal Republic of Nigeria 1999 (As Amended), Challenges in combating terrorism in Nigeria.

While chapter five is on summary of the work, findings and recommendations.

## CHAPTER TWO

### CONCEPTUAL CLARIFICATIONS OF KEY TERMS

#### 2.1 INTRODUCTION

For a succinct comprehension of this work, it is important that a clarification of key terms be made in order to elucidate on the work. To this end, the concept of terrorism, the concept of terrorist financing, the concept of money laundering, the concept of terrorist financing through money laundering, the typologies of terrorist financing in Nigeria and the concept of crime under domestic and international law are defined and clarified in this chapter.

#### 2.2 CONCEPT OF TERRORISM

What is Terrorism?

Here I think we have a challenge – a clear and specific definition for “terrorism”. Although, the term might seem self-evident, in practice it is hard to agree upon a legal definition at the international level. An analogous example of this dilemma is the definition of “aggression”, a subject discussed in Rome during the drafting of International Criminal Court Statute. The Statute did not include “aggression” as one of its “grave crimes” because the Conference could not agree upon its definition, even though efforts to define the crime of aggression have been underway since 1948 and despite the fact that Article 51 of the UN Charter had shed light on this issue.<sup>19</sup>

I mention this to show how important definitions are in international law. There is a resemblance between the case of aggression and terrorism, for in neither is unanimity on a definition. This remains despite the fact that the first attempt to define terrorism took place with the Convention for the Prevention and Punishment of Terrorism in 1937.<sup>20</sup>

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<sup>19</sup>Ousama Damaj: The Problem of Responding to terrorism. *Terrorism and International Law: Challenges and Responses*.

<sup>20</sup>Ibid

The controversies generated by the definitional debate have exercised the minds of many draftsmen and academics; a leading authority has noted that between 1936 and 1981, not less than 109 definitions of terrorism were put forward<sup>21</sup>. Within this time frame, one of the earliest and most prominent definitions was advanced through the 1937 Convention for the Prevention and Punishment of Terrorism<sup>22</sup>. According to Article 1(2) of the Convention

*In the present Convention, the expression 'acts of terrorism' means criminal act directed against a State intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.*

In 2004, the Security Council, in its Resolution 1566 (2004), identified elements of a definition, referring to criminal acts including and/or against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostage, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or abstain from doing any act

A United State Army manual on countering terrorism defines terrorism as “the calculated use of violence to attain goals that are political, religious or ideological in nature. This is done through intimidation, coercion or instilling fear”.

Section 1(2) of the Terrorism (Prevention) Act, 2011 defined Terrorism thus:

In this section, “act of terrorism” means an act which is deliberately done with malice, aforethought and which:

- (a) may seriously harm or damage a country or an international organization;
- (b) is intended or can reasonably be regarded as having been intended to-

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<sup>21</sup> Laqueau: ‘Reflection on Terrorism’ 65 Foreign Affairs (1986-87) 88; Saul: ‘Attempt to Define Terrorism in International Law’ NILR (2005) 57

<sup>22</sup> The Convention for the Prevention and Punishment of Terrorism, 16 November, 1937, 19 League of Nations Official Journal (1938) 23 reprinted 27 UN GAOR, Annex 1, Agenda Item No. 92, UN Doc. A/C 6/418 (1972)

- (i) unduly compel a government or international organization to perform or abstain from performing any act;
  - (ii) seriously intimidate a population
  - (iii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or
  - (iv) otherwise influence such government or international organization by intimidation or coercion; and
- (c) Involves or causes, as the case may be-
- (i) an attack upon a person's life which may cause serious bodily harm or death;
  - (ii) kidnapping of a person
  - (iii) destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
  - (iv) the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph b(iv) of this subsection;
  - (v) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into and development of biological and chemical weapons without lawful authority;
  - (vi) the release of dangerous substance or causing of fire, explosions or floods, the effect of which is to endanger human life;
  - (vii) interference with or disruption of the supply of water, power or any other fundamental natural resources, the effect of which is to endanger human life;
- (d) An act or omission in or outside Nigeria which constitutes an offence within the scope of counter terrorism protocols and conventions duly ratified by Nigeria.

The researcher of this work defines terrorism as the bombing of the police headquarters, Abuja in June, 2011; the bombing of the United Nations Building, Abuja in August, 2011; the wanton killing in *Baga* in April, 2014; the abduction of *Chibok* school girls in April, 2014 and other similar wilful violence resulting in carnage and destruction of properties in and outside Nigeria.

Definitional issues have generated substantial complications in formulating internationally and legally acceptable definition of Terrorism. The term “terrorism” is probably the most difficult to define because of varied perceptions over the characterization of terrorist acts, purpose and motivation behind such acts, and the variable identity of the perpetrator. Indeed, the issue has been so controversial that divisions have emerged not only in the proposed definitions but more fundamentally as to whether it is worthwhile attempting to define such an elusive concept<sup>23</sup>. Professor Bassiouni in his work titled, “A Policy Oriented Inquiry into the Different Forms and Manifestations of International Terrorism”<sup>24</sup> makes the point that, ‘there is no internationally agreed upon methodology for the identification and appraisal of what is commonly referred to as “terrorism”, including causes, strategies, goals and outcomes of the conduct in question and those who perpetuate it.

In his essay Professor Baxter<sup>25</sup> expresses his doubts about energizing efforts to define terrorism. He notes, ‘we have cause to regret the definitional problem that a legal concept of “terrorism” has inflicted upon us. The term is imprecise, it is ambiguous and above all, it serves no operative legal purpose’<sup>26</sup>. According to Baxter, the problem of acceptable and definitive consensus on what terrorism is all about stems from the ideological schism between the developed and the developing nations on one hand and the attitude of the United Nations to the developing nations on the other hand. Conceptual challenges abound, especially at the international level. The issue of state-perpetrated and state-sponsored terrorism and the ambivalence, hypocrisy and oligarchic power

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<sup>23</sup> See Rehman, J. ‘International Human Rights Law (Second Edition) Pearson Press, London, 2002, pg. 881

<sup>24</sup> Bassiouni, A policy – oriented inquiry into the Different forms and Manifestations of “International Terrorism” Terrorism and International, Challenges and Responses, p. vi.

<sup>25</sup> Baxter I. ‘A Skeptical Look at the Concept of Terrorism’ 7 Akron Law Review (1974) 380 at p. 380

<sup>26</sup> Ibid

relations that bedevil the balance of forces at the international arena compound the difficulty of arriving at a definitive consensus on what terrorism entails<sup>27</sup>.

For instance, in the case of *Nicaragua v. United States*, the International Court of Justice (I.C.J.) made an attempt to address the issue of terrorism in the case. However, it is interesting to note that the ICJ did not use the term 'terrorism' in this very long case despite the fact that the central claim by Nicaragua against U.S included among other things an allegation that the U.S was 'recruiting, training, arming, financing, supplying and otherwise encouraging, supporting, aiding and directing military and paramilitary actions in and against Nicaragua' and killing, wounding and kidnapping citizens of Nicaragua. These claims were carefully articulated by Nicaragua as substantive charges against U.S., each claim accurately reflected in prohibitive norms of international law, and the ICJ dealt with them as such without adjudicating on the international position on the question of cross-border terrorism<sup>28</sup>.

It may be noted here that America is guilty of practicing double-standards in respect of terrorism. While on the one hand, despite several solid evidence of terrorists acts by Pakistan, America is not declaring Pakistan a state sponsor of terrorism and has a soft corner for Pakistan and even renders military aid to it.

On the other hand, when America is confronted with acts of terrorism, its attitude completely undergoes a change, for example, when in August, 1998, bombs were exploded in its embassies, it replied by attacking Sudan and Afghanistan by missiles on 21 August, 1998. On being asked whether it concedes such a right to India for attacking places in Pakistan from where terrorist attacks are launched and help is rendered to Kashmir militants, the American reply is in the negative. This double standard and unilateralism of America is indirectly encouraging terrorism and impeding a consensual conception of terrorism.

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<sup>27</sup>Baxter Op.cit

<sup>28</sup>Rema J. Op.cit at pg. 421

The resolution of the Security Council on terrorism after the September 11, 2001 incident abhors and rejects all forms of terrorism and obligates the member States to oppose the perpetration of terrorism from their soils. However, U.S. which was the prime mover of the above resolution has shield away from accepting the proposal to set up international criminal courts at Hague along with other 'rogue nations' like Iraq and Libya for fear of a ceiling and limitation on its big brother activities in various regions of the world. This clearly spells doom for the development of a consensual and uniform regime against crimes of cross border dimensions. It is a fact that Pakistan and Saudi Arabia much more than Iraq, appear to be associated with sponsoring terrorism. According to Mr. Peter Burleigh, an expert in counter terrorism, the U.S. relationship with Pakistan is very important, especially in war against terrorism. The relationship has improved and thickened dramatically since 9/11. Pakistan's cooperation, despite its record of close association with some terrorist organizations, to combat terrorism and wage war in Afghanistan against Taliban and late Osama Bin Laden cannot be ignored in a fight against global terrorism<sup>29</sup>.

Recently, however, there has been some change in America's attitude especially towards the growing terrorism in Africa and Indian sub-continent. America has expressly recognized Pakistan's hand in sponsoring state terrorism and has warned it several times. America has not only ratified the extradition treaty between America and India but has also agreed to tackle terrorism jointly. This change of attitude came after Pakistan's intrusion in *Kirgil* area of Kashmir.

In conclusion, it is better to describe act of terrorism than to define it. As long as there is power politics, there will be no consensual conception of terrorism because of the ambivalence and hypocrisy of the super powers: for one State terrorist is another State freedom fighter. The search for a consensus definition merely amounts to academic exercise if the status quo in world politics remains.

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<sup>29</sup> Ibid

## 2.3 CONCEPT OF TERRORIST FINANCING

The United Nations has made numerous efforts, largely in the form of international treaties, to fight terrorism and the mechanisms used to finance it. Even before the September 11 attack on the United States, the UN had in place the International Convention for the Suppression of the Financing of Terrorism (1999), which provides:

1. Any person commits an offence within the meaning of this convention if that person by any means, directly or indirectly, unlawfully and willingly, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
  - (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
  - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking any active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing an act.
2. For an act to constitute an offense set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offense referred to in paragraph 1, subparagraph (a) or (b)<sup>30</sup>.

The World Bank and the International Monetary Fund (IMF) also define terrorist financing as “the financial support, in any form, of terrorism or of those who encourage, plan or engage in it”<sup>31</sup>

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<sup>30</sup> International Convention for the Suppression of the Financing of Terrorism (1999), Article 2, <http://www.un.org/law/cod/finterr.htm>.

<sup>31</sup> World Bank and the International Monetary Fund (2003)

The difficult issue for some countries is defining terrorism. Not all countries that have adopted the convention agree on what actions constitute terrorism. The meaning of terrorism is not universally accepted due to significant political, religious and national implications that differ from country to country. The Financial Action Task Force (FATF) which is also recognized as the international standard setter for efforts to combat the Financing of Terrorism<sup>32</sup>, does not specifically define the term financing of terrorism in its eight special Recommendations on Terrorist Financing (Special Recommendations)<sup>33</sup> developed following the events of September 11, 2001. Nonetheless, FATF urges countries to ratify and implement the 1999 United Nations International Convention for Suppression of the Financing of Terrorism<sup>34</sup>. Thus, the above definition is the one most countries have adopted for purposes of defining terrorist financing.<sup>35</sup>

## **2.4 CONCEPT OF MONEY LAUNDERING**

Money Laundering can be defined in a number of ways. Most countries subscribe to the definition adopted by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (1988) (Vienna Convention)<sup>36</sup>. The conversion or transfer of property, knowing that such property is derived from any (drug trafficking) offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions. The concealment or disguise of the true nature, sources, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses or from an act of participating in such an offense or offenses<sup>37</sup>

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<sup>32</sup> See Chapter III, FATF

<sup>33</sup> [http://www.oecd.org/tatf/speftf\\_en.htm](http://www.oecd.org/tatf/speftf_en.htm)

<sup>34</sup> Id, at Spec. Rec. 1

<sup>35</sup> Terrorism Act 2011 & Terrorism Amendment Act 2013 as well as Anti-Money Laundering Act 2011 did not define Terrorist Financing

<sup>36</sup> <http://www.incb.org/conv/1988/>

<sup>37</sup> The Vienna Convention, Article 3(b)

The Vienna Convention adds that money laundering also involves the acquisition, possession or use of property, knowing at the time of receipt that such property was derived from an offense or offenses or from an act of participating in such offense or offenses<sup>38</sup>.

By its terms, the Vienna Convention limits predicate offenses (which is to say, the criminal activity whose illicit proceeds are laundered) to drug trafficking offenses. As a consequence, crimes unrelated to drug trafficking, such as tax evasion, fraud, kidnapping and theft, for example are not defined as money laundering offenses under the Vienna Convention. Over the years, however, the international community has come to the view that predicate offense for money laundering should go beyond drug trafficking. Thus, other international instruments have expanded the Vienna Convention's definition of predicate offenses to include other serious crimes. For example, the United Nations Convention against Transnational Organized Crimes (2000) (Padermo Convention) requires all participant countries to apply that convention's money laundering offenses to "the widest range of predicate offenses"<sup>39</sup>.

The Financial Action Task Force on Money Laundering (FATF), which is recognized as international standard setter for Anti Money Laundering (AML) efforts<sup>40</sup>, defines the term money laundering succinctly as "the processing of criminal proceeds to disguise their illegal origin in order to "legitimize" the ill-gotten gains of crime."<sup>41</sup> However in its 40 recommendations for fighting money laundering, FATF specifically incorporated the Vienna Convention's technical and legal definition of money laundering and recommends expanding the predicate offenses of that definition to include all serious crimes.

## **2.5 TERRORIST FINANCING THROUGH MONEY LAUNDERING**

The concept of terrorist financing cannot be exhaustively discussed or analysed without bringing into focus money laundering aspect of crime. They are alter ego in crime situation analysis and as such

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<sup>38</sup> Id. Article 3(c) (i)

<sup>39</sup> The Padermo Convention, Article 2 (2), <http://www.undep.org.adhoc/padermo/convmain.html>

<sup>40</sup> See Chapter III B. FATF

<sup>41</sup> FATF, What is money laundering?, Basic Facts About Money Laundering

interwoven. Reference must be made to money laundering in the analysis of the concept of terrorist financing and vice versa. For most countries, money laundering and terrorist financing raise significant issues with regard to prevention, detection and prosecution. Sophisticated techniques used to launder money and finance terrorism add to the complexity of these issues. Such sophisticated techniques may involve many different types of financial institutions; many different financial transactions using multiple financial institutions and other entities, transfer to, through and from different financial instruments and other kinds of value-storing assets.

Money laundering is, however, a fundamentally simple concept. It is the process by which proceeds from a criminal activity are disguised to conceal their illicit origins. Basically, money laundering involves the proceeds of criminally derived property rather than the property itself. The financing of terrorism is the financial support, in any form of terrorism or of those who encourage, plan, or engage in it. Money laundering and terrorist financing often display similar transactional features and most often transnational, mostly having to do with concealment.

Money launderers send illicit funds through legal channels so as to conceal their criminal origins, while those who finance terrorism transfer funds that may be legal or illicit in origin in such a way as to conceal their source and ultimate use, which is the support of terrorism. But the result is the same – reward. When money is laundered, criminals are rewarded with disguised and apparently legitimate proceeds. Similarly, those who finance terrorism are rewarded by providing the financial support to carry out terrorist stratagems and attacks.

The techniques used to launder money are essentially the same as those used to conceal the sources of, and uses for, terrorist financing. Funds used to support terrorism may originate from legitimate sources, criminal activities, or both. Nonetheless, disguising the sources of terrorist financing, regardless of whether source is of legitimate or illicit origin is important. If the source can be concealed, it remains available for future terrorist financing activities. Similarly, it is important for terrorists to conceal the use of the funds so that the financing activity goes undetected. For these reasons, FATF has recommended that each country criminalize the financing of terrorism, terrorist

acts and terrorist organizations<sup>42</sup>, and designate such offenses as money laundering predicate offenses<sup>43</sup>.

Finally, FATF has stated that the eight Special Recommendations combined with the Forty Recommendations on money laundering<sup>44</sup> constitute the basic framework for preventing, detecting and suppressing both money laundering and terrorist financing. Efforts to combat the financing of terrorism also require countries to consider expanding the scope of their Anti Money Laundering (AML) framework to include non-profit organizations, particularly charities, to make sure such organizations are not used, directly or indirectly, to finance or support terrorism<sup>45</sup>. CFT efforts also require examination of alternative money transmission or remittance systems such as *hawales*. This effort includes consideration of what measures should be taken to preclude the use of such entities by money launders and terrorists<sup>46</sup>.

As noted above, a significant difference between money laundering and terrorist financing is that the funds involved may originate from legitimate sources as well as criminal activities. Such legitimate sources may include donations or gifts of cash or other assets to organization such as foundations or charities that are in turn utilized to support terrorist activities or terrorist organizations. Consequently, this difference requires special laws to deal with terrorist financing. However, to the extent that funds for financing terrorism are derived from illegal sources, such funds may already be covered by the country's AML framework, depending upon the scope of the predicate offenses for money laundering.

By their very nature, money laundering and terrorist financing are geared towards secrecy and do not lend themselves to statistical analysis. Launderers do not document the extent of their operations or publicize the amount of their profits, nor do those who finance terrorism. Moreover, because these activities take place on global basis, estimates are even more difficult to produce. Launderers

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<sup>42</sup> Id, at Spec. Rec. 11

<sup>43</sup> Id.

<sup>44</sup> Id, at introductory paragraph

<sup>45</sup> Special Recommendation, Spec. Rec. VIII

<sup>46</sup> Special Recommendation, Spec. Rec. VI

use various countries to conceal their ill-gotten proceeds, taking advantage of differences among countries with regard to AML regimes, enforcement efforts and international cooperation. Thus, reliable estimates on the size of the money laundering and terrorist financing problem on a global basis are not available with regard to money laundering only, the International Monetary Fund has estimated that the aggregate amount of funds laundered in the world could range between two and five percent of the world's gross domestic product. Using 1996 statistics, this percentage would approximate between US \$590 billion and US \$1.5 trillion<sup>47</sup>. Thus, by any estimate, the size of the problem is very substantial and merits the complete attention of every country.

## **THE PROCESSES**

The initial concern over money laundering began with its early connection to illegal trafficking in narcotic drugs. The objective of drug traffickers was to convert typically small denominations of currency into legal bank accounts, financial instruments, or other assets. Today, ill-gotten gains are produced by a vast range of criminal activities – among them political corruption, illegal sales of weapons, and illicit trafficking in and exploitation of human beings. Regardless of the crime, money laundering resorts to placement, layering and integration in the process of turning illicit proceeds into legal monies or goods.

### **1. PLACEMENT**

The initial stage of the process involves placement of illegally derived funds into the financial system, usually through a financial institution. This can be accomplished by depositing cash into a bank account. Large amounts of cash are broken into smaller, less conspicuous amounts and deposited over time in different offices of a single financial institution or in multiple financial institutions. The exchange of one currency into another one, as well as the conversion of smaller notes into larger denominations, may occur at this stage. Furthermore, illegal funds may be converted into financial instruments, such as money orders, or cheques and co-mingled with

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<sup>47</sup> Vito Tanzi, "Money Laundering and the International Finance System," IMF Working Paper No. 96/55 (May 1996), at 3 and 4

legitimate funds to divert suspicion. Furthermore, placement may be accomplished by the cash purchases of a security or a form of an insurance contract

## **2. LAYERING**

The second money laundering stage occur after the ill-gotten gains have entered the financial system, at which point the funds, security or insurance contract are converted or moved to other institutions further separating them from their criminal source. Such funds could be used to purchase other securities, insurance contracts or other easily transferable investment instruments and then sold through yet another institution. The funds could also be transferred by any form of negotiable instrument such as cheques, money order or bearer bond, or transferred electronically to other accounts in various jurisdictions. The launderer may also disguise the transfer as a payment for goods or services or transfer the fund to a corporation.

## **3. INTEGRATION**

The third stage involves the integration of funds into the legitimate economy. This is accomplished through the purchase of assets, such as real estate, securities or other financial assets, or luxury goods. These three stages are also seen in terrorist financing schemes, except that stage three which is 'integration' involves the distribution of funds to terrorists and their organizations, while money laundering, as discussed previously goes in the opposite direction-integrating criminal funds into the legitimate economy.

### **2.6 THE TYPOLOGIES OF TERRORIST FINANCING IN NIGERIA**

Terrorists have various ways of financing terrorism. Without finance, it will be practically impossible for terrorists to carry out their nefarious activities. In Nigeria, Boko Haram raises fund through:

1. Trade

One of the ways Boko Haram raises fund to finance their activities is by purchasing and sending items to its members in other locations. The members in turn, dispose these items at exorbitant prices and the proceeds are used to finance the activities of the terrorist group, including renting apartments, procuring Improvised Explosive Devices (IED) for their operations, buying of hard drugs, clothing and feeding.

Some of their members are in communication business and they use part of their profits to support the activities of Boko Haram while supplying pre-registered Subscriber Identity Module (SIM) materials for their operations.

2. Through voluntary or compulsory contributions from members of the group.

Some of the nominal members of the group are rich and influential. When the group runs out of fund, they either appeal to their rich members to assist them with fund or task themselves. How a member raised his own contribution for the funding of the organization is not a problem as long as the demand is met. The compulsory donation is calculated and levied based on the ability of each member. Funds raised from the donations are used to support the activities of Boko Haram. Funding of the organization is one of the reasons why they rob and raid communities.

Since one of the ways Boko Haram finances its activities is through self-help. As this method is difficult to detect, there is the need for relevant authorities to enhance their intelligence gathering capabilities and consider undercover operations as a way of obtaining information about terrorists and terrorist groups like Boko Haram.

3. Through Begging

Boko Haram raises fund through begging, using vulnerable persons. They use children, the physically challenged, and the elderly to appeal for donations in order to raise fund in support of the group's activities. These beggars are positioned at strategic locations in main towns and cities and are sometimes used as spies for the terrorist organization. The activities of Boko Haram is the reason behind the influx of beggars in our major cities.

The exploitation of alms-giving in Nigeria appears to be a common practice by Boko Haram. Boko Haram appears to be taking advantage of unsuspecting people to raise funds in support of their activities. This reveals the need for relevant authorities to monitor the activities of street beggars, particularly in areas known for terrorist activities, in order to curtail this type of fund raising and ensure that terrorists do not exploit a vulnerable population.

4. Through smuggling of arms, assets and currency.

Boko Haram members when smuggling arms into the country, donate the proceeds from the sale of such arms to the organization. Arms are sent to Boko Haram for their operations free of charge from their allies outside the country who either supply or facilitate the process for acquisition of the illicit small arms and light weapons.

Boko Haram frequently uses women to deliver arms, ammunitions and cash to their members. Women are preferable because security personnel at roadblocks generally do not search them as the majority of security personnel are Muslim men and Islamic tenets forbid them from having any physical contact with women who are not their wives. Boko Haram exploits this reality. When male couriers are used, they pretend to be commercial drivers moving goods and commuters to their destinations. On arrival at the points of destination, calls are put through to recipients' members of Boko Haram to meet the couriers at designated points for collection.

These are some of the insidious means used by Boko Haram to move funds and other materials intended for use in attacks. It highlights the need for security officials to be creative by thinking ahead of Boko Haram. It also shows the influence of culture and religion and how they can inadvertently come into conflict with security measures.

5. Drug trafficking

Drug trafficking is another business that gives terrorists funds for the running of their organization. Al Qaeda, AQIM and the Fuerzas Armadas Revolucionarias de Colombia

(FARC) are notable terrorist organizations that involve in drug trafficking to generate fund for their activities and that of their junior allies like *Boko Haram* and *Al-Shabaab*. It is regrettably that members of Boko Haram are now actively involved in drug trafficking, shipment of cocaine across Africa with false identification documents aimed at generating fund for the running of their activities.

Drug trafficking was found to be an attractive source of funds for terrorist organizations, enabling them to raise large sum of money. Given this reality there is a need for the government to strengthen measures against drug trafficking in Nigeria.

#### 6. Through human trafficking.

Boko Haram also traffic in human beings in order to make money for the funding of their activities. They also involve in kidnapping for ransom, robbery and raiding of communities for fund raising.

Terrorists and terrorist organisations depend on funds for their personal, operational, and organisational needs. Detecting and cutting of their source of funding are critical steps in denying them the ability to operate. Apprehending, investigating and prosecuting the financiers of terrorist groups and terrorist acts will serve as a deterrent to others. The freezing, confiscation and seizure of terrorist assets will equally have a deterring effect. More importantly, understanding and addressing the issue of terrorist financing is critical because of the destructive effects of terrorism on peace, security and development.

In conclusion, these are some of the ways Boko Haram raises fund for their activities. It is important that our security agents have reliable knowledge of the methods and techniques terrorists and their supporters use in raising, moving and utilising fund for their activities. That will help them to proactively checkmate their nefarious activities.

## **2.7 CONCEPT OF CRIME UNDER DOMESTIC AND INTERNATIONAL LAW**

### **2.7.1 INTRODUCTION**

The word crime is synonymous with the word offence<sup>48</sup>, and both words are interchangeable. A crime is an act or omission which under any written law is deemed to be a crime, thus attracting punishment. The hallmark of a crime, therefore, is the singular criterion of the act or omission complained of or alleged, being designated a crime in a statute, be it an Act of the Federation, a law of a State or a bye law of a local government<sup>49</sup>.

International law through various conventions and international instruments provides for deterrence against international crimes such as genocide, war crimes and crimes against humanity. The International Criminal Courts or tribunals have jurisdiction over these crimes and can adjudicate on them. Despite being regarded as a crime and a threat to international peace and security, for the most part, acts of international terrorism do not fall into the category of “core international” crimes such as genocide, war crimes and crimes against humanity. There is therefore no international criminal courts or tribunals with jurisdiction over these crimes.<sup>50</sup> The International Criminal Court, created in 1998 by the treaty of Rome, is granted jurisdiction over the crime of genocide, war crimes and the crime of aggression. Jurisdiction over acts of terrorism was rejected during the negotiations that resulted in the court’s creation.<sup>51</sup>

Terrorist crimes (as defined in the universal instruments against terrorism) fall in the category of national criminal law of international concern. The duty to bring perpetrators of terrorism to justice therefore rests solely with the national criminal justice systems. The case of Nicaragua v. United States<sup>52</sup> clearly demonstrates the fact. It is interesting to note that the I.C.J. did not use the term ‘terrorism’ in this very long case despite the fact that the central claim by Nicaragua against US included among other things, an allegation that the US was “recruiting, training, arming, financing, supplying and otherwise, encouraging, supporting, aiding and directing military and paramilitary

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<sup>48</sup>Attorney-General v. Awoyele (1952) 19 NLR 52

<sup>49</sup>Oluwatoyin Doherty: Criminal Procedure in Nigeria. Law and Practice, Blackstone Press Limited (1990) pg. 1

<sup>50</sup>United Nations Office on Drugs and Crimes Vienna Handbook on Criminal Justice Response to Terrorism Criminal Justice Handbook on Criminal Justice Response. Criminal Justice Handbook Series, United Nations, New York, 2009 p.9

<sup>51</sup> Ironically, the United States that declare war on terror contributed in denying the court jurisdiction on terrorism.

<sup>52</sup>I.C.J Reports, 1986. P.4

actions in and against Nicaragua” and “killing, wounding and kidnapping citizens of Nicaragua”. Without adequate domestic capacity to discharge that duty, international counter-terrorism efforts will almost certainly fail.

The criminal justice response to terrorism is therefore essentially framed by national law, which itself must comply with various aspects of international law. There are several components of international law that are directly relevant to the criminal justice response to terrorism. In addition to treaty-based obligations stemming from their ratification of the universal legal instruments against terrorism and several legally binding obligations imposed through the relevant Security Council resolutions on counter-terrorism, States also have a number of legal obligations under other branches of international law, including international human rights, humanitarian, refugee and customary law.<sup>53</sup> These legal regimes are complementary bodies of law that share a common goal, namely, the protection of lives, health and dignity of persons. While international humanitarian law applies only in times of armed conflict, human rights law applies at all times: in times of peace and in times of armed conflict.

The concurrent application of these two bodies of law has been expressly recognized by various international tribunals and national courts<sup>54</sup>. As a result of technological advances in transport, information technology and telecommunications, which have made the world a single vast global village, crime is no longer a national phenomenon but has taken on a transnational dimension. The United Nations Convention against Transnational Organized Crime (article 3) gives a clear definition of transnational offence. An offence is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State.

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<sup>53</sup> United Nations Handbook on Universal Legal Framework against Terrorism Op. cit at p.1

<sup>54</sup> Gillard, E. ICRC Legal Adviser, International Committee of the Red Cross, statement at the International Association of Refugee Law Judges World Conference held at International Criminal Courts Stockholm on 21 – 23 April, 2005.

- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State or
- (d) It is committed in one State but has substantial effects in another State.

Because of its transnational nature, terrorism, like all transnational organized crime, poses serious problems for national justice systems. It is the national courts that try perpetrators since there is no international court that is competent to try terrorism cases (unless such cases present elements that constitute crimes for which the international criminal court is competent). It is difficult for criminal justice officer to investigate or institute criminal proceedings against persons suspected of participating in terrorist activities when such persons are outside their territory or where key evidence, witnesses, victims or the proceeds from the crime are located outside the country's jurisdiction, or where the legal and judicial systems with which they must cooperate are different from those of their own country.

However, practitioners cannot realistically work within the confines of national borders. They have no choice but to cooperate with their foreign counterparts in order to bring the perpetrators of such offences to 'justice' as the Lockerbie case evinces. The effectiveness of the fight against transnational crime depends on close cooperation between States in criminal matters<sup>55</sup>. Several interdependent forms of international cooperation in criminal matters can be identified from an analysis of legal practice and doctrine namely:

1. Extradition
2. Mutual legal assistance
3. Transfer of criminal proceedings
4. Execution of foreign sentences
5. Recognition of foreign criminal judgments
6. Confiscation of the proceeds from crime

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<sup>55</sup> United Nations Office on Drugs and Crime Vienna Module 3, International Cooperation in Criminal Matters: Counter Terrorism. Counter Terrorism Legal Training Curriculum United Nations New York 2012 p. 4

7. Collection and exchange of information between intelligence and law enforcement services
8. Regional and sub-regional legal forums access to justice

Of all these types of cooperation, the universal counter-terrorism conventions and protocols focus on extradition and mutual legal assistance. These are also the best-known and most common forms of co-operation in practice.

Domestically, various States have national laws that are meant to curb the activities of criminals. Such criminal activities like terrorisms, kidnapping, armed robbery, assassination, hostage taking, bunkering, obtaining by false pretences, etc. are provided for in the criminal laws of the land. It is the responsibility of all practitioners to ensure that criminal justice practices are in compliance with national law and applicable international law. Monitoring that compliance and taking action to address non-compliance typically falls within the ambit of legal judicial institutions (including the defence bar and prosecution services) and various institutional oversight mechanisms. Civil society and public media must also remain vigilant and assume their own responsibility in this regard. For instance, in India, the Government of India succeeded to pass the Act named Prevention of Terrorism Act, 2002. The President of India also assented to a related law, The Passport (Amendment) Act, 2002, which seeks to confer on the government the power to suspend the passport and related travel documents of subversives and terrorists to curb their international movements<sup>56</sup>.

In Nigeria, there are various laws that are enacted to combat crime. Some of them are Anti-Money Laundering and Terrorism Act 2011, Terrorism (Prevention) (Amendment) Act, 2013, Amended Constitution of the Federal Republic of Nigeria 2011, Economic and Financial Crime Commission Act, ICPC Act, Criminal Code, Penal Code, Criminal Procedure Code & Criminal Procedure Act, The Administration of Criminal Justice Act, 2015, etc. The Lockerbie case, however, manifest the relevance of international law to terrorism cases. Following the bombing of Pan Am Flight 103 over

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<sup>56</sup> Sirchi J.P.S: Criminology and Penology, Allahabad Law Agency Ltd, Pakistan, 2004, p. 422 – 423.

Lockerbie, Scotland in 1988 known as the Lockerbie bombing, the United Kingdom and the United States simultaneously issued indictments against two Libyan suspects and demanded that Libya surrender them to either jurisdiction, Libya refused and indicated that it would prosecute the two Libyan nationals pursuant to the Montreal Convention, as it was entitled and indeed obliged to do under Article 7.

However, given that one of the suspects was a member of the Libyan Intelligence Agency, doubts were expressed as to whether Libya would provide genuine trials of both men. At the initiative of the United Kingdom and the United States, the UN Security Council subsequently became involved, urging Libya in Resolution 731 to respond to the requests for extradition.

Subsequently in March 1992, the Security Council adopted Resolution 748 in which they decided that Libya's failure to respond effectively to Resolution 731 amounted to a threat to international peace and security. Acting under chapter vii of the Charter of the United Nations, the Security Council demanded compliance with the requests for the surrender of the suspects and imposed economic sanctions upon Libya. Contemporaneously, International Court of Justice (ICJ) was seized of a case brought by Libya against the United Kingdom and the United States under Article 14 of the Montreal Convention.

In its application, Libya argued that it had complied with its obligations under that Convention by taken steps in its own courts to investigate and prosecute the offenders, and alleged that the United Kingdom and the United States were in breach of their obligations to Libya under the Montreal Convention. Libya also sought provisional measures enjoining the United Kingdom and the United States from taking any action against Libya calculated to coerce or compel Libya to surrender the accused individuals to any jurisdiction outside of Libya. The court refused Libya's request for interim orders, finding that Resolution 748 (which effectively required the surrender by Libya of the two suspects) took precedence over Montreal Convention by operation of Article 103 of the Charter

of the United Nations. At subsequent proceedings on the issue of jurisdiction, the ICJ went on to conclude on narrow grounds, that it was competent to hear the merits of the case.

Had the case been heard in full, it might have provided the ICJ with an opportunity to examine both the legality of Security Council Resolution 748 and the capacity of the court to engage in the judicial review of the decisions of the political organs of the United Nations. The court might also have clarified the scope of key provisions of the Montreal Convention and the respective obligations of arresting and requesting States. However, these opportunities did not eventuate, as on 10 September 2003 the parties agreed to discontinue the proceedings 'without prejudice'. The main lesson from the international legal repercussions of the Lockerbie bombing is that the obligation to either extradite or prosecute, found in Article 7 of the Montreal Convention and repeated in other counter-terrorism instruments, may give rise to significant and intractable disputes between arresting and requesting States as to the appropriate forum for prosecuting terrorist offences.

The obligation to prosecute when extradition is refused may be regarded by some States not as evidence of the effective operation of international counter-terrorism law, but instead as a contrivance employed to prevent offenders from facing justice. The bipartite *aut dedere aut punire (judicare)* obligation, which lies at the fulcrum of international counter-terrorism law, is designed to ensure that offenders are brought to trial and cannot enjoy immunity by escaping the jurisdiction where an offence was committed. However, this obligation rests on the assumption that the criminal justice systems of all States are of equal standing. Hence an arresting State is entitled to refuse to extradite an offender and instead elect to prosecute, notwithstanding claims by other States parties that the arresting State's trial processes are unsatisfactory. There is no way States can make an enforceable demand on the basis of existing treaties for the extradition of a terrorist suspect on the grounds of such claims.

However, there are several strategies by which attempts may be made to resolve such deadlocks. Despite settlement procedures, both diplomatic and legal, may play a role in facilitating international

cooperation in the extradition and prosecution of alleged offenders to a jurisdiction satisfactory to all interested States. In this respect, a distinctive feature of the United Nations counter-terrorism treaties is their inclusion of compulsory dispute settlement provisions that require the submission of resolved disputes between contracting parties to arbitration or to the international court of justice. Indeed, it was on the basis of such a provision in the Montreal Convention (Article 14) that Libya sought the resolution of its dispute with the US and UK over the extradition of Libyan suspects in the Lockerbie case<sup>57</sup>. The ICJ could therefore be utilized to settle disputes as to whether an arresting State is justified in refusing extradition, either on the grounds of the political offence exception or on the basis that the alleged offender would be subject to a politically motivated prosecution. In conclusion; from the foregoing, corporation is *sine qua non* between International and Domestic laws for the war against crimes, including terrorism to be upheld.

## **2.7.2 HOW COUNTRIES RECOGNIZE AND ADOPT INTERNATIONAL CRIMINAL LAW UNDER DOMESTIC JURISDICTIONS**

### **i) UNITED KINGDOM**

Under Section 51(1) of the International Criminal Court Act 2001, genocide and crimes against humanity committed either in the United Kingdom or by United Kingdom nationals abroad can be prosecuted but, as a dualist nation. Other prosecution can only be mounted where the United Kingdom has acceded to conventions and treaties that create the offences including: war crimes, torture, and enslavement and forced labour offences. The criminal jurisdiction is presumed territorial in the absence of express words and based on the presence of the accused within the jurisdiction. There are a number of statutes that impose criminal liability on UK and/or non UK nationals who commit particular acts outside the jurisdiction, but this can only be exercised where the individual is present or visits the United Kingdom, otherwise the United Kingdom government would need to seek extradition from the State in which he is located.

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<sup>57</sup>Tim, S. – “International Criminal Law and the Response to International Terrorism” (2004) UNSW Law J1 30; (2004) 27 (2) University of New South Wales Law Journal 454.

## **ii) UNITED STATES**

Because the US courts do not subscribe to the doctrine of universal jurisdiction, the relevant international law must have been incorporated directly into U.S criminal law through congressional legislation. Congress has enacted statutes covering genocide, war crimes, torture, piracy, slavery and trafficking in women and children to meet the U.S obligations under international agreements. If a criminal act is commenced in one U.S state, but the defendant has fled to another state, the first state must seek extradition for trial.

## **iii) CANADA**

In Canada the Crimes Against Humanity and War Crimes Act S.C. 2000 (CAHW) has incorporated the following as domestic crimes: genocide, crimes against humanity, war crimes, breach of responsibility by a military commander or a superior, offences against the administration of justice of the international criminal court and possession or laundering or proceeds derived from these crimes. Normally, criminal jurisdiction is exclusively territorial but CAHW invoke universal jurisdiction as defined in customary international law.

## **iv) NIGERIA**

Under S.4 of the 1999 Amended Constitution of the Federal Republic of Nigeria, the National Assembly comprising the Senate and the House of Representatives has the sole responsibility of law making for the Federal Republic of Nigeria. Because the Nigerian courts do not subscribe to the doctrine of universal jurisdiction, the relevant international law must be domesticated and incorporated directly into Nigeria Criminal Law through legislation by the National Assembly. National Assembly has enacted statutes covering terrorism, hostage taking, genocide, war crimes, torture, piracy, slavery and trafficking in women and children to meet the Nigeria obligations under international agreements.

In conclusion, therefore, there has to be a synergy between the International and Domestic laws for the war against terrorism and other crimes to be won.

## CHAPTER THREE

### TERRORISM IN NIGERIA.

#### 3.1 Introduction.

One of the gravest challenges Nigeria is facing is terrorism. It has become a monster to the government and a nightmare for the people. Though a global issue, Nigeria has to bear the brunt of it. As was noted by the researcher of this research, terrorism was alien to Nigeria, and if terrorism was alien to our country, it means that there are certain factors that influenced, encouraged or welcome its arrival; for the societies in which the terrorist groups germinate and grows furnish the support for them<sup>58</sup>. Nigerian society is no exception.

#### 3.2 CAUSES OF TERRORISM IN NIGERIA

##### i. INJUSTICE

Injustice is one of the foremost factors that breed terrorism. Wherever there is injustice, justice has taken a flight. The concept of justice connotes the legal equality of human beings. It is conceived and formulated around the dignity of the human person. The external manifestation of the concept of justice is the sense of justice, i.e. equality of all citizens before the law and in society general for all practical purposes<sup>59</sup>. There are two sides to justice within the context of Nigeria, namely:

- a. Legal Justice and
- b. Social Justice

As far as the masses of our people are concerned, the two are equally important in the interest of development, stability, peace, order and good governance. No wonder, Justice Abbot once said, "While my constituency is law, my vision is social justice". There cannot be social justice in the

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<sup>58</sup>Watson Francis M. Political Terrorism: The Threat and the Response. Robert B. Luce Co.. Inc. Washinton-New York, 1976, page 117.

<sup>59</sup> Adaramola, J: Basic Jurisprudence, MacMillan Press Ltd, Ibadan, 1992, page 3

midst of grinding and excruciating poverty caused by the mismanagement of the common wealth of the people. Poverty within the context of the Nigerian society means:

- (a) Lack of employment and unemployment benefits otherwise called social security
- (b) Lack of access to good education
- (c) Lack of good and affordable house to live in
- (d) Lack of access to good healthcare
- (e) Inaccessible good and nutritious food
- (f) Lack of clean water for both domestic and industrial uses
- (g) Lack of electricity
- (h) Lack of effective, efficient and affordable rail, road, air and waterway transportation systems
- (i) Lack of cheap but efficient communication and telecommunication facilities; and
- (j) Insecurity of life and property

Therefore, for there to be social justice in Nigeria, the basic economic rights of our people must be made fundamental rights so that the ordinary people are not driven to the precipice of despair, anguish, pain and frustration. An unemployed person cannot produce. And if we do not care for him, he will engage in anti-social activities that will hamper all the other sub-systems - economic, political and social, etc. The rising trend in which people take the law into their hands is a product of frustration and lack of confidence in the government. The unprecedented growth in terrorism is traceable to economic deprivation of the people and lack of economic justice. Our late sage, Chief Gani Fawehinmi once said, 'if our democracy is to survive and our legal justice is to have any meaning, all governments in Nigeria must invest in social justice and the only way to do this is to:

- (a) make economic rights fundamental rights;

(b) and massively fund those economic rights<sup>60</sup>

Justice also demands that an Hausa man should leave in any part of the country without fear of molestation or attack. Justice demands that property belonging to an Ibo man in any part of the country should not be declared abandon property.

Justice demands that the commonwealth of the people should be used for the overall benefits of all, not few. Injustice, therefore, is one of the foremost factors that breed terrorism. When the grievances of the people are not redressed, they resort to violent actions. So this is the case with Nigeria where timely justice has always been a far cry. Hence, the delayed justice is working as incentive for victims and dragging them to the swamp of terrorist organizations.

## **ii. POVERTY**

Poverty is one of the incubating causes of terrorism. Notably, majority of people in Nigeria are living below poverty line. While especially for the young stars, unemployment has made the matter worse. In this adverse circumstance and with the wasteful, exotic and flamboyance lifestyle of the ruling class, some people go to the level of extremism and even commit suicide. These are the people whose services are hired by the terrorist groups and they become easy prey to terrorism. During a March 2002 United Nations (UN) Summit in Monterrey, Mexico, for instance, world leaders appeared to make a direct causal link between terrorism and poverty. A similar assertion was made at the World Economic Forum held in New York a week earlier. It is common place to postulate that the law cannot rule in an environment of abject poverty. Cut-throat survivalist instinct will continuously breed anti-social criminalities. And in most cases the government, which is the society's trustee, is to blame<sup>61</sup>. Pervasive poverty as a result of government failure further contributes to Nigeria's increasing vulnerability to terrorism. In 2007, it was estimated that over 70 percent of Nigeria's 140

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<sup>60</sup> Chief Gani Fawehinmi (SAN): The Way The Law Should Go (Being an acceptance speech of Fawehinmi at his swearing in ceremony as a Senior Advocate of Nigeria along with eleven (11) others at the SC Abuja on Monday, September 10, 2001) p. 23.

<sup>61</sup> Fawehinmi Gani, *ibid*

million people survive on less than a dollar per day with 35 percent living in absolute poverty. Available statistics shows that the existential condition of the vast majority of the inhabitants of the northern Nigeria is the lowest in 2007.

While the prevalence of poverty (in percentages) in the South-South was 35.1; the South-East stood at 28.7; the South-West 43.0; that of the North Central was 67.0; North-West was also high with 71.2 and North-East was the poorest with 72.2. The three northern zones were reported to have an average poverty incidence of 70.1 percent as compared to 34.9 percent for the three Southern zones, leading to the conclusion that “very high level of poverty is essentially a northern phenomenon”<sup>62</sup> that has cataclysmic and catacomb effect on the people. This may account for why the northern region has remained a hotbed of violent conflicts and extremism<sup>63</sup>. Poverty in Nigeria, whether in the north, west, east or south, obviously, is as a result of poverty of leadership. In conclusion, poverty is one of the incubating causes of terrorism in Nigeria.

### **iii. UNEMPLOYMENT**

Large number of youths in Nigeria is without any means of legitimate livelihood and this definitely compound the environment of insecurity in Nigeria, which feeds into the overall vulnerability question. Nigeria’s youthful population is estimated to be close to 70 to 80 million, about 55 to 60 percent of the entire population. Yet a significant segment of the youth population remains unemployed, underemployed or unemployable. Official statistics shows that more than 80 percent of the youths are unemployed while about 10 percent are underemployed. The Saturday March 15, 2014 recruitment test of the Nigerian Immigration Service across the country, where about 70,000 turned up for the test in Abuja centre alone was a pointer to the enigmatic problem of unemployment in Nigeria. The recruitment drive ended in deaths, tears, sorrows and frustration for many at most of the centres across the country. The estimated 10 percent in employment are inundated with demands

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<sup>62</sup> Lukeman, M, “The North and Poverty Phenomenon”, THIS DAY, 6 February, 2007.

<sup>63</sup> Onuoha, F.C. Nigeria’s Vulnerability to Terrorism: The Imperative of a Counter Religious Extremism and Terrorism (COMREST) Strategy. THIS DAY, February 02, 2011, pg. 1.

from immediate and extended family members. Consequently, growing frustration and disillusionment that accompany long-term unemployment in a country where unemployment benefits are non-existent, underline their gravitation to crimes, making them more vulnerable to recruitment by criminal cartels, extremist and terrorist groups.<sup>64</sup>

Chief Mike Ozekhome (SAN) while narrating his ordeals in the hands of the kidnappers called on the government to immediately declare a state of emergency on security and youth unemployment.<sup>65</sup>

#### **iv. EXISTENCE OF RADICAL ISLAMIC SECTS**

The existence of radical fundamentalist sects exemplified by the activities of Boko Haram, Kalla Kalo, Ansarau and Jambs further heighten terrorist activities in Nigeria. Aside from the ferocity of the terrorist activities by these sects, the greatest challenge now stems from the emerging alliance between these fundamentalists and established transnational jihadist, particularly AQIM. It was recently discovered that the training camps of *BokoHaram* is based in Mali. Well over 200 Nigerians trained for 10 months in Timbuktu under local Al-Qaeda linked militants<sup>66</sup>. This bonding has the dangerous potentials of increasing their capacity to field more devastating attacks in the near future than they could otherwise<sup>67</sup>. In conclusion, therefore, there is the need to proscribe every radical fundamentalist sect in Nigeria, or at least monitor their activities closely to make sure that they do not indoctrinate their followers into extremism.

#### **v. RELIGIOUS INTOLERANCE**

In Nigeria, the two main religious divides are Christianity and Islam. The relationship between the Christians and Moslems has always been cordial, be it in schools, in tertiary institutions, in the offices, in the ministries, in sports, in various institutions and organizations: anywhere they find

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<sup>64</sup> Onuoha, F.C, "Youth Unemployment and Poverty: Connection and Concerns for National Development in Nigeria", International Journal of Modern Economy. Vol. 1 No. 1, pg. 1-3.

<sup>65</sup> Chief Mike Ozekhome was abducted on Friday August 23, 2013 on his way to his home town from Benin and was released on Thursday September 12, 2013.

<sup>66</sup> Daily Trust Wednesday, February 6, 2013. Vol. 31 No. 43, pg. 2 & 3.

<sup>67</sup> Onuoha, F.C. Op.cit pg. 2.

themselves they co-exist as brothers, living out their belief in the unity and indivisibility of an entity call Nigeria<sup>68</sup>. The religion of Islam which means submission to the will of Allah advocates freedom, peace and mutual agreement and warn against aggression. The following verses are explicit on it;

*“And do not aggress; God dislikes the aggressors”. (Quran 5:87)*

*“You shall resort to pardon, advocate tolerance, and disregard the ignorant”. (Quran 7:199)*

The relations of Muslims with others are based primarily on peace, mutual respect and trust. The theme in the Quran is peace, unless there is oppression or injustice that cannot be resolved by all the peaceful means available. The true religion of Islam forbids the killing of innocent people, irrespective of the cause, be it religion, political or social beliefs.

*“You shall not kill. God has made life sacred – except in the course of justice. These are His commandments to you that you may understand”. (Quran 6:151)*

*“You shall not kill any person; for God has made life sacred – except in the course of justice”. (Quran 17:33)*

In Islam, an amazingly powerful emphasis is laid on developing love for mankind and on the vital importance of showing mercy and sympathy towards every creature of Allah Almighty, including human beings and animals. For indeed, love and true sympathy are the antidote of terrorism. It therefore follows that religious fundamentalists who engage in killing the innocent do not derive any directive or inspiration from the Quran. They are infidel, they are wicked, they are inhuman, they are evil that hide under religion to perpetuate their selfish and evil agenda of causing disaffection between the peaceful Muslims and Christians. Most often, you discover that political motives inform the existence of fundamentalism of any sort; be it *Maitasene, Boko Haram, Kalla Kalo, Ansarau* or *Jambs*, hence the reason why religious intolerance is synonymous with various civilian

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<sup>68</sup> Though tribe and tongue (religion) may differ: in brotherhood we stand. See the first Nigeria National Anthem

administrations Nigeria has had. In the *Maitasene* days, governors courted the sponsorship of *Maitasene*. And today, nothing has changed as Senators, Governors and Ministers are linked with *BokoHaram*.

The politicians are so desperate: they are the ones that manipulate religion<sup>69</sup>. They whip up religious sentiment to achieve their narrow interest of remaining relevant in the political and power equation and calculus of the country. It is the same politicians that will come in the open to condemn the activities of those terrorists they armed and funded surreptitiously<sup>70</sup>.

Therefore, religious intolerance is another factor which is adding fuel to the fire of terrorism. Youths, educated through religious *Madrassahs*, are indoctrinated with extreme ideas outside the teachings of Prophet Mohammed. They become intolerant towards other religions and even other sects of their own religion. They impose their own extreme ideas and vent their fanaticism through violent actions. Intolerance makes society a jungle. It is proving destructive phenomenon for social harmony, political stability and economic growth.

## vi. CORRUPTION

There is no gainsaying the fact that corruption and the obvious inability of Nigerian government to frontally tackle corruption have provided a fertile ground for terrorism to thrive in Nigeria. According to Professor Chinua Achebe;

*“Corruption in Nigeria has passed the alarming and entered the fatal stage, and Nigeria will die if we continue to pretend that she is only slightly indisposed”<sup>71</sup>.*

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<sup>69</sup> Soyinka Wole: The Next Phase of Boko Haram Terrorism. Leadership, Tuesday, 7 February, 2012.

<sup>70</sup> It is pertinent to mention here that it is not all the politicians that engage in this unpatriotic and wicked act. We still have decent ones in our midst.

<sup>71</sup> Achebe C.: There was a country: A Personal History of Biafra, Allen Lane, Britain, 2012, pg. 249. Achebe, C: The Trouble With Nigeria, Fourth Dimension Publishing Co. Ltd, Enugu, 1983, pg. 38

This remark was first made 32 years ago by Achebe. The relevance of this remark 32 years ago is further re-inforced by its relevance 32 years after. Achebe went further to say:

*“Nigerians are corrupt because the system under which they live today makes corruption easy and profitable; they will cease to be corrupt when corruption is made difficult and inconvenient”<sup>72</sup>”*

It is pertinent to mention here that corruption goes with power. As the researcher researched on this work, he came across newspaper headlines with the following captions;

- Judgment for sale: NBA raises alarm over cash and carry verdicts<sup>73</sup>.
- Bribery saga gets messier, Lawan, Otedola trade claims<sup>74</sup>.
- N96m bribery scandal: Three Policemen arrested for helping Farouk Lawan<sup>75</sup>.
- Ibori loot: We’ll recover all Delta State money – Uduaghan<sup>76</sup>.
- Corruption: Nnaji forced out<sup>77</sup>.
- Alleged N101BN FRAUD: ALAO-AKALA, DANIEL, DOMA TO SPEND WEEKEND IN EFCC CELL... as anti-graft body declares ex-Governor Goje wanted over alleged N52bn fraud<sup>78</sup>.
- Nigeria is 35<sup>th</sup> most corrupt nation – TI<sup>79</sup>.
- ‘NNPC’s inefficiency cost Nigeria N15 trillion annually<sup>80</sup>.
- EFCC Quizzes Ex-Governor Idris over choice properties<sup>81</sup>.
- Senate: N195 billion pension cash missing<sup>82</sup>.
- Corruption under Jonathan is too much - Obasanjo<sup>83</sup>.
- How Benue politicians shared ₦500m Bank of Industry loan (BOI) meant for small and medium enterprises (SMEs) under former Governor Gabriel Suswam.<sup>84</sup>

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<sup>72</sup> Achebe Ibidem

<sup>73</sup> Daily Sun Tuesday, September 20, 2011 Vol. 6 No. 21 84

<sup>74</sup> The Guardian Tuesday June 12, 2012

<sup>75</sup> The Punch Tuesday June 19, 2012 Vol. 17 No 20,166

<sup>76</sup> The Nation Sunday August 26, 2012

<sup>77</sup> Blueprint No. 267 Wednesday, August 29, 2012

<sup>78</sup> Saturday Punch October 8, 2011. Vol. 7092 No. 1582

<sup>79</sup> The Punch Thursday, December 6, 2012 Vol. 17 No. 20, 287

<sup>80</sup> Sunday Trust Nov. 18, 2012 Vol. 7 No. 21

<sup>81</sup> Leadership Thursday December 20, 2012

<sup>82</sup> The Nation Vol. 7 No. 2338 Wednesday Dec. 12, 2012

<sup>83</sup> Leadership Wednesday 9, 2013 No. 1, 882

- Arms deals: Buhari orders arrest of Dasuki, others. Panel unveils how Nigeria was duped.<sup>85</sup>

Let it be stated categorically that our current malaise stemmed from corruption. According to Chinua Achebe, corruption in Nigeria has grown because it is highly encouraged<sup>86</sup> by those who benefit from it. Terrorism has continued to thrive in Nigeria because of those that benefit from it. Since 2011, the budget allocation for security in Nigeria has alarmingly increased with no corresponding improvement on security of lives and property of the people, rather security situation of the country has continued to nose-dive. If the huge amount allocated for security is not corruptly diverted, but judiciously used for the provision of security in Nigeria, terrorism would have belonged to the past. Those who corruptly enrich themselves from the huge security allocation would continue to ensure, at all cost, including the financing of terrorism that insecurity thrives in Nigeria. Therefore, until we stamp out corruption in all its ramification, terrorism which has become a veritable means of livelihood will not cease; and may lead to an order-less and lawless society as posited by Yusuf Aboki, a Professor of Law and former Dean, Faculty of Law, Ahmadu Bello University (ABU) Zaria, when he said:

*A society that is ridden with corruption is bound to be an order-less and lawless society which cannot advance economically. This is because those who have the means to corrupt others will use those means to achieve their aims. Secondly, those who benefit from corruption would defy the laws, ethics, moralities, etc., when making decisions to confer or deny benefits to deserving people as a result of corruption. The social consequence is injustice. A society bereft of justice is a society, where people have no hopes and expectations. It is a society, which will ultimately destroy itself.<sup>87</sup>*

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<sup>84</sup> The Nation Vol. 10, No. 3399, Monday, November 16, 2015

<sup>85</sup> The Nation, Vol. 10, No. 3401, Wednesday, November 18, 2015.

<sup>86</sup> Achebe, C. Op.cit pg. 249

<sup>87</sup> Yusuf A: Introduction to Legal Research Methodology, Tamaza Publishing Company Limited, Zaria, 1<sup>st</sup> Edition (2001) p. 54

Economic deprivation and corruption produce and exacerbate financial and social inequities in a population, which in turn fuel political instability. Within this environment, extremists of all kinds – particularly religious zealots and other political mischief makers find a foothold to recruit supporters and sympathizers to help them launch terrorist attacks and wreak havoc in the lives of ordinary citizens<sup>88</sup>.

Corruption stinks, even to the high heavens. The rabid nature of corruption in Nigeria was made manifest in the recently released figures by the US based agency, Global Financial Integrity. In its report, the agency stated that a total sum of \$182 billion dollars was looted from the national coffers and laundered in foreign banks between 2000 and 2009. What a massive capital flight? Imagine what could have been achieved with that kind of money if judiciously utilized in infrastructural development. Our roads, hospitals, education, justice system and other sectors would have benefitted. The power sector would have been fixed and provision of employment for skilled and unskilled persons would have been the probable consequence that flows from regular power supply, as more and more industries would have been opened. An idle mind, they say, is a devil's workshop. When Nigerians are gainfully employed, frustration and hardship which are the primary reason for joining terrorist groups would have been taken away from them, nobody would use them as instrument of destruction. Nigerians have suffered enough not only from the hands of terrorists but from the hands of the looters of our treasury.

Nuhu Ribadu has this to say on corruption in Nigeria<sup>89</sup>:

*Between 1960 and 1999, Nigerian officials had stolen or wasted more than \$440 billion. That is six times the Marshal plan, the total sum needed to rebuild a devastated Europe in the aftermath of the Second World War.*

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<sup>88</sup> Achebe C. Op.cit at p. 250

<sup>89</sup> Nuhu Ribadu: Capital Loss and Corruption: The Example of Nigeria. Testimony before the House Financial Services Committee, May 19, 2009.

*I have seen corruption provide fertile ground for injustice, for violence, for the failure of government and the failure to use revenues and donor support for the benefit of the people...*

*The examples I give today are not to point fingers, but to illustrate that corruption is killing Nigeria...*

In conclusion, corruption is one of the causes of terrorism in Nigeria.

#### **vii. ILLITERACY**

Illiteracy is one of the foremost factors that breed terrorism in Nigeria. It is easier to sell a dummy to an illiterate and get him convinced for want of knowledge, information and exposure. An illiterate can easily be convinced that by killing innocent people he gets automatic ticket to heaven. This is so because of his inability to read, understand and give the right interpretation to Quran or any other information given to him. He only depends on those he trusted as his leaders for his own actions.

#### **viii. LEADERSHIP FAILURE**

That Nigeria is today under the siege of terrorism is as a result of the cumulative effect of bad governance occasioned by bad leadership. We must take a hard and unsentimental look at the crucial question of leadership in order to establish the consequences of leadership failure in Nigeria. Leadership from the researcher's standpoint is about the judicious use of the commonwealth of the people to better the lots of the people. It is about direction and exemplary conducts of the leaders. It is equally about the welfare and security of the people. In Nigeria, it is about the looting of the treasury, it is about the deceit of the people, it is about singing praises to our leaders by sycophants, it is about the profligacy and flamboyant life style of our leaders, it is about the conspiracy of the ruling elites to perpetually hold down the people. Unemployment, poverty, corruption, impunity, violence and development deficit are some of the products of bad leadership rearing their ugly heads in Nigeria.

Our leaders have totally failed us. They have abdicated their responsibilities. Nigerians now provide their own water by digging boreholes, provide their own light by availing and powering their

generators, provide their healthcare by having medical personnel in their employ and even construct the roads that lead to their houses. What then is the fate of the have-nots in such a society like ours?

Government provides these amenities only in the radio, television and on the pages of the newspapers but not on ground. On yearly basis, staggering amount of money is budgeted for the same purposes, yet no significant improvement on the provision of basic amenities is recorded, despite the huge sum we earn from oil and tax levied on the people. A good instance of leadership failure in Nigeria is the shoddy land administration, especially in the Federal Capital Territory, Abuja. It is no longer news that one does not apply and get land on merit in the F.C.T, even after paying the mandatory and non-refundable fee of One Hundred Thousand Naira application fee.

Land allocation is now done at the discretion of the F.C.T Minister. If you must get land in F.C.T., you must be ready to part with a huge sum of money. Land in F.C.T. is for outright sale to the highest bidder. Even the areas that are mapped out for the low-income earners are hijacked by the wealthy and connected people, and in turn, sold to the low income earners at exorbitant prices. That is not the end of it. The government after merchandising the layouts will not open up the area for development by providing the necessary infrastructures and will go ahead to place a caveat that nobody is allowed to build in the area until infrastructures are provided.

The question is, how long will it take to provide infrastructures in a layout approved by the government and given to the people? Why is it that successive Ministers of F.C.T instead of developing the existing layouts, abandon them and go ahead to create new layouts that would subsequently be abandoned by his successor? Is government not a continuum? What is the motive behind this shenanigan? Why double allocation, revocation and re-allocation in the guise of overriding public interest when it is for selfish purpose? The 1999 Constitution of the Federal

Republic of Nigeria as amended clearly states: A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.<sup>90</sup>

Why develop some layouts and abandon others, even when the abandon ones were first in turn? Ten years after Kubwa FO1 and other layouts meant for low income earners came into existence, people are yet to inhabit the place for lack of infrastructures in the area, despite the huge yearly budgetary allocation for FCT development and the whooping revenues that accrue to FCTA from payment of Ground rent, Certificate of Occupancy Bill, Recertification Bill, Tenement Rates, Power of Attorney Registration Bill, Plot Extension Bill, Capital Gain Tax, Plot Sub-Division/Merger Bill, Certified True Copy Bill, Consent to Assign Bill, Deed of Release Bill, Violation Bill, Quarry Site Bill, Legal Search Bill, Fresh Land Application Bill, Tender Fees, etc. The FCT administration is tardy in opening these areas, and at the same time, will not allow any development to commence in such areas, thus adding to the yoke and frustration of the people in the face of high rent. It is all about leadership failure and has a way of influencing terrorism.

The same is obtainable in most of the States of the Federation. Most of our leaders are interested in feathering their own nest and not in serving the interest of the people they are meant to serve. This attitude of government contributes to the emergence of large number of frustrated population, especially young people. The challenge here is not the lack of sufficient public resources, rather, it is the problem of widespread profligacy and corruption especially in the public sector which compounds governance and bring about development deficit that encourage terrorism. Former Speaker, House of Representatives and current Governor of Katsina state, Aminu Masari blamed security lapses on leadership failure. He made the remark while speaking with newsmen in Ilorin, the Kwara State capital, and lamented the huge loss of lives and property to the *Boko Haram* menace. He said:

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<sup>90</sup> Code of Conduct for Public Officers, Part 1.1 of the Fifth Schedule of the 1999 Constitution of the F.R.N. as amended.

*It is very sad that people are being killed and properties are being destroyed, this should not be the case. The failure of security is the failure of leadership because it is part of the responsibilities of leaders to provide security for lives and properties. If you fail to do that, you have failed. There is no excuse for this failure because the government has all the resources both human and material to tackle the problem.*<sup>91</sup>

Still on leadership failure, the Former Speaker of the House of Representatives and current Governor of Sokoto State, *Aminu Tambuwal* attributed the leadership crisis in the country to how the leaders treat the people after elections, which he said had created the trust gap between the people and those in power.

*This fact is common knowledge. But since we are talking about the reality of nation building, we must agree that more often than not, we leaders behave as if the people owed us rather than the other way round.*

*Once we get power, we become selfish and arrogant and forget that we are servants of the people and not masters of the universe. This is the fundamental cause of our leadership crisis. Although we see daily proof that power is transient, it has not tempered our predisposition to misuse the opportunities we have and to squander the public goodwill on the altar of greed.*<sup>92</sup>

The electorates, immediately after elections, are completely abandoned by those they elected to power, as they are denied access to them. The successful politicians will link up even with the members of the opposition parties in the National Assembly in order to promote measures of common interest to their new elite status, while relegating the electorates to the abyss of poverty with occasional distribution of bags of rice and salt to the people whom they see and consider as beggars (for it is only a beggar that you give whatever you feel like giving him without first asking him what he actually wants). Witness how quickly our Honourable and Distinguish Senators passed

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<sup>91</sup> The Nation Vol. 07 No. 2439 Saturday, March 23, 2013. Pg. 60

<sup>92</sup> THIS DAY, Thursday 24 January, 2013 Vol. 18 No. 6484 pg. 12

bill to increase their emoluments; the amazing cooperation and seriousness with which they took and defended the issue of cutting down their bogus salaries and allowances when it was raised by the people they are meant to serve; unite to sell Legislative Quarters to themselves at under-valued prices; unite to cover up members wrong doing; divert the fund meant for constituency projects through their crony contractors, receive gratifications from Ministries, Departments and Agencies before approving their budgets; using their oversight functions for money making. All these and more they do without recourse to the electorates.

Goodluck Jonathan recourse to the people for their votes in 2011 to enable him continue as the President of Nigeria, but he fails, most often, to recourse to the electorates in taking crucial decisions of national importance. He failed to recourse to the people in granting state pardon to *Alameisigha* and others (the legality or otherwise of his action is not the issue here). The public outcry that followed his action point to the fact that majority of Nigerians denounced his action as not only morally wrong, but encouraging corrupt practices.

The leadership style of our leaders in a way, influence terrorism. The flagrant display of wealth and the ostentatious living of those in power on the commonwealth of the people in the face of ravaging poverty, unemployment and underemployment, is capable of driving one to frustration. Linked to leadership failure is the institutional paralysis, socio economic downfall of the people, blatant disregard to rule of law resulting to the deteriorating law and order situation; have provided a fertile ground for terrorism to grow.

Still on leadership deficit in Nigeria, former Minister of Defence, Lt. General Theophilous Danjuma in a speech titled, 'Nigeria in tatters' delivered in Zaria on Saturday, June 22, 2013 on the occasion of the conferment of chieftaincy title to him by the Emir of Zazzau (Zaria) decried the state of the economy, saying:

*In a highly competitive world, our children are missing out in getting qualitative and functional education. The masses of our people are*

*chained down in dehumanizing and grinding poverty, while we continue to maintain few islands of false prosperity in the turbulent ocean of penury and squalor. There cannot be peace and harmony where there is wide disparity between the few rich and a multitude of the poor.*

He went further to say:

*We are in a season of sorrow and mourning caused by decades of neglect of a sizeable segment of our society. Now our people are dying in thousands in needless battle and conflicts.*<sup>93</sup>

The assertion by General *Danjuma* is not only correct but a true reflection of what majority of Nigerians are passing through today. Many have died in needless battle and conflicts. Many are maimed in needless battle and conflicts and many have been displaced and rendered homeless in needless battle and conflicts. From the standpoint of leadership failure, the researcher sees terrorism as the culmination of a series of injustices, indignities and neglect that have existed over the years.

Furthermore, lack of coordination and information sharing among various institutions of government is also a cause behind the escalating terrorist activities. Our law enforcement agencies have completely failed to protect and provide security for the people. In the absence of proper trial, the terrorists are entrenching their roots firmly. Failure of the law enforcement agencies to bring the terrorist to book has emboldened terror mongers to strike at a target of their choice at will. Schools, hospitals, markets, public places and places of worship have become their favourite target. In conclusion, leadership failure has been found to be one of the causes of terrorism in Nigeria.

### **3.3 IMPACT OF TERRORISM ON NATIONAL DEVELOPMENT, PEACE AND SECURITY**

Terrorism produces harmful effects in several ways. The consequences of terrorism can be very dire and disastrous for all countries, both rich and poor, and their people. The normal social life gets

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<sup>93</sup>The Nation, Sunday, June 23, 2013 Vol. 07, No. 2525

totally disturbed and a large number of innocent lives go down in vain. Fear and terror hunts everybody and the productivity of people is miserably stalled. Everything may come to a halt and the dream of leading a life of happiness, liberty and peace is shattered. Economic and social aspects of the society come to a halt. Almost all become paralyzed amid terrorist incidents. Terrorism breaks down the social, economic, political and legal structures of the affected countries and the entire process of development stops. Socio-cultural mosaic goes to rack and ruin, and the economy of the country suddenly becomes a shamble. The rule of law and human rights crumble and people suffer terribly.

For developing countries, terrorism is fatal to their development planning because they can hardly withstand the violent assaults of terrorism; their longing for a better and brighter future goes up in smoke. Moreover, terrorism not only weakens the established political authority but also brings about political instability. In that situation, maintenance of law and order and human rights become almost impossible. Terrorism idealizes violence, does away with morality, distorts politics, promotes totalitarianism, subverts progress and destroys the apparatus of freedom in democratic societies. In fact, it destroys the will of a civilized society to defend itself. It appears that everything the mankind strives for collapses like a pack of cards. As a matter of fact, terrorism is war against humanity and civilization. Today, terrorism poses a great threat not just to human life, human rights, dignity and democratic values, but to the very existence of a civilized life.

For Nigeria, the consequences of being the epicentre of the war on terror have been disastrous psychologically, politically and economically, inter alia. Nobody understands terrorism more than Nigerians. They have been victims of various manifestations of it since 2009. Terrorism has so far killed scores of innocent Nigerians, and muffled the already slow pace of our economic growth brought about by the poor management of our huge resources. The financial cost of the on-going war on terror in the year 2012 and 2013 alone has been more than fifty billion dollars, including the government huge spending on security which yields minimal result. Recently, the former Central Bank Governor and now the Emir of Kano, *Sanusi Lamido Sanusi* said government's huge spending

on security will never succeed in ending insecurity in the country unless there is adequate investment in education, health and jobs creation. Speaking at a public lecture in Abuja, the erstwhile CBN governor said the hundreds of billions being spent on security amounted to fighting a symptom and that the situation could only worsen unless the original cause was treated. He further said the security sector received the highest allocation in the federal government's two successive budgets-N900 billion in 2012 and about the same in the year 2013. How much are we spending on education compared to how much we are spending on unnecessary overheads or how much we are spending on security?<sup>94</sup> This has badly affected in particular, the socio-economic development of Nigeria.

Since 2009, about 11,000 Nigerian civilians have lost their lives or have been seriously injured on an on-going fight against terrorism. The Nigerian Army has lost 2,795 soldiers in the war and 700 have been injured. There have been 301 bomb blasts in the country, including 65 major suicide attacks. More than 8 million people have been displaced. The damage to the Nigerian economy is estimated at 70 billion dollars over the last four years. Over 100,000 Nigerian troops were deployed at the frontline and 70,000 soldiers are fighting against militants on the fringes. The on-going insurgency has accelerated the already dismal economic situation and has affected almost each and every economic aspects of the country, particularly in the south-east and south-south where kidnapping and hostage taking are the order of the day; and in the entire northern part of the country, particularly, the north-east and north-west where bomb has succeeded in bombing away the economy. All the sources of revenue in the affected areas have been hurt including agriculture, the tourism industry, manufacturing and small scale industry<sup>95</sup>.

Due to insurgence, the loss to agriculture alone is imponderable and amount to billions of naira. The breakdown in law and order situation has damaged the fruit based economy of the northern areas. It has rendered billions of naira losses to the landowners, labourers, dealers and farmers who earn their livelihood from these orchards. Also the economic survey of Nigeria report shows that the share of

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<sup>94</sup> Daily Trust. Friday April 12, 2013 Vol.31 No. 90, pg. 1.

<sup>95</sup> CBN 2010 Annual Report, pg. 2-4.

agriculture in the gross domestic product (GDP) has been constantly falling. It accounted for 25.99 percent of GDP in 2008; however gradually its share shrank to 21.3 percent in 2012. The figures show that terrorism has not only decreased the production capacity of agricultural activity in these regions but also in the entire country. Unless the Federal Government shows that it is capable of containing the current insecurity precipitated by the series of bombings of the country, the much expected capital inflows will never be a reality.

The increasing level of insecurity is already frustrating efforts by the Nigeria Investment Promotion Commission (NIPC) to attract investments into the country. This was recently revealed by the Director, Policy Advocacy and External Relations, James Ebuetsse. Speaking to the press after the blast that rocked the UN office in Abuja, Ebuetsse regretted that Nigeria is fast becoming one of the unsafe nations of the world, advising that security is a critical area that needs to be addressed in order to encourage investments which is one of the cardinal points on the agenda of the then government. Figures taken from the Central Bank of Nigeria<sup>96</sup> shows that total foreign capital inflow into the Nigerian economy in 2010 was 5.99 billion dollars. A breakdown of this amount reveals that the FDI portion was just 12.2 percent or 668 million dollars, which is a 78.1 percent drop from 3.31 billion dollars in 2009. This is the third consecutive year of decline in FDI inflow into the country.

The CBN blames the drop of FDI flow into the country on “poor state of infrastructure and the global economic uncertainty”. Analysts believe however that this is largely due to insecurity and that the new net capital inflow of 33 billion dollars forecast for Nigeria in 2011 is under threat due to the bombings. The trend in the capital market in the last one month is even more worrying as there are signs that even portfolio investment may be leaving the country, as the stock market lost N183 billion in the last week of August 2011’s trading, the All Share Index hitting a twenty month low. The paper opines that foreign investors may be taken out their funds from the capital market following the crisis

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<sup>96</sup> Ibid

in the international capital markets. They note however, these funds will not flow back easily into the country if the current insecurity is not resolved by the government<sup>97</sup>.

The manufacturing sector has been hard hit by frequent incidents of terrorism and has created an uncertain environment resulting into low level of economic growth, the manufacturing industry is witnessing the lowest – ever share of 18.2 percent in the GDP over the last five years. In addition, the small and medium size enterprises which are key area of manufacturing in Nigeria have been affected across the country because of power shortages and recurrent terrorist attacks.

On account of persistent terrorist attacks many hotels in the north-east and north-west of the country have been closed. The hotel industry has suffered a huge loss running into billions of naira. Many workers have lost their jobs and transport sector has also face a severe blow. Due to war on terror, local people of war-ridden areas are migrating to other areas of the country. Nigeria has seen the largest migration since independence in 1960. These people have left their homes, businesses, possessions and property back home. This large influx of people and their rehabilitation is an economic burden for Nigeria.

Unemployment is still prevalent and now the question of providing employment to these migrants has also become a serious concern. This portion of population is contributing nothing worthwhile to the national income yet they have to be benefited from it. This unproductive lot of people is a growing economic problem of Nigeria. Social impacts have also been caused by this terror war. A society where terror exists cannot be healthy. Social dislocation has occurred due to terrorism. Social relations, economic transactions, free movements, getting education, offering prayers, etc. have suffered. Nigeria's participation in the anti – terrorism campaign has led to massive unemployment, homelessness, poverty and other social problems and ills. In addition, frequent incidents of terrorism and displacement of the local population have severely affected the social fabric.

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<sup>97</sup> Ibid

The rejection of posting by National Youth Service Corp members to serve in the war prone states like Kebbi, Kano, Borno, Yobe, Adamawa, Niger, Plateau, Benue and Kaduna to mention but a few have contributed seriously to the loss of manpower to these states, thus contributing to the manifest economic inefficiency of these states which in turn impact negatively on the national development. Educational institutions in these States have been in a state of comatose for the past five years as pupils and students alike left these war ravaged states in droves to other safe states. Those sitting for university examinations and other higher school examinations have deliberately avoided choosing these hotbeds of insecurity states for fear of being killed. This has brought untold economic hardship to the people of the area as they witness low patronage.

On the political front Nigeria is badly impacted in fighting the war against terrorism. The government of Goodluck Jonathan had taken many valuable steps to defeat terrorists. In spite of all the sacrifices the government made, it was branded to be insincere or half-hearted in fighting the menace. Every time the government was told to do more as Nigerians were tired of the clichés, “We are on top of the situation”, “The perpetrators will be brought to book.”

The then opposition party – All Progressives Congress (APC) seriously capitalized on the intractable and un-resolving challenges of insecurity and corruption in Nigeria to dismiss Goodluck Jonathan’s government as weak and incompetent. Using insecurity problem as a political chess board, the then opposition impacted negatively on Goodluck Jonathan’s government. The inability of Jonathan’s government to show serious commitment to ending terrorism in Nigeria robbed him of victory in March 28, 2015 presidential election. Nigerians who were tired and frustrated by the insecurity situation of the country voted him out. The trend in Spanish election repeated itself in March 28, 2015 presidential election in Nigeria. The outcome of the Spanish election just after the attacks in Madrid is an obvious example of what happened in Nigeria. The unexpected loss by the incumbent Prime Minister Azner has been widely attributed to the attacks and their aftermath. According to several polls and research projects, many voters came to the polls to vote for the opposition, even though they

were not planning to do so before the attacks.<sup>98</sup> The insecurity situation in Nigeria indeed eroded the trust between the people and the Jonathan's government, especially on *Chibok* issue. The continued terrorist activities in Nigeria portend great danger for the peace and security of the country.

The ferocious act of terrorism in Nigeria in the last five years, especially by the *Boko Haram* sect has succeeded in spreading terror and fear across the country, and particularly in the north where law and order has collapsed. Different murderous gangs roam the nooks and crannies of the cities, streets and villages day and night exploding bombs, shooting and killing innocent people. They set homes and business premises on fire; destroy places of worship, and attacking security agents and installations. These have promoted anarchy by disrupting the peace and security of the country and causing confusion and widespread panic among the people.

The sect activities have spread fear across the length and breadth of not only northern Nigeria but the entire country especially among the political class. Given the ethnic sensitivity of the country, it has pushed further its political polarization and raised the existing suspicion and distrust especially between the north and south.<sup>99</sup> Similarly, the terror has brought series of psychological problems. Fear in the hearts of the people is created. Trauma, depressions and confusion have been on the increase. The people feel insecure and unsafe in their daily life activities as time and again they watch the terror events taking place in different cities, especially those that have closely witnessed the suicidal bombings.

In conclusion, the impact of terrorism on national development, peace and security of Nigeria is imponderable. It is indeed a bitter pill in our mouths and a nightmare to all of us. Happily, the *Buhari* government is doing something drastic to wipe out terrorism in Nigeria.

### **3.4 International Legal Framework in Combating Terrorism**

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<sup>98</sup>The Concept of Terrorism: Analysis of the rise, decline, trend and risk. Dec.2008, Pg. 88. A Project Financed by the European Commission under the Sixth framework Programme.

<sup>99</sup>Ibid

### 3.4.1 Introduction

The international dimension of terrorism, a direct result of the increasing mobility of people and goods is exacerbated by the increasing ease with which information circulates worldwide. In this increasingly interdependent world, no country can tackle terrorism effectively in isolation, and cooperation among States to prevent and punish acts of terrorism is of paramount importance. The ability of States to assist each other quickly and effectively is no longer an optional bonus but an absolute necessity if they are to combat terrorism effectively.<sup>100</sup>

An effective and prevention focused response to terrorism should therefore include a strong criminal justice component element: One that is guided by a normative legal framework and embedded in the core principles of the rule of law, due process and respect for human rights. Perpetrators of terrorist acts as defined in the international legal instruments against terrorism are criminals, and they should therefore be dealt with by the criminal justice process as it is the most appropriate and fair mechanism to ensure that justice is achieved and that the rights of the accused are protected. In addition to this core function, criminal justice approaches to terrorism also provide for effective prevention mechanisms, including interventions that target the funding of terrorist and terrorist organizations and allow for the interception of conspiracies to commit attacks and the prohibition of incitement to terrorism.

The international legal framework against terrorism therefore consists of a set of instrument adopted at the global level that contains a series of legally binding standard for States to prevent and counter international terrorism. These instruments take the form of United Nations Security Council Resolutions and Treaties that have been developed by the international community over several years. There are several components of international law that are directly relevant to the criminal justice response to terrorism. In addition to treaty-based obligations stemming from their ratification of the universal legal instruments against terrorism and several legally binding obligations imposed through the relevant Security Council resolutions on counter-terrorism, States also have a number of

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<sup>100</sup> UNODC: International Corporation in Criminal Matters: Counter-Terrorism, UN, New York, 2010.

legal obligations under other branches of international law, including international human rights, humanitarian, refugee and customary law.<sup>101</sup>

### **3.5 International Legal Regime against Terrorism**

These legal regimes are complementary bodies of law that share a common goal, namely, the protection of the lives, health and dignity of persons while international humanitarian law applies only in times of armed conflict, human rights law applies at all times: in times of peace and in time of armed conflict. The concurrent application of these two bodies of law has been expressly recognized by various international tribunals and national courts.<sup>102</sup> It is the responsibility of practitioners to ensure that criminal justice practices are in compliance with national law and applicable international law. Monitoring that compliance typically falls within the ambit of legal judicial institutions (including the defence bar and prosecution services) and various institutions oversight mechanisms. Civil society and mass media must also remain vigilant and assume their own responsibility in this regard.

It is well known that the international community has not yet been able to agree on a comprehensive and generally accepted definition of terrorism despite several attempts by the General Assembly and the Security Council and legal jurists in that regard. It is important to note at this juncture that member States are negotiating to draft a comprehensive convention on international terrorism. The convention when in place, would complement the existing framework of universal instruments against terrorism and would build on key guiding principles already present in that regime. Those principles include the following: the importance of the criminalization of terrorist offences, making them punishable by law and calling for the prosecution or extradition of the perpetrators, the need to eliminate legislation that establishes exceptions to such criminalization on political, philosophical, ideological, racial, ethnic, religious or similar grounds; a strong call for member States to take action

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<sup>101</sup> UNODC Publication titled: Handbook on Criminal Justice Responses to Terrorism. United Nations Publication, 2009, pg.9.

<sup>102</sup> Emmanuela – Chiara Gillard, ICRC Legal Adviser, International Committee of the Red Cross, statement at the International Association of the Refugee Law Judges World Conference held in Stockholm on 21-23 April, 2005.

to prevent terrorist acts; and an emphasis on the needs for member States to cooperate, exchange information and provide each other with the greatest measure of assistance in the prevention, investigation and prosecution of terrorist acts.

However, the lack of a broad definition of terrorism does not present a legal challenge to practitioners. Since 1963, the international community has elaborated a comprehensive set of universal legal instruments to prevent terrorist's acts. They consist of more than a dozen conventions and protocols covering almost every conceivable kind of terrorist acts. These legal instruments (16 in total as at 2008), together with several Security Council resolution relating to terrorism (most notably, resolutions 1267 (1999), 1373 (2001) and 1540 (2004) make up what is commonly referred to as the universal international legal regime against terrorism.

The International Legal Instruments were developed under the auspices of the United Nations and its specialized agencies, in particular the International Civil Aviation Organization, the International Maritime Organization and the International Atomic Energy Agency, and are open to participation by all member States. They are based on the understanding of international terrorism as endangering international security and world peace. The most recent instruments were adopted in 2005 in the form of substantive changes to three of first 13 instruments including the amendment to the convention on the physical protection of nuclear materials<sup>103</sup> and amendments to both the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation<sup>104</sup> and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.<sup>105</sup> The 16 instruments cover the following unlawful terrorist acts:

- Acts of aircraft hijacking;
- Acts of aviation sabotage;

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<sup>103</sup> Adopted on July 8, 2005 by the Conference to consider and adopt proposed amendment to the Convention in the physical protection of Nuclear Material

<sup>104</sup> Adopted on 14 October, 2005 by the Diplomatic Conference on the Revision of the SUA Treaties (LEG/CONF/5/22

<sup>105</sup> United Nations, Treaty Series, Vol.2178, No. 38349

- Acts of violence at airport;
- Acts against the safety of maritime navigation;
- Acts against the safety of fixed platforms located on the continental shelf;
- Crime against internationally protected persons (such as the kidnapping of diplomats);
- Acts of unlawful taking and possession of nuclear material;
- Acts of hostage – taking;
- Acts of terrorist bombing;
- Acts of funding of the commission of terrorist acts and terrorist organizations;
- Nuclear terrorism by individuals and groups.

These instruments create, obligations for States parties to adopt substantive criminal and procedural criminal law measures to counter various acts of terrorism, as well as administrative measures to combat the financing of terrorism. The goal of these instruments is to ensure that criminal justice practitioners are equipped with effective mechanism to lawfully prevent and punish acts of terrorism. These measures are designed to have both a preventive and a dissuasive impact on terrorism.<sup>106</sup>The dissuasive aspects of these international instruments are based in part on an attempt to harmonize the criminal legislation of States and to strengthen law enforcement and criminal justice cooperation. Effective criminalization of terrorist behaviour by all States is meant to eliminate safe havens for perpetrators of terrorism crimes and to facilitate international cooperation among State agencies involved in the fight against terrorism.

### **3.6 The Regional Efforts of ECOWAS in Combating Terrorism.**

Economic Community of West African States has resolved to leave no stone unturned in their quest to rid the region of terrorism. On 27 and 28 February 2013, this resolve was embodied in the Political Declaration on a Common Position Against Terrorism which included a Counter Terrorism Strategy and Implementation Plan, adopted by the Authority of Heads of State and Government of the

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<sup>106</sup>UNODC Publication op. cit at pg 11.

Economic Community of West African States (ECOWAS) at its 42<sup>nd</sup> ordinary session in Yamoussoukro, Coted' Ivoire. The Strategy is the result of an inclusive process that began in 2009 and has involved national, regional and international experts, civil society and media organizations.<sup>107</sup>

The principal purpose of Declaration and Strategy is to prevent and eradicate terrorism and related criminal acts in West Africa, with a view to creating conditions conducive to sound economic development and ensuring the wellbeing of all ECOWAS citizens. The plans also seek to give effect to regional, continental and international counter-terrorism instruments and to provide a common operational framework for action.

At a time of rising transnational criminal activities and terrorism in West Africa, the Declaration was hailed as a historic achievement in ECOWAS's efforts to combat terrorism. Military coups, internecine conflicts, civil war, mercenary activities and authoritarian regimes have exposed West Africans to different incarnations of terrorism. The recent intensification of terrorist attacks in the region, particularly following the escalation of the Niger Delta conflict in 2006 and the resurgence of Boko Haram in 2009, as well as the occupation of northern Mali by terrorist group in 2012, have alarmed not only West African countries but also the broader international community. These developments have exposed the fragility of West African states and the profound threat that terrorism poses to peace, stability, development and territorial integrity.<sup>108</sup>

A key lesson brought home by these contemporary manifestations of terrorism has been their transnational nature, whereby an attack may be planned in country A and executed in country B, and materials for the attack may have come from countries C, etc. in addition, terrorist groups in the region have tended to form alliances with al-Qaeda and likeminded groups, as well as with

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<sup>107</sup>FATF Report, Terrorist Financing in West Africa

<sup>108</sup>Ewi M.A: The new ECOWAS Counter Terrorism Strategy and its Implications for West Africa, Institute for Security Studies (ISS) Publication, 13 March, 2013 pgs. 1&2

transnational criminal networks such as drug traffickers, arms smugglers and cigarette traffickers. It is in the context of these considerations that the Declaration and Strategy were adopted.<sup>109</sup>

The key question is whether the Declaration and Strategy can solve the complicated problem of terrorism in West Africa, which is often intertwined with transnational criminality. The effectiveness of any such instrument depends on its implementation. To achieve results, systematic actions are needed to enforce the strategy. The commitment of ECOWAS member states, other regional actors and international partners to the practical translation of the Strategy's provisions will be key to the Strategy's success. It is therefore worth considering the Strategy's design, characteristics and key provisions.

Firstly, it is important to note that although ECOWAS had long espoused the need to prevent and combat terrorism, the Declaration and Strategy constitute the first major ECOWAS policy framework documents adopted specifically to deal with the problem. The Declaration provides broad policy areas, including norms and principles that are shared by all member states and enshrined in relevant regional, continental and international legal regimes. For example, member states unequivocally condemn terrorism and related offences such as incitement to and financing of terrorism. It also establishes the principle that a terrorist attack in one member state constitutes an attack on all<sup>110</sup>.

Secondly, the Strategy is inspired by the United Nations Global Counter-Terrorism Strategy to provide comprehensive steps that states must take individually and collectively to address the threat of terrorism. It rests on three main pillars: prevent, pursue and reconstruct. The most important pillar is the first, which requires member states to undertake a wide range of activities to prevent terrorism. These include ratifying and effectively implementing the relevant legal regimes, eliminating conditions conducive to the spread of terrorism, enhancing early warning and operational intelligence, preventing extremism and radicalisation, and promoting democratic practices and the

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<sup>109</sup>Ibid

<sup>110</sup>Ibid

protection of human rights. The ‘Pursue’ pillar is meant to enable member states to undertake rapid, timely and effective responses to terrorism when it occurs. Some of the main objectives are to investigate, intercept and disrupt terrorists planning, networks and activities; promote a rule-based or criminal justice approach that seeks to bring terrorist leaders and their supporters to justice; and cut off terrorists funding and access to equipment, finances, training, etc.<sup>111</sup>

The third pillar deals with the aftermath of a terrorist act and is aimed at rebuilding society and enabling the state to heal social wounds caused by terrorism and counter-terrorism activities. Some of the major features of the Strategy are:

1. An ECOWAS Counter-Terrorism Coordination Unit
2. An ECOWAS Arrest Warrant
3. An ECOWAS Black List of Terrorist and Criminal Networks

The Strategy also calls for the adoption of an ECOWAS Counter-Terrorism Training Manual. An integral part of the Strategy is its implementation plan that details the practical modalities for action.

It is still too early to assess the impact of the Strategy. Its implementation will, however, have a significant and robust effect on the modus operandi of states and of the ECOWAS Commission regarding the promotion of peace and security. If operationalized, the ECOWAS Arrest Warrant, for example, will strengthen cross-border cooperation among law enforcement agencies and eliminate safe havens for terrorists and other criminals. In particular, it will enable ECOWAS States to pursue terrorists across borders and so help prevent a Mali-Nigeria-like crisis in neighbouring countries.

The challenge the Strategy faces is that its implementation could be hamstrung by a lack of political will. Given the sweeping nature of the Strategy, substantial human, financial and material resources which ECOWAS member states do not have will be required to ensure its full implementation. The Strategy is also likely to suffer from the perennial problem of competing priorities between counter-

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<sup>111</sup>Ibid

terrorism and other issues, whereby the former often loses out. Indeed, the lack of debate on the draft Strategy at the level of the Authority of Heads of State and Government is already a worrying sign.<sup>112</sup>

While the Strategy may not be a complete answer to the problem of terrorism in West Africa, it certainly does provide a robust and proactive framework for containing the threat of terrorism. For its full potential to be realised, however, the Strategy must be implemented at all levels. ECOWAS states must take practical measures to ensure that the provisions of both the Strategy and the Declaration are scrupulously enforced at the national and regional level. The ECOWAS Commission should urgently operationalize the Counter-Terrorism Coordination Unit and set up a monitoring mechanism, including log frames to keep track of states' implementation of the Strategy. At the same time the AU, through the African Centre for the Study and Research on Terrorism (ACSRT), should support ECOWAS endeavours, particularly the capacity-building of States and the Counter-Terrorism Coordination Unit.<sup>113</sup>

The Inter-Governmental Action Group against Money Laundering in West Africa(*GIABA*) was established by the Economic Community of West African States (ECOWAS) Authority of Heads of State and Government in the year 2000. GIABA is a specialized institution of ECOWAS that is responsible for strengthening the capacity of member states towards the prevention and control of money laundering and terrorist financing in the region\*. It initiated an annual AML/CFT Research Grant in 2011. The aim of the grant is to build regional capacity for research on Money Laundering and Terrorist Financing (ML/TF) by providing some funds to facilitate the conduct of studies aimed at exposing the activities of money launderers and terrorist financiers with a view to bringing them to book.<sup>114</sup>All these mechanisms are evolving rapidly to keep pace with new determination of

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<sup>112</sup>Ibid

<sup>113</sup>ibid

<sup>114</sup> GIABA Research Grant Reports: [http://web.giaba.org/page/index\\_789.html](http://web.giaba.org/page/index_789.html). Retrieved 1/7/2014 at 9:00am.

memberStates to work more closely with each other to face the growing threats of organized crime, corruption and terrorism.<sup>115</sup>

The international legal instruments for combating terrorism from the researcher's point of assessment is novel but its Achilles heel is in enforcing it. Disproportionate attention is given to terrorism where the super-powers are involved as evinced in the Nicaragua v United States case where the International Court of Justice (ICJ) made an attempt to address the issue of terrorism. However, it is interesting to note that the ICJ did not use the term "terrorism" in this very long case despite the fact that the central claim by Nicaragua against US included among other things, an allegation that the United States was "recruiting, training, arming, financing, supplying and otherwise encouraging, supporting, aiding and directing military and paramilitary actions against Nicaragua."

In Lockerbie case, the principle of *aut dedere, aut judicare* which translates into the alternative of extradite or prosecute which is an obligation expressed in the universal instruments against terrorism and is implicit in Security Council Resolution 1373 (2001) was not strictly adhered to as Libya was ready to prosecute and have initiated prosecution against her two nationals who were fingered in the Lockerbie bombing but Britain and America insisted that they be extradited to face trial in Britain.<sup>116</sup>

Promises of grants, arms and military assistance by the big States to other States (especially States from the West African region) to help them prosecute the war on terror were unfulfilled. A great power can violate the rights of a small nation without having to fear effective sanctions against itself by the latter or from the United Nations. However, the event of 11<sup>th</sup> September, 2001, though condemnable, shows that the world powers are not invincible. It is only the united act of the United Nations that can save the world from terrorism, insecurity, poverty and domination.<sup>117</sup>

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<sup>115</sup> See also Joutsen M. "The Evolution of Cooperation in Criminal Matters within the European Union: the record so far" in Aroma R and Viljanven T (eds), International key Issues in crime prevention and criminal justice (Helsinki, Heuni, 2006) pg 67-91

<sup>116</sup> Sirchi J.P.S. op. cit

<sup>117</sup> Ezeugo Nkem. op. cit

## **CHAPTER FOUR**

### **ANALYSIS OF DOMESTIC LEGAL FRAMEWORK IN COMBATING TERRORISM AND TERRORIST FINANCING IN NIGERIA**

#### **4.1 INTRODUCTION**

As earlier noted in this research, effective and swift cooperation constitutes the cornerstone of a criminal justice response to terrorism. As there are no international tribunals with competence to try acts of international or local terrorism, the duty to bring perpetrators of such criminal acts to justice rests solely with domestic courts. And because counter-terrorism operations, by nature, are often transnational in character and scope, effective and efficient domestic laws geared towards combating terrorism and terrorist financing becomes imperative.

Following the dastardly bombing of the World Trade Centre in September 11, 2001, which inevitably altered global security calculus giving terrorism primacy over warfare as the world's greatest security threat, the U.N condemned the attacks via an avalanche of resolutions; specifically, resolution 1373 calling on all member States to either amend their existing laws or enact new laws to criminalize terrorism. In apparent compliance with resolution 1373, Nigeria included a provision on terrorism in the Economic and Financial Crime Commission (EFCC) Establishment Acts 2004.

This chapter, therefore, is set out to critically examine all the enactments on terrorism in Nigeria ranging from Terrorism (Prevention) Act 2011, Terrorism (Prevention (Amendment) Act, 2013 and 1999 Constitution of the Federal Republic of Nigeria (as Amended).

#### **4.2 THE ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC) (ESTABLISHMENT) ACT, 2004**

**Section 15 of the EFCC Establishment Act states:**

## Offences in relation to terrorism

- 1) A person who wilfully provides or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used for any act of terrorism, commits an offence under this Act and is liable on conviction to imprisonment for life.
- 2) Any person who commits or attempt to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life.
- 3) Any person who makes funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.

Section 15 of the EFCC (Establishment) Act, 2004 is the only section dedicated to the fight against terrorism. The EFCC Act only covers the provision of funds and participation in the crime of terrorism. It did not state or define what constitute terrorism or acts of terrorism, what constitute terrorist act, how investigation is to be conducted, the agency that would be responsible for the investigation and prosecution of offenders, it did not touch on the seizure of terrorist funds and property, mutual assistance and extradition, etc. The EFCC Act was not comprehensive in matters of terrorism hence only section 15 of the Act was dedicated to terrorism offences.

It is understandingly so because Nigeria as of that time had not started witnessing the ferocious and invidious attacks by terrorists in Nigerian soil. Nigeria being a member of the United Nations was only complying with the United Nations directives in the aftermath of September 11, 2001 attacks. The attacks were unequivocally condemned by States and by international organizations. On September 12, 2001, the United Nations General Assembly passed a resolution condemning the heinous acts which had resulted in loss of lives and enormous destructions. While showing solidarity with the people of the United States, the U.N called for

international cooperation to bring to justice the perpetrators, organizers and sponsors of the crime committed on September 11, 2001.

It is in the light of this wake-up call by the United Nations that terrorism offences and punishment were included in the Economic and Financial Crimes Commission (EFCC) Establishment Act. However, five years after the EFCC Act came into operation, terrorism blossomed in Nigeria. From 2009 to date, terrorists have virtually overrun the country, making Nigeria a safe haven for their operation. The heinous activities of terrorists in Nigeria forced the government to embark on a thorough and wholesale enactment of Terrorism Act tagged “Terrorism (Prevention) Act, 2011.

### **4.3 TERRORISM (PREVENTION) ACT, 2011**

The Terrorism (Prevention) Act, 2011 was passed into law by both chambers of the National Assembly on the 1<sup>st</sup> day of June, 2011, and came into force on the 3<sup>rd</sup> day of June, 2011. The Act provides for measures for the prevention, prohibition and combating acts of terrorism, the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of the Financing of Terrorism. It also prescribes penalties for violating any of its provisions.<sup>118</sup>

The Act is divided into eight parts and it contains 41 sections. Part 1 is headed ‘acts of terrorism and related offences’ which covers prohibition of acts of terrorism defined to mean:

- a. An act which is deliberately done with malice aforethought and which may seriously harm or damage a country or an international organization;
- b. Is intended or can reasonably be regarded as having been intended to: -
  - (i) Unduly compel a government or international organization to perform or abstain from performing any act;

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<sup>118</sup> See the explanatory memorandum to the Terrorism (Prevention) Act, 2011

- (ii) Seriously intimidate a population;
  - (iii) Seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or
  - (iv) Otherwise influence such government or international organization by intimidation or coercion; and
- c. Involves or causes, as the case may be: -
- (i) An attack upon a person's life which may cause serious bodily harm or death;
  - (ii) Kidnapping of a person;
  - (iii) Destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
  - (iv) The seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b)(iv) of this subsection;
  - (v) The manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological, or chemical weapons, as well as research into, and development of biological and chemical weapons without lawful authority;
  - (vi) The release of dangerous substances or causing of fire, explosions, or floods, the effect of which is to endanger human life;
  - (vii) Interference with or disruption of the supply of water, power or any other fundamental natural resources, the effect of which is to endanger human life.
- d. An act or omission in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria.<sup>119</sup>

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<sup>119</sup> The Terrorism Prevention Act, 2011, section 1(2)

An exception is however made to the effect that an act which disrupts a service but is committed in pursuance of a protest, demonstration, or stoppage of work is not a terrorist act within the meaning of this definition provided that the act is not intended to result in any harm referred to in subsection (2)(b)(ii) or (v) of this section.

The question however, is the extent of such an exception as the provision appears to be vague and overboard in the sense that subsection (2)(b)(i) for example talks of an act which is intended or can reasonably be said to have been intended to ‘unduly compel a government or international organization to perform or abstain from performing any act’... but then, when critically examined, an industrial action is intended to do exactly just that. When a trade union goes on a strike, the essence of such an action is to compel a government or even an organization whether international or not to do or abstain from doing what the workers consider to be either beneficial or detrimental to them. Will such a strike action for instance then constitute an act of terrorism?

So also, where for instance, the Nigerian Medical Association goes on a strike and patients are left to die at the hospitals, can this not be said to be intended to intimidate the population so as to put pressure on governments to meet their demand? And obviously, human life is being endangered by such action: will it also constitute an act of terrorism? Even the provisions of subsection (iv) may not be so easily discernible with respect to strike actions as it may well be the case nowadays that in certain situations, the governments or organization have to be coerced (somewhat), into doing the things they are supposed to do.

However, it obviously could not have been said to be the intendment of the legislature that such a sweeping interpretation be given to the provisions of the Act. It follows therefore, that such strike or similar civil actions meant to drive the demands of workers or other legitimate organizations cannot amount to terrorist activities as they are done within legal permissions pursuant to constitutionally guaranteed right to freedom of association and the relevant labour laws.

Another worrisome part of this definition is the emphasis on international organization; is it thus being suggested that only international organizations are capable of being threatened by terrorist activities? This provision, like many other provisions of the Act, was simply copied verbatim from the international legal instruments on terrorism without considering the real meaning or extent of the application of such provisions at the domestic level: for a domestic legislature, it should have considered non-international organizations as also potential victims of acts of terrorism as the citizens can also be a victim of terrorism.

Also under this part, an organization may be proscribed as a terrorist organization on an application made by the Attorney General (AGF), the Inspector General of Police (IGP), or the National Security Adviser (NSA) to a judge in chambers. The application must however, be on the approval of the President.<sup>120</sup> This particular section may be said to have taken good steps to ensure fairness for the purposes of proscribing an organization in making the process having to go through a judge who decides whether to issue such an order or not. Where such an order is made, it shall be published in the official gazette, in two National Newspapers and at such other places as the judge in chambers may determine.<sup>121</sup> And once an organization is so proscribed, it becomes an offence punishable with twenty years imprisonment, to belong to such an organization.<sup>122</sup> A person who however, was only a member of a proscribed organization before such proscription and took no steps to associate with the organization after notice of its proscription may not be liable under this section.<sup>123</sup> And the Attorney General (AGF) upon the approval of the President may withdraw the order if satisfied that such proscribed organization has ceased to engage in an act of terrorism.<sup>124</sup>

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<sup>120</sup> Section 2 Terrorism (Prevention) Act, 2011

<sup>121</sup> Section 2(2) Ibid

<sup>122</sup> Section 2(3)(i) Ibid

<sup>123</sup> Section 2(4) Ibid

<sup>124</sup> Section 2(5) Ibid

However, the section seem to have taken away everything with respect to terrorist organizations from state government by making the whole process having to go through the President, and not governor's approval, and by making only the Inspector General of Police (IGP), the National Security Adviser (NSA) to the President and the Attorney General of the Federation (AGF) as those responsible for such an application. This provision may have unintended consequences especially considering the fact that crime and punishment is a matter on the concurrent legislative list of the Constitution, and also bearing in mind the fact that most of these activities have, and may be taking place in states where the federal government may not be more suited to tackling the issues.

Another conspicuous short sightedness exhibited by the drafters of the Act however, is the absence of any provision empowering members of such a proscribed organization to go to court and challenge the proscription of the organization where they have reasons to believe that the organization was wrongfully or maliciously proscribed. This failure may tantamount to a denial of the members constitutional right to fair hearing,<sup>125</sup> especially as the application to proscribe the organization is made to the judge in chambers, and the right to freedom of association also guaranteed by the Constitution.<sup>126</sup>

Dealing with the terrorist meeting, the Act<sup>127</sup> makes it an offence punishable with ten years imprisonment to arrange, manage, assist in managing or participating in a meeting or activity which he knows is connected with an act of terrorism. So also is the provision of logistics, equipment, or facilities for a meeting, or an activity which he knows is connected with an act of terrorism; or attending such a meeting. The solicitation or actual rendering of support for acts of

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<sup>125</sup> As guaranteed under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

<sup>126</sup> See Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 as amended

<sup>127</sup> Section 3 Terrorism (Prevention) Act, 2011.

terrorism or proscribed organizations is punishable with twenty years imprisonment.<sup>128</sup> But where death results from such activity, it shall carry death sentence.

Harbouring of terrorists and the provision of training for terrorists is punishable with ten years imprisonment;<sup>129</sup> so also is refusal to disclose material information about a terrorist act.<sup>130</sup>

Obstruction of terrorism investigation also carries a penalty of ten years imprisonment.<sup>131</sup>

The President is empowered<sup>132</sup> to declare a person or a group,<sup>133</sup> a suspected international terrorist or international terrorist group, and if such a person is a Nigerian citizen other than by birth, he may be deprived of his citizenship.<sup>134</sup> The Attorney General of the Federation is also empowered to make regulations to provide for the freezing of his or its funds, financial assets or other economic resources,<sup>135</sup> and for the prevention of his or its entry into, or transit in, Nigeria;<sup>136</sup> for the prohibition of the direct or indirect supply, sale and transfer of arms, weapons, ammunitions, military vehicles and equipment, etc.<sup>137</sup> where such directive is contravened, it carries a five years jail term as penalty.<sup>138</sup> Provision or collection of funds for terrorist activities carries a ten years jail term,<sup>139</sup> so also is hostage taking.<sup>140</sup>

Part II of the Act deals with terrorist funds and property: it empowers the NSA and the IGP to seize any cash which they suspect is intended for terrorist activities, belongs to or is held in trust for a proscribed group, or represents property obtained through acts of terrorism.<sup>141</sup> This section however, represents one of the most confusing parts of the Act, as it provides for an application

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<sup>128</sup> Section 4 Ibid

<sup>129</sup> Sections 5 and 6 Ibid

<sup>130</sup> Section 7 Ibid

<sup>131</sup> Section 8 Ibid

<sup>132</sup> Section 9 Ibid

<sup>133</sup> Section 9(4) Ibid

<sup>134</sup> Section 9(3) Ibid

<sup>135</sup> Section 9(6)(a) Ibid

<sup>136</sup> Section 9(6)(b) Ibid

<sup>137</sup> Section 9(6)(c) Ibid

<sup>138</sup> Section 9(6)(d) Ibid

<sup>139</sup> Section 10 Ibid

<sup>140</sup> Section 11 Ibid

<sup>141</sup> Section 12(1) Ibid

to be made to a judge in chambers before the forfeiture is carried out,<sup>142</sup> and at the same time empower NSA and the IGP to carry out the forfeiture even without a court process.<sup>143</sup>

By the provision of Section 13 of the Act, any person who solicits, receives, provides or possesses monetary or other property for the purpose of terrorism or for the proscribed organization, commits an offence under this Act and shall on conviction be liable to imprisonment for a maximum term of ten years. However, this provision seems to be more of a duplication of Section 10 of the same Act.

Also under this part, there is an obligation on financial institutions or designated non-financial institutions to report suspicious transaction relating to terrorism.<sup>144</sup> Dealing in terrorist property including concealment, removal from the jurisdiction, or transfer to any other person, carries a ten years jail term,<sup>145</sup> and the State Security Service (SSS) may apply to court for the purpose of attaching any property belonging to a person charged or about to be charged with an offence under the Act.<sup>146</sup> And where the SSS has reasonable grounds to suspect that a person has committed, is committing or is likely to commit an act of terrorism or is in possession of terrorist property, it may apply to court for an order for the purposes of getting information to track such person's property.<sup>147</sup>

Part III of the Act deals with mutual assistance and extradition: under this part, the Attorney General of the Federation may execute any application made by a foreign State for the purpose of assistance in terrorism related cases,<sup>148</sup> and may also forward such a request to a foreign State.<sup>149</sup> The part also provides for the admission of evidence taken before a foreign court,<sup>150</sup> the

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<sup>142</sup> Section 12(4) Ibid

<sup>143</sup> Section 12(3) Ibid

<sup>144</sup> Section 14 Ibid

<sup>145</sup> Section 15 Ibid

<sup>146</sup> Section 16 Ibid

<sup>147</sup> Section 17 Ibid

<sup>148</sup> Section 18 Ibid

<sup>149</sup> Section 19 Ibid

form of such a request<sup>151</sup> and that extradition may be requested, granted or obtained pursuant to the Extradition Act with respect to offences under Section 1, 2, 3, 4, 5, 6, 10, 11, 13 and 14 of the Act.<sup>152</sup> The Act did not specify the next line of action whereby the extradition request is tuned down by the requested country. This brings into mind the dispute in the Lockerbie case.

Part IV of the Act deals with information sharing, extradition and mutual assistance on criminal matters. It provides for exchange of information relating to terrorist groups and terrorist acts between Nigeria and a foreign State;<sup>153</sup> this provision however, duplicates Section 18 of the same Act.

Part V deals with investigation into terrorist related activities and provides for an application by the NSA or the IGP to be made to court for issuance of warrant;<sup>154</sup> the NSA and the IGP are also permitted to, in certain cases of verifiable urgency, conduct a search without warrant.<sup>155</sup>

Also provided under this part is the provision for intelligence gathering which empowers the NSA and the IGP to give such directions as appear to him to be necessary to any communication service provider specifying the maximum period for which a communication service provider may be required to retain communications data.<sup>156</sup> This provision is obviously overboard, giving the NSA and the IGP unrestricted powers to interfere with correspondence of all citizens at all times, without providing an objective criterion for the exercise of such powers. How for instance can this provision be reconciled with the constitutionally guaranteed right<sup>157</sup> to privacy and respect for the dignity for of human person? If the constitution has guaranteed the right to privacy, with specific reference to the correspondence, telephone conversations and telegraphic

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<sup>150</sup> Section 20 Ibid

<sup>151</sup> Section 21 Ibid

<sup>152</sup> Section 22 Ibid

<sup>153</sup> Section 23 Ibid

<sup>154</sup> Section 24 Ibid

<sup>155</sup> Section 25 Ibid

<sup>156</sup> Section 26 Ibid

<sup>157</sup> The Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) section 37.

communications of citizens, how feasible is it that the NSA and the IGP will be given powers to interfere with such a right on a threshold as low as “as appear to him to be necessary”? To derogate from a constitutionally guaranteed right, there is the need for a more stringent and clear situation to be provided explaining in details the circumstances under which such rights may be derogated from: as it stands, the NSA, IGP, or AGF may decide to erode this right without necessarily, any objective test than the fact that ‘it appeared necessary to them, which is quite subjective’. This fact is clearly demonstrated in the case of total withholding of telecommunication service in three states of the federation for months; which is purely unnecessary as lack of communication hinders the effective combat of terrorism. For where there is information to pass across to the security agents by the people, which information would help in routing the terrorists, there would not be means to pass across the information.

Also provided under this part is the power of security personnel to detain a conveyance.<sup>158</sup> Under this part, all that the officer needs to inform such a decision is ‘if he is of the opinion’. The point therefore, is that so long as the officer is of the opinion that any of the things listed under the section is likely to take place, he can order the detention of any conveyance and there will certainly be no liability whether the order was issued maliciously, negligently, or carelessly. Also of concern under this part is the fact that where the operator of the conveyance objects to a detention order and applies to court, the judge can only confirm, vary or cancel the order on the advice of the Attorney General.<sup>159</sup> This provision therefore, subjects the judicial power to review an executive decision to further executive discretion. Can it then be said that the judiciary actually has powers to review such a decision? Has the judicial powers of the courts not been fettered? Besides, a security officer having the kind of unfettered discretion is likely to abuse it for personal reason.

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<sup>158</sup> Section 27 Terrorism (Prevention) Act, 2011

<sup>159</sup> Section 27(4) Ibid

Further in this part, is the provision relating to detention for offences related to terrorism.<sup>160</sup> Under this head, where a person is arrested in connection with an offence under the Act, he may be detained for a period of up to 24 hours with access only to a medical doctor and legal counsel of the detaining agency; how compatible this provision is with the constitutional guarantee to counsel and fair hearing is a matter left to be seen when these issues are presented for judicial interpretation. The Constitution provides for the right to a legal practitioner of his own choice<sup>161</sup> and also the right to remain silent until after consultation with a legal practitioner or any other person of his own choice.<sup>162</sup> Obviously, legal counsel of the detaining agency cannot fit into this description and this provision is contrary to the spirit, intent and letters of the aforementioned constitutional provisions.

Part VI of the Act deals with prosecution of offences under the Act and reiterates the constitutional powers of the AGF to institute criminal proceedings on behalf of the federal government.<sup>163</sup> However, conspicuously missing is the powers of state governments to institute proceedings under the Act; does that indicate that terrorism is certainly a matter to be tried only by federal courts?<sup>164</sup> It is trite to say that just like the cases of armed robbery, corruption, and economic and financial crimes which are regulated by federal legislations yet are tried by both federal and state courts, terrorism should not be an exception.

This part also provides for witness protection<sup>165</sup> wherein the court is empowered, for the purposes of protecting a witness; hold the proceedings at a place to be decided by the court;<sup>166</sup> refusal to disclose the name and address of the witness,<sup>167</sup> and to prohibit the publication of the

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<sup>160</sup> Section 28 Ibid

<sup>161</sup> CFRN S.36(6)(c)

<sup>162</sup> S.35(2) Ibid

<sup>163</sup> Section 30 Terrorism (Prevention) Act, 2011

<sup>164</sup> Section 32 Ibid

<sup>165</sup> Section 31 Ibid

<sup>166</sup> Section 31(2)(a) Ibid

<sup>167</sup> Section 31(2)(b) and (c) Ibid

proceeding in any manner.<sup>168</sup> And the court may exclude the public from any such proceedings.<sup>169</sup>

The Act empowers the Federal High Court to in addition to penalties under the Act, order forfeiture.<sup>170</sup> A contradictory provision however, is that the court can only impose a penalty not exceeding twenty years;<sup>171</sup> while the Act has made provision for death sentence and life imprisonment, especially where the offence involves death.<sup>172</sup>

Part VII of the Act deals with charities related to terrorist activities, and the Registrar General of the Corporate Affairs Commission is empowered to refuse or revoke the registration of charity based on security or criminal intelligence reports.<sup>173</sup>

Part VIII of the Act deals with miscellaneous powers, and amongst other things provides for the provision of information relating to passengers of vessels and aircraft and persons,<sup>174</sup> the powers to prevent entry into Nigeria and removal from Nigeria of persons suspected to be involved in the commission of a terrorist act.<sup>175</sup> Powers to refuse refugee application,<sup>176</sup> and the powers of the Attorney General to make regulations are under the Act. Also under this part is the Interpretation Section of the Act.<sup>177</sup>

Several key provisions of the Act are therefore, incompatible with Nigeria's human rights obligations as enshrined in chapter four of the Constitution of the Federal Republic of Nigeria and International Human Rights documents to which Nigeria is a party. Many of the provisions of the Act use terms and definitions that are imprecise, ambiguous and overboard in scope,

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<sup>168</sup> Section 31 (2)(d) Ibid

<sup>169</sup> Section 31(3) Ibid

<sup>170</sup> Section 32 Ibid

<sup>171</sup> Section 32(2)(a) Ibid

<sup>172</sup> Section 33(1)(a) and (e) Ibid

<sup>173</sup> Section 35(1) Ibid

<sup>174</sup> Section 36(1) Ibid

<sup>175</sup> Section 37(1) – (4) Ibid

<sup>176</sup> Section 38 Ibid

<sup>177</sup> Section 40 Ibid

violating the ‘legality’ requirement for criminal offences, and/or unlawfully restricting a range of rights – such as freedom of thought, conscience and religion, freedom of opinion and expression, freedom of association, right to privacy, and freedom of assembly by failing to adhere to the requirements of demonstrable proportionality.

Some provisions relating to investigation, detention, and trial are not consistent with various provisions of human rights law as discussed while analysing the Act above and some administrative provisions lack any provision for meaningful access to effective legal remedies and procedural safeguards, consequently infringing the rights of due process in a fair hearing.

Under this Act, there was no lead security agency designated to coordinate the activities of all the security agencies in order to have a coordinated approach to the fight against terrorism. The issues and provisions cited above are illustrative and not exhaustive examples of problems with the Act, and do not necessarily purport to constitute a comprehensive analysis of the act. However, they point to the weakness of the act. This and many other issues led to the amendment of the Act which came into force in 2013.

#### **4.4 THE TERRORISM (PREVENTION) (AMENDMENT) ACT, 2013**

As stated earlier, the problems with the Act of 2011 both in theory and application, necessitated an amendment to the Act; this came in the form of the Terrorism (Prevention) (Amendment) Act, 2013. The Act amends the Terrorism (Prevention) Act No. 10, 2011, makes provision for extra-territorial application of the Act and strengthens terrorist financing offences.<sup>178</sup> Some sections of the 2011 Act are amended, some substituted, and others are deleted.

To start, a new subsection (1) has now been inserted under the existing section 1 stating that “(1) All acts of terrorism and financing of terrorism are hereby prohibited.” Also introduced, is a new subsection (2) which defines in more details, the activities punishable under this section with a

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<sup>178</sup> See the explanatory memorandum to the Act.

maximum of death sentence.<sup>179</sup> Under the amendment, the office of the National Security Adviser (NSA) has been made the coordinating body for all security and enforcement agencies under the Act.<sup>180</sup> Also introduced under the 2013 Act are the more precisely defined roles of the NSA, the AGF, and the security agencies under the Act.<sup>181</sup>

A prospective point of dispute however, is the obvious clash between the powers of the NSA and that of the AGF.<sup>182</sup> The 2013 Act stated that the office of the National Security Adviser shall be the coordinating body for all security and enforcement agencies under this Act: while further,<sup>183</sup> it stated that ‘The Attorney General of the Federation shall be the authority for the effective implementation and administration of this Act’. What therefore, is the difference between their powers? Who gives who directives between the NSA and the AGF when it comes to issues covered under the Act and who has the final say? Section 150(1) of the 1999 Constitution of the Federal Republic of Nigeria (with Amendments 2011) also defines the functions of the Attorney General of the Federation thus: there shall be an Attorney General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the Government of the Federation. On the strength of the provisions of the Constitution which is the ground-norm of all laws in the land, the office of the AGF should have an upper hand when it comes to the administration and enforcement of any laws, but for the purpose of fighting terrorism, there should be a clear delineation of the powers and functions of the NSA and the AGF in order to avoid foot dragging, uncoordinated implementation of terrorism laws and unnecessary wrangling and power tussles between the NSA and AGF. As time goes on, there is bound to be conflict between these two offices as there cannot be two captains in a ship.

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<sup>179</sup> Section 1(2) of the Terrorism (Prevention)(Amendment) Act, 2013.

<sup>180</sup> Section 1(A) Ibid

<sup>181</sup> Sections 1A (1)-(6). Ibid

<sup>182</sup> Under Section 1A(1) and (2) Ibid

<sup>183</sup> Subsection (2) Ibid

Under the 2013 Act, Section 3 – 8 of the 2011 Act are substituted with a new set of Section 3 – 25 to cater for certain areas hitherto not so adequately provided for under the 2011 Act. These new Sections cover areas such as offences against internationally protected persons,<sup>184</sup> terrorist meetings,<sup>185</sup> soliciting and giving support to terrorist groups for the commission of terrorist acts,<sup>186</sup> harbouring or hindering the arrest of a person suspected of an act of terrorism.<sup>187</sup> Also under this part of amendment are areas like provisions of training and instruction to terrorist groups or terrorists<sup>188</sup> stating in a more detailed form, what constitutes the offence under this section than the general and vague way in which it was stated under the 2011 Act. Also covered are issues of concealing of information about acts of terrorism,<sup>189</sup> provision of devices to a terrorist and recruitment of persons to be members of terrorist groups or to participate in terrorist acts,<sup>190</sup> which were not catered for under the 2011 Act. Incitement, promotion or solicitation of property for the commission of terrorist acts<sup>191</sup> and provision of facilities in support of terrorist acts<sup>192</sup> are also covered under the 2013 Act even though they were also in a general way provided for under the 2011 Act. Also covered under 2013 Act is the financing of terrorism<sup>193</sup> which was addressed by the 2011 Act: one wonders however, why this section is not merged with Section 5 dealing with solicitation and giving support to terrorist groups especially in view of Section 5(2)(e) which also addresses the issue of financing support for terrorist activities.

Dealing in terrorist property and hostage<sup>194</sup> which were both addressed under the 2011 Act has also been incorporated into the 2013 Act: so is membership of a terrorist group or proscribed

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<sup>184</sup> Section 3 Ibid

<sup>185</sup> Section 4 Ibid

<sup>186</sup> Section 5 Ibid

<sup>187</sup> Section 6 Ibid

<sup>188</sup> Section 7 Ibid

<sup>189</sup> Section 8 Ibid

<sup>190</sup> Sections 9 and 10 Ibid

<sup>191</sup> Section 11 Ibid

<sup>192</sup> Section 12 Ibid

<sup>193</sup> Section 13 Ibid

<sup>194</sup> Section 14 and 15 Ibid

organization,<sup>195</sup> and conspiracy.<sup>196</sup> Aiding and abetting a person to commit an act of terrorism,<sup>197</sup> and escape or aiding and abetting escape<sup>198</sup> both of which were not specifically prescribed under the 2011 Act are now covered under the 2013 Act. So also is attempt to commit an offence under the Act,<sup>199</sup> preparation to commit terrorist acts,<sup>200</sup> and unlawful assumption of character of any law enforcement officer or security,<sup>201</sup> all of which are new and innovative provisions which were not captured under the 2011 Act, and which were only brought out by the realities of the situation as it unfolds. Tampering with evidence and witness<sup>202</sup> also falls under this category of new provisions not covered under the 2011 Act. Obstruction of any officer of a law enforcement or security agency<sup>203</sup> is also prescribed but one wonders if this provision is meant to be different from the provisions on obstruction of terrorist investigation under the 2011 Act. Where an offence under the Act is committed by an entity,<sup>204</sup> the director, manager, or other officers responsible may face a life imprisonment on conviction.

Section 10 of the 2011 Act has been substituted with a new Section 10 dealing with funds to support terrorism which on conviction carries a ten years jail term and in the case of a corporate body, to a fine of not less than N100,000,000, prosecution of the principal officers of the body who are on conviction liable to imprisonment for a term of not less than ten years, and the winding up of the body. Further, Section 11 of the 2011 Act is deleted and Section 13 of the 2011 Act has been substituted with a new Section 13 which specifically prohibits the provision of support whether within or outside Nigeria for terrorists or terrorist organizations, and on conviction carries a minimum penalty of ten years imprisonment and a maximum of life

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<sup>195</sup> Section 16 Ibid

<sup>196</sup> Section 17 Ibid

<sup>197</sup> Section 18 Ibid

<sup>198</sup> Section 19 Ibid

<sup>199</sup> Section 20 Ibid

<sup>200</sup> Section 21 Ibid

<sup>201</sup> Section 22 Ibid

<sup>202</sup> Section 23 Ibid

<sup>203</sup> Section 24 Ibid

<sup>204</sup> Section 25 Ibid

imprisonment.<sup>205</sup> Whether this provision amounts to criminalizing an act done outside the territorial jurisdiction of Nigerian courts and its validity under both Nigerian domestic laws and international laws are issues yet to be seen. The punishment under Section 14 of the 2011 Act has been amended to provide for a stiffer punishment of 10,000,000.00 (ten million naira) fine or a minimum of five years prison term.<sup>206</sup> So also, Section 15 subsection one (1) of the 2011 Act has been deleted and the powers to apply to a judge has now been conferred on the AGF alone.<sup>207</sup> Section 16 and 17 of the 2011 Act are deleted,<sup>208</sup> and Section 24 of the 2011 Act has been substituted with a new Section 24 which gives the power to apply to court for a warrant to a law enforcement officer as opposed to the NSA or IGP as obtained under the 2011 Act.<sup>209</sup> A new Section 25 in substitution for the one under the 2011 Act attempts to provide for a more detailed procedure for search without warrant.<sup>210</sup> Also substituted are sections 26-29 of the 2011 Act.<sup>211</sup> The new Section 26, unlike the one under the 2011 Act deals with the taking of the measurements, samples, photographs and fingerprint impressions of suspects.

Of more concern however is the provision of the new Section 27 which empowers a judge to, pursuant to an ex-parte application, grant an order for the detention of a suspect under the Act for a period not exceeding 90 days subject to renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with.<sup>212</sup> In addition, the section provides that a person found on any premises or place or in any conveyance may be detained by the relevant law enforcement officer of any agency until the completion of the search or investigation under the provisions of this Act. These provisions are of grave consequence as it relates to the fundamental human rights of the suspects in clear

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<sup>205</sup> Section 7 Ibid

<sup>206</sup> Section 8 Ibid

<sup>207</sup> Section 9 Ibid

<sup>208</sup> Section 10 Ibid

<sup>209</sup> Section 11 Ibid

<sup>210</sup> Section 12 Ibid

<sup>211</sup> Section 13 Ibid, providing for new sections dealing with totally different issues not contained under the 2011 Act.

<sup>212</sup> Section 13 Ibid

contradiction of the Constitutional provisions on the right to personal liberty which specifically requires that:

Any person who is arrested or detained in accordance with subsection (1)(c) of this Section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of-

- (a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
- (b) Three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.<sup>213</sup>

Even the expression ‘a reasonable time’ is further explained to mean

- (a) In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and
- (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.<sup>214</sup>

Obviously, the provisions of the new Section 27 of the 2013 Act cannot stand against this Constitutional right. This is notwithstanding the provisions of Section 35 subsection (7)(a) of the Constitution, because the Constitution has not given the security agencies a blank check to detain people indefinitely without them having the opportunity to challenge their detention before a court of law.

Similarly confusing are the provisions of the new Section 28(4) of the 2013 Act which states that:

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<sup>213</sup> CFRN Section 35(4)

<sup>214</sup> Section 35(5) Ibid

Where a person arrested under this Act is granted bail by a court within the 90 days detention period stipulated by this Act, the person may; on the approval of the head of the relevant law enforcement agency be placed under a house arrest and shall –

- (a) Be monitored by its officers;
- (b) Have no access to phones or communication gadgets; and
- (c) Speak only to his counsel until the conclusion of the investigation.

The question here is, will that amount to a bail at all? If placed under a house arrest and can only speak to his counsel, does that mean that such a suspect will also be denied access to his close family members too? his wife or children for instance? And, why will the powers to order for house arrest be placed in the head of the relevant law enforcement agency? Shouldn't it have been better if the power to order a house arrest were placed in the court? Does it not amount to eroding the powers of the court and the judiciary in general that after the court might have granted a suspect bail with specific terms, an administrative officer has the powers to vary or even impose new terms?

The provisions of the new Section 29 are however, an improvement over what obtained under the 2011 Act with respect to intelligence gathering in the sense that the 2013 Act has made the powers to intercept communications of private individuals subject to a court order which provides in details, the time frame, the persons, the nature of the communication to be intercepted.<sup>215</sup>

Also introduced is the provisions dealing with issuance of a certificate by an appropriate authority certifying that a particular object is actually a weapon, a hazardous, radioactive or

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<sup>215</sup> Section 29 Terrorism (Prevention) Act, 2013.

harmful substance, a toxic chemical or microbial or other biological agent or toxin.<sup>216</sup>

Interestingly however, the term appropriate authority has not been defined under the Section.

Section 32 of the 2011 Act has been substituted with a new Section 32 which is to the effect that the Federal High Court located in any part of Nigeria, regardless of the location where the offence is committed, shall have jurisdiction to try offences under the Act or any other related enactment,<sup>217</sup> with a provision for plea bargaining of sorts under the Act. One would have expected that State High Court which have coordinate jurisdiction with the Federal High Court should have jurisdiction to try terrorism related matters as well.

Another important feature of the 2013 Act is the introduction in the interpretation section of a definition of the word terrorist: ‘terrorist’ means any person involved in the offences under Sections 1-4 of this Act and includes his sponsor.<sup>218</sup>

Generally speaking, the 2013 Amendment Act is a radical departure and a substantial improvement upon the 2011 Act, and has corrected some of the common problems associated with the 2011 Act even though it has also introduced its own controversial provisions, notably the provisions of the new Section 27 on detention of suspects for a period that could amount to indefinite detention, and the confusion created in the roles of NSA and the AGF.

#### **4.5 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED)**

Chapter 2 of the Constitution of the Federal Republic of Nigeria, 1999 deals with the Fundamental Objectives and Directive Principles of State Policy. Section 16 dwells on Economic Objectives

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<sup>216</sup> Section 13 Ibid

<sup>217</sup> Section 15 Ibid

<sup>218</sup> Section 19(e) of the 2013 Act: see also, subsection (f)

16(1) states: The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution –

- a. Harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy for every citizen on the basis of social justice and equality of status and opportunity;
- b. Control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- c. Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;
- d. Without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy

(2) The State shall direct its policy towards ensuring –

- a. The promotion of a planned and balanced economic development;
- b. That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
- c. That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
- d. That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

This provision of the Constitution<sup>219</sup> under the Fundamental Objectives and Directive Principles of State Policy seek to promote the economic well-being of the citizens<sup>220</sup> by making sure that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.<sup>221</sup>

Economic well-being of the people is an antidote to terrorism as excruciating poverty can drive the youth to the swamp of terrorists. However, the non-enforceability of these economic rights is one of the lacunae in the Constitution.

Section 18 is on Educational Objectives

- (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
- (2) Government shall provide science and technology
- (3) Government shall strive to eradicate illiteracy and to this end government shall as and when practicable provide –
  - (a) Free, compulsory and universal primary education;
  - (b) Free secondary education;
  - (c) Free university education; and
  - (d) Free adult literacy programme

This is another provision of the Constitution that promotes education knowing full well that knowledge is a key to the development of any State. Provision of free education up to university level by the government as envisaged by the Constitution is one of the best things that would have happened to the Nigeria citizens. But as there is no right to education, no citizen can force

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<sup>219</sup>Section 16(1)(a) of the 1999 Constitution of The Federal Republic of Nigeria (as amended)

<sup>220</sup>Ibid

<sup>221</sup>Section 16(2)(d)

any government to provide any education of any type, more so, when there is a caveat<sup>222</sup> which states “Government shall as and when practicable provide free education”. How then is it to be determined when it is practicable for government to provide free education up to university level since the Constitution did not provide any criteria for determining such?

The inability of the government under any guise to provide free education up to university level is one of the reasons why terrorism has continued to thrive especially in the North-Eastern part of Nigeria as many parents cannot afford to train their children. It is important, therefore, that this right be made a fundamental right that is enforceable.

Sections 214, 215 and 216 of the Constitution are on the Nigeria Police Force.

#### Section 214

- (1) There shall be a police force for Nigeria, which shall be known as the Nigerian Police Force, and subject to the provisions of this Section no other police force shall be established for the federation or any part thereof.
- (2) Subject to the provisions of this Constitution –
  - (a) The Nigerian Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly;
  - (b) The members of the Nigerian Police Force shall have such powers and duties as may be conferred upon them by law;
  - (c) The national Assembly may make provisions for branches of the Nigerian Police Force forming part of the armed forces of the federation or for the protection of harbours, waterways, railways and air fields.

#### Section 215

- (1) There shall be –

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<sup>222</sup> Section 18(3)(a)(b)(c)

- (a) An Inspector General of Police who, subject to Section 216(2) of this Constitution shall be appointed by the President on the advice of the Nigeria Police Council from among serving members of the Nigeria Police Force;
  - (b) A Commissioner of Police for each State of the Federation who shall be appointed by the Police Service Commission.
- (2) The Nigeria Police Force shall be under the command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in a state shall, subject to the authority of the Inspector-General of Police, be under the command of the Commissioner of Police of that state.
- (3) The President or such other Minister of the Government of the Federation as he may authorize in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and security of public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those directions or cause them to be complied with.
- (4) Subject to the provisions of this Section, the Governor of a state or such Commissioner of the government of the state as he may authorize in that behalf, may give to the Commissioner of Police of that state such lawful directions with respect to the maintenance and security of public safety and public order within the state as he may consider necessary and the Commissioner of Police shall comply with those directions or cause them to be complied with provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions.

By the provision of Section 214 of the Constitution, there shall be a Police Force for Nigeria and no other Police Force shall be established for the Federation or any part thereof.<sup>223</sup> This Section authorizes and legitimizes the monolithic structure of the Nigerian Police. It recognizes only one Police Force for Nigeria. Given the type of Constitution Nigeria operates which is a federal Constitution and given the vast and heterogeneous nature of the country, there is need for the establishment of state police to cater for the crime peculiarities of the states. The Nigerian Police Force and matters relating to it should be made to be in the Concurrent legislative list and not in the Exclusive list of the Constitution.

By the provision of Section 215,<sup>224</sup> the appointment of an Inspector General of Police shall be made by the President on the advice of the Nigerian Police Council. The appointment and removal<sup>225</sup> of the Inspector General of Police by the President gives the President unfettered power over the Nigerian Police Force and does not allow the police to do their work without fear or favour.

Also by provision of Section 215,<sup>226</sup> the government of a state may give order to the Commissioner of Police in a state but the Commissioner of police may refuse to carry out such a lawful directive until such order is referred to the President for further directive. This is clearly a long and unwarranted process especially in emergency situation. The Commissioner of Police should not have any reason not to carry out a lawful directive from a governor who is the chief security officer of the state.

#### **4.6 CHALLENGES IN COMBATING TERRORISM IN NIGERIA**

The incessant killings of innocent Nigerians and the destruction of their properties through the dastardly act of terrorism have brought Nigeria to a state comatose, perching it on a precipice.

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<sup>223</sup> Section 214(1) of the Constitution of the Federal Republic of Nigeria (as amended)

<sup>224</sup> Section 215(1)

<sup>225</sup> Section 216(2)

<sup>226</sup> Section 215(4)

Indeed, there are challenges in combating terrorism in Nigeria, suffice it to mention the following amongst others;

#### **4.6.1 Poor enforcement of the extant terrorism laws of the land.**

It is the researcher's candid view that the fight against terrorism has could be hamstrung by lack of political will to enforce the extant laws on terrorism. How many terrorists have been brought to book since terrorism Act 2011 came into operation on 3<sup>rd</sup> June 2011? Or does it mean that terrorists no longer strike since terrorism Act 2011 came into force.

The nefarious activities of terrorists escalated in Nigeria with the passage of Terrorism Act 2011. One would have taugt that the reverse would have been the case, since there is a law in place to checkmate it. All the inhuman and anti-people activities of the terrorists took place in Nigeria after the passage of Terrorism Act, 2011. The bombing of the Force Headquarters in Abuja took place on June 16, 2011 soon after Terrorism Act came into force. The United Nations Building in Abuja was bombed on August 26, 2011 and St Theresa Catholic Church, Madala was bombed on December 25, 2011 thus sending a chilling impression to the people that terrorism laws cannot save them.

It did not end there, the increased ferocity of terrorists activities in Nigeria with the passage of Terrorism Act, gave the international community the impression that we could not walk the law. A law without enforcement is like a vehicle without an engine. And a vehicle without engine definitely cannot function. How many terrorists have been punished for taking the lives of their fellow Nigerians and rendering their properties desolate? How many financiers of terrorist acts have been unmasked? How has the terrorism cases in our courts fared so far?

These and more questions beg for answer. But let me say that half-hearted enforcement of the extant terrorism laws has constituted a clog in the wheel of progress in fighting terrorism in Nigeria. It is a trite aphorism that mercy commits murder when it pardons those who murder.

Those who deliberately take the lives of others all in the name of terrorism must not go unpunished. The law must be allowed to take its own course and must not be unduly delayed in order to bring justice to both victims and perpetrators of terrorism in Nigeria.

#### **4.6.2 Human rights abuses by the security agents**

*“We are all determined to fight terrorism and to do our utmost to banish it from the face of the earth. But the force we use to fight it should always be proportional, and focused on the actual terrorists. We cannot and must not fight them using their own methods – by inflicting indiscriminate violence and terror on innocent civilians, including children”<sup>227</sup>*

It is correct to say that our security agents are working hard to extinguish terrorism. However, the abuse of human rights by some security agents against the people is not cheery news. Upholding human rights is not at odds with battling terrorism in the contrary, the moral vision of human rights – the deep respect for the dignity of each person is among our most powerful weapons against terrorism.<sup>228</sup>“At the same time, building a durable global human rights culture, by asserting the value and worth of every human being, is essential if terrorism is to be eliminated. In other words, the promotion and protection of human rights should be at the centre of the strategy to counter terrorism”<sup>229</sup>. There have been human rights abuses by the security agencies involved in the fight against terrorism. The Baga incident which took place in April, 2013 was a good example of human rights abuses. Contrary to Section 33(i) of the 1999

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<sup>227</sup> Kofi Annan, Former United Nations Secretary-General addressing the United Nations General Assembly (18 November 1999)

<sup>228</sup> Former UN Secretary-General, Kofi Annan Statement to Conference on “Fighting Terrorism for Humanity: A Conference on the Roots of Evil”, 22 September 2003.

<sup>229</sup> Patrignoc J. Terrorism and International Law: Challenges and Responses, Sanremo, 24-26 September 2002, p.8

Constitution of the Federal Republic of Nigeria as amended which guarantees right to life, about 185 people<sup>230</sup> were said to have been killed in a clash involving the dreaded *BokoHaram* group and the army. Though, the military investigation panel set up by former President, Dr Goodluck Jonathan to look into the alleged violations of human rights stated that only 36 lives were lost during the clash.<sup>231</sup>

The researcher did not want to delve into the number of casualties recorded in the Baga incident. What is clear to all is that lives were lost. If the lives of those that are meant to be safeguarded are snuffed out by their supposed protector, what then is the very essence of deploying them to rescue the people from the hands of terrorists?<sup>232</sup> How would they get information about the terrorists and their activities if they wiped out the people that will provide them with such information? What happened to the rules of engagement that ensure that non-combatants civilians are protected? What happened in Baga where innocent civilians were indiscriminately fired and killed in broad daylight clearly shows that some of our security agents do not have any regard for the sanctity of life.<sup>233</sup>

On the Apo 8 killings by the Army and the SSS on September 20, 2013, the National Human Rights Commission (NHRC) has indicted the Nigerian Army and the Department of State Service (DSS) for their role in the killing of eight people in the Apo District of the Federal Capital Territory, Abuja.<sup>234</sup>

The Commission through its former chairman, Professor Chidi Odinkalu said the Army and the DSS failed to prove that the eight persons killed and 11 others injured due to an attack launched by the security operatives in Apo, Abuja, were members of the *Boko Haram*. The Commission however ordered the awards of the sum of N10 million as compensation for each of the deceased

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<sup>230</sup>The Nation Newspaper Vol.07, No.2481, Saturday May 4, 2013, pg.5.

<sup>231</sup>Ibid

<sup>232</sup>Ibid

<sup>233</sup>Ibid

<sup>234</sup>Leadership, No. 2,166 April 8, 2009, p.5

or N80 million in respect of the eight deceased persons. It also awards to each of the injured survivors the sum of N5 million or a total of N55 million against the respondents<sup>235</sup>.

Furthermore, it ordered that all the respondents shall undertake a review and harmonization of the rules of engagement governing the operations of security agencies, to bring them into compliance with the applicable rules of international humanitarian law governing non-international armed conflicts. This is another pointer to the recklessness of our security agents and that in itself is a challenge.<sup>236</sup>

The degrading treatment meted out to the people at the army and police checkpoints at various locations around the country at a slightest mistake or provocation need to be experienced than imagined. Section 34(i) of the 1999 Constitution of the Federal Republic of Nigeria as amended states:

Every individual is entitled to respect for the dignity of his person, and accordingly

- a. No person shall be subjected to torture or to inhuman or degrading treatment;
- b. No person shall be held in slavery or servitude; and
- c. No person shall be required to perform forced or compulsory labour.

The way and manner some of the military and police officers harassed and denigrate the people while subjecting them to rigorous checks left much to be desired. Some of them go to the extent of keeping people for a whole day after subjecting them to rigorous punishment including frog jump. How do we explain this debase treatment in the name of providing security? The hours spent at these checkpoints eat deep into our economy. Our roads are having a decrepit and war-torn look as they are littered with bags of sand at every checkpoint. Is there no better, technology

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<sup>235</sup>Ibid

<sup>236</sup>Ibid

driven way of detection than the crude and uncivilized way of stop and search method? Nigeria by now ought to have passed that level and way of doing things, if things are working well.

This untold sufferings and human rights abuses compelled the Emirs in Kaduna state to request the removal of military checkpoints in Kaduna state<sup>237</sup>. The traditional rulers under the umbrella body of Kaduna State Council of Emirs and Chiefs decried the increasing reports of harassment of innocent persons and time consumed during rigorous searches at various security checkpoints within the metropolis.

Chairman of the Council and Emir of Zazzau (Zaria), Alhaji Shehu Idris, who made the call when he led Emirs and Chiefs on a courtesy visit to former Governor of Kaduna state, Mukhtar Yero after their general meeting in Kaduna, expressed concern over the increasing release of criminals without proper prosecution. He said:

*The release of criminals by the Nigerian Police without properly prosecuting them according to the law had contributed to the increasing rate of insecurity and social vices by miscreants in the state.*<sup>238</sup>

The human rights abuses of the Nigerian Police indirectly ignited the fire of terrorism in Nigeria. The extra judicial killings of Yusuf and his financier, Buji Foi, without recourse to judicial processes provoked his followers, who since then have declared war on the police and later metamorphosed to terrorists. Change is coming slowly to Nigeria and it must be safeguarded. We must not allow another generation of terrorists to develop because of a lack of personal liberty.

#### **4.6.3 Inadequate funding of the security agencies by the government.**

For the past four years budgetary allocation for security has consistently topped the budgetary chart. The increase in security allocation naturally would have translated to acquisition of

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<sup>237</sup>Ibid

<sup>238</sup>Ibid

modern and technologically driven security gadgets and equipment for the security agencies, continuous training of the security personnel for efficient service; befitting remuneration and welfare packages, a comprehensive insurance policy coverage for the security personnel, provision of proper accommodation for the personnel, amongst other things, which promote quality services by the security agencies.

Despite the huge and incredible budget allocation to security, our security agencies especially the Nigerian Police are grossly underfunded whereas our governors and president are basking in the ocean of billions of naira in the name of security votes.

To this end, the under following are some of the products of the underfunding of the security agencies which in turn poses a challenge to the fight against terrorism.

- i. Poor remuneration of security agents
- ii. Unavailability of adequate training for the security personnel
- iii. Unavailability of modern gadgets and equipment for the security agents
- iv. Inadequate manpower
- v. Unavailability of welfare packages
- vi. Shortage of accommodations and vehicles for the officers

When security personnel know that there is no adequate measures put in place to take care of his family if he dies in the course of fighting for his fatherland, he gets discouraged. Patriotism is simply love for one's country and it is unnatural for one to love a country that does not love him. It therefore behove the government to take good care of its security personnel who in turn put their lives on the line in defence of their father land.

#### **4.6.4 Lack of good governance.**

One of the challenges in combating terrorism in Nigeria is lack of sincerity and political will by those in power to prosecute governance. The attitudes of some government officials only exude

hatred, arrogance, impunity, selfishness and hypocrisy. They are there to serve themselves. They say one thing and do another thing. On yearly basis budgets are passed with huge amount of funds being allocated to various sectors of the economy, yet nothing tangible in terms of development takes place and the lives of the people are not touched while poverty and unemployment continue to ravage and pillage the country.

Is it not surprising that with the huge allocation that goes to ‘security’ that terrorists are still stalking the land and terrifying our people. This is because those entrusted with the fund meant for the prosecution of the fight against terrorism failed to disburse the funds for that purpose. In fact, they have seen it as a means of getting stupendously rich and have refused to put their feet where their milk flows. As long as they are in government, terrorism will not cease in this country. With the huge resources within their disposal, even when it seems terrorism is abating, they would create artificial one.

They are the mole in government. They sabotage the efforts of the government in combating terrorism as they leaked the government strategies and next line of action to terrorists in order to make sure that terrorism thrives to enable them to continue being in the business of making money and not serving their fatherland. Former President, Dr Goodluck Jonathan was correct when he stated that *Boko Haram* members were in his government.

#### **4.6.5 Corruption.**

Corruption is one of the major challenges we face in the fight against terrorism in Nigeria. Wherever and whenever corruption rears its ugly head, nothing works. Just as earlier stated, it is the spirit of corruption that would make a government official to divert fund meant for public good to his private pocket. It is the spirit of corruption that would make public servant entrusted with fund for the purchase of gadgets and modern equipment for combating terrorism to influence the price and yet go for inferior and out-dated equipment. It is the spirit of corruption

that would make a security agent to leak vital information to terrorists because of gratification he expects to get from the enemies of the State. Corruption is indeed a clog in the wheel of progress in the fight against terrorism and need to be checked.

#### **4.6.6 The Role of the Judiciary**

Judiciary as we all know is the last hope of the common man. Constitutionally, the Judiciary is charged with the responsibility of dispensing justice. The Nigerian Judges, no doubt, are hard-working. However, given the circumstances under which they work, cases before them take a long time to dispense.

The poor working condition under which our Judges work left much to be desired.<sup>239</sup> Trial Judges take evidence in long hand, conduct researches and write judgments, most times without the aid of well-equipped libraries. All these coupled with the legal antics of some lawyers unduly delay cases.

Terrorism related cases, considering the grave and atrocious act of terrorists need to be handled expeditiously in order to give justice to the victims of this evilly act; for justice delayed is justice denied. One of the first major terrorism cases, involving *BokoHaram* members was brought to a Federal High Court sitting in Abuja in the year 2011. Six members of the BokoHaram sect were arraigned on a five count charge in 2011 following the April 8, 2011 bombing of the Independent National Electoral Commission (INEC) office in Suleja, Niger State and other bombings that took place both in Abuja and Suleja. The judgment in this case was delivered in July, 2013, two years after its commencement. Given the fact that terrorism cases are criminal in nature, and criminal cases essentially must be proved beyond all reasonably doubt, the court needs time to establish the facts of the case.

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<sup>239</sup>Gani Fawehinmi Op cit at pg 11

On that premise, two years is a record time to dispense with a criminal matter. To this end, the effort of Justice *Balkisu Bello Aliyu* in that case is highly commendable.<sup>240</sup> However, our judges can do better, especially in terrorism related cases. Prompt and expeditious dispensation of terrorism cases would definitely send the right signal to terrorists that Nigeria is committed to the fight against terrorism and would not spare anyone found guilty of terrorist act.

#### **4.6.7 Poor Intelligence gathering and lack of basic tools of research and investigation.**

One of the challenges Nigeria has continued to grapple with in the course of fighting terrorism is the lack of effective intelligence gathering mechanism. Intelligence gathering is key to a diligent prosecution and successful fight against terrorism and where there is no synergy and necessary interface among the security agencies (namely: the Nigerian Police Force (NPF), the State Security Service (SSS), the Nigerian Army, the National Intelligence Agency (NIA), Defence Intelligence Agency (DIA), the Office of the National Security Adviser (ONSA), the Office of Chief Security Officer (CSO), the Nigerian Customs Service (NCS), the Nigerian Immigration Service (NIS) and the Nigerian Security and Civil Defence Corps (NSCDC)), the fight becomes illusion.

Combating terrorism requires going back to the basics. Intelligence gathering and analysis as well as a seamless integrated approach of all the security agencies are sine-qua-non in fighting and uprooting terrorism in Nigeria. Unfortunately, lack of the basic crime detection tools in forensics, ballistics and a database to compare evidence gathered from previous incidents like DNA, fingerprinting, photographs of suspect's facial mapping and other material evidence from the crime scene.

According to a November 2007 report by former Inspector-General of Police, *Ibrahim Coomasie*, the Nigerian Police Force entire forensic infrastructure comprises a non-functioning

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<sup>240</sup>The Federal Republic of Nigeria vs Shuaibu Abubakar (ABU QUATADA) and 5 Ors, FHC/ABJ/CR/113/2011 Unreported

forensic laboratory in *Oshodi*, Lagos; a forensic facility in *Ikoyi* Lagos and two government chemists in Lagos Island and Kaduna. The *Oshodi* facility which is actually operated by the Federal Ministry of Health over the years has suffered neglect as a result of inadequate funding and poor staffing. Currently it lacks adequate equipment, working materials and qualified staff to operate successfully.

In 1982, the Nigerian Police Force established its forensic Laboratory in Lagos to support criminal investigations within the premises of the Force CID. The laboratory was designed to have seven units, namely: Chemistry, Biology, Fingerprinting, Photograph, Ballistics, Disputed Documents, Tool Marks and GSM Information Extraction. The laboratory currently looks like an abandoned property with little or no activity going on. It has remained in a dismal state, with the existing equipment inadequate and obsolete. In 2007, the *Oshodi* laboratory had only five scientific officers to meet the forensic needs of the entire country.

The entire forensic capacity of NPF in 2007 comprised only one trained forensic pathologist. There was no ballistics experts, 97 and no DNA expert, 98. Expectedly a 2007 review of the forensics and investigation capabilities in the NPF found “a near total absence of forensic science in police investigation in Nigeria. Fingerprints or photographs of the scene are rarely taken”. The review concluded that this gives “impetus to the use of third degree policing strategies by police investigators”.<sup>241</sup> A country that pride itself as the giant of Africa should not have this kind of police.

No successful action for fighting terrorism can be realized without the support of the public, how cordial is the relationship between the Nigerian public and our security agencies, especially, the Nigeria police? And how else do we encourage security agencies that refuse to use intelligence information sent to them by citizens or fail to coordinate intelligence information from various security outfits and government agencies?

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<sup>241</sup> Osinuga, O.O.: The poverty of Rhetoric and the fight against Terrorism in Nigeria. [osihya@hoymail.com](mailto:osihya@hoymail.com)

More worrisome is the attitude of the police to the informant when information is taken to them. Instead of putting the information to test through analysis and investigation with a view to ascertaining the genuineness of it or otherwise, they often implicate or rope in the informant by either detaining him for further investigation or asking him to reveal the source of his information and at times go to the extent of letting the suspect know who the informant is in order to curry favour or get financial gratification from the suspect. How would one want to give the police, or any other law enforcement agencies for that matter information when he knows that his life would be in danger thereafter?

The attitude of some of the law enforcement agents indeed contributes to the state of assassination and kidnapping going on in the country; most often working hand in glove with the leaders of these notorious groups. For the fight against terrorism in Nigeria to succeed, the law enforcement agents should relate with public professionally. The war against terrorism can only be fought and won decisively through the support of the people as these terrorists do not leave in the moon. They leave among the people, and with the right attitude, the people would definitively cooperate.

#### **4.6.8 Porous Borders**

One of the challenges faced in combating terrorism in Nigeria is the lack of adequate security measures across the nation's borders. Security and surveillance at various borders are weak, compounded by numerous unofficial and illegal border cross points, thereby resulting in the infiltration of terrorists and illicit small arms and light weapons.<sup>242</sup>

The obvious dereliction of duties by our security agents at the borders is a major challenge in combating terrorism. Arms and ammunitions are illegally crossed into the country by terrorists

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<sup>242</sup>FATF Report op cit.

through our borders. There is a cross movement of terrorists into and out of the country through our borders.

The unpatriotic attitude of some of the security personnel at the nations land and maritime borders is a major reason for the continue thriving of terrorism in Nigeria. Some of these security agents compromised the security integrity of the country through collaboration with these agents of destruction, the terrorists, by leaking to them vital security information; helping them to smuggle weapons and ammunition into the country, and alerting the terrorists whenever there is security reshuffle and security beef up at the borders. Some of them go to the extent of selling out their fellow patriotic and hardworking security agents to the terrorists who see them as their arch enemies that must be uprooted. No wonder, these patriotic security agents are often the target of the terrorist's bombs and bullets.

All these happen at our borders because of the greedy and corrupt tendency of some of our security agents who are ready to do anything illegal and unpatriotic for the sake of financial gratification from the terrorists. They are worse than terrorists; for they are double edge sword, blowing hot and cold at different times, thereby tightening the noose round the neck of Nigeria.

It is as a result of porous borders that *Boko Haram* members were able to migrate to Mali and stayed at training camps with Malian militants for months in *Timbuktu*,<sup>243</sup> learning to fix *Kalashikovs* and launch shoulder-fired weapons, thereby intermingling with a local *al-Qaida* offshoot called *Ansar Dine*. It is as a result of porous land and marine borders that the three Lebanese by name – *Mustapha Fawaz*, *Abdallah Thahini* and *Talal Ahmad* who are members of the international terrorists *Roda* group, *Hezbollah*, were able to engage in the unlawful importation of prohibited firearms into Nigeria between 1988 and 2008 in Kano.<sup>244</sup>

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<sup>243</sup>Daily Trust Wednesday, February 6, 2013 pgs. 1 & 5

<sup>244</sup>The Nation Vol. 8, 2513 Tuesday June 11, 2013 pg. 60

It is a as result of porous borders that there is increase in proliferation of small arms and light weapons (SALW) all over the country and the consequent rise in criminal activities in the land. Professionalism and patriotism should be the yardstick for the recruitment of the security personnel in the country as their job is highly sensitive and strategic to the sovereign integrity of the Nigerian state. Any security agent(s) found compromising the security of the land must be summarily dismissed. A border is porous because the security agents sent to man them, having compromised themselves, decided to look the other way while nefarious activities are going on across the borders.

The challenge of porous borders in the fight against terrorism is not insurmountable if the security agents should be up and alive to their responsibilities. Professionalism and patriotism are the answer to the challenge of porous borders in the fight against terrorism in Nigeria.

#### **4.6.9 Leakage of vital information to the members of the terrorist groups by security agents.**

One of the challenges in combating terrorism in Nigeria is the unpatriotic attitude of some of the security agents tagged Joint Task Force (JTF) sent to quell the act of terrorism in some parts of the country. Given the peculiar circumstances that led to this very task, the Joint Task Force is well taken care of in an extra ordinary way to the extent that some of them would not want an end to terrorism in order to continue to enjoy special packages and treatment by the government. That is partly what informed the Baga incident where the JTF was seriously indicted in the atrocities, nay, human rights abuses, killings of innocent citizens committed in that community in April, 2013.

In addition, some of the members of the Joint Task Force have been compromised either ideologically or financially by the terrorists to the extent that our security agencies have been infiltrated by the dreaded *BokoHaram* hence they quickly adjust their strategy almost as simultaneous as we plan against them. The State must therefore move fast to rid the security services of all these compromised elements who are constantly disclosing counter- terrorism strategies to their pay masters and enemies of the State. Again this challenge can be surmounted when professional and patriotic security agents are absolutely in charge.

In conclusion, this chapter analysed terrorism Act and 1999 Constitution of the Federal Republic of Nigeria (as Amended) with a view to bringing to the fore the defects for possible corrections and point out the challenges in combating terrorism in Nigeria.

## CHAPTER FIVE

### SUMMARY AND CONCLUSION

#### 5.1 SUMMARY

In summary, Chapter one of this research serves as a general introduction to the research topic, setting out the background of the study.

Chapter two takes us on the concept of crime under domestic and international law showing a linkage between the two on the fight against terrorism and other crimes as States cannot realistically work within the confines of national borders without cooperating with their foreign counterparts in order to bring the perpetrators of such offences to justice. It also brings into focus money laundering and explicates how terrorists financing is done through laundering of fund. It further explains the mechanisms put in place by the International Monetary Fund (IMF), the Finance Action Task Force (FATF), the Inter-Government Action Group (GIABA), *inter alia*, in combating the menace of terrorist financing and money laundering.

Chapter three dwells on the causes of terrorism in Nigeria and the impact of terrorism on national development, peace and security and the international legal framework in combating terrorism and terrorist financing.

Chapter four dwells on an analysis of domestic legal framework in combating terrorism and terrorist financing. It also analysed the challenges in combating terrorism in Nigeria.

While chapter five is on the summary, findings and recommendation.

#### 5.2 FINDINGS

**1. The Conflicting Roles of the National Security Adviser and the Attorney General of the Federation.**

The 2013 Act<sup>245</sup> stated that the office of the National Security Adviser shall be the coordinating body for all security and enforcement agencies under this Act while it further stated that the AG of the Federation shall be the authority for the effective implementation and administration of this Act. The role of the NSA and AGF under this Act is overlapping and is capable of frustrating the workings of this Act especially where the occupants of these offices want to show the superiority of the offices they occupy. This is a potent danger in the administration of the Act and if not looked into may derail the fight against terrorism.

**2. Non Inclusion of the State High Courts in Handling Terrorism Matters under the Act.**

The 2013 Act like the 2011 Act did not include States High Courts in terrorism related matters. This omission has its grave consequences as terrorism matters take a long time to dispense with thereby encouraging terrorism. It is the researcher's reasoning that since the state high courthandles criminal matters, terrorism matters which by every standard are criminal should also be handled by it. That way, terrorism matters will be given the desired attention and quickly dispensed with. The delay encountered in the handling of terrorism matters has not helped the fight against terrorism.

**3. The Seemingly Indefinite Detention of Terrorism Suspects under the Act.**

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<sup>245</sup> Terrorism Prevention Act, Section 1

The 2013 Act<sup>246</sup> by providing for the detention of a suspect for up to 90 days is derogatory of the Fundamental Human Rights of the person. Any law that tend to infringe on the rights of a suspect unduly should not be allowed to stand, after all, fighting terrorism is not at odds with the inalienable rights of the people; rather each should be made to reinforce and complement the other.

#### **4. Poor Implementation of Terrorism Act.**

The 2013 Act extensively cured the mischief in the 2011 Act and will go a long way in curbing terrorism. However, the effective implementation of this Act is the problem we are having. The judiciary which is responsible for the interpretation of Terrorism Act and adjudication of terrorism related cases is seriously hampered by incessant strikes. It is worrisome the rate at which judiciary staffs go on strike thereby obstructing the efficient handling of terrorism matters. The lawyers that advocate for the accused persons, as well as the State do not help matters as they unduly delay the resolution of terrorism matters by calling for adjournments. Some of the judges also do not help matters. They most often, do not attend courts and would not give prior notice to that effect. All these contribute to the delay in implementation of Terrorism Act.

5. The activities of street beggars and the negative use of the fund raised by some religious and charity organizations militate against the elimination of terrorism in Nigeria.

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<sup>246</sup> Section 27

6. Intelligence gathering is key to defeating terrorism. Unfortunately, the intelligence gathering capabilities of the security operatives is poor and that poses a challenge.
7. Operational co-operation mechanism in information dissemination between and among all the security operatives and other organs of government concerned is seriously lacking and that is a challenge to defeating terrorism in Nigeria.
8. Human and institutional capacities of the security agencies involve in fighting terrorism are weak and that results to poor investigation, prosecution and adjudication for cases of terrorism and terrorist financing which ultimately hamper the fight against terrorism in Nigeria.

### **5.3 RECOMMENDATIONS.**

#### **1. Amendment of the Provisions of the Law:**

To strengthen the fight against terrorism, the following Sections of terrorism law and Constitution have to be amended.

- i. Amendment of Sections 1A (1) and (2) of Terrorism (Prevention) Act, 2013 which is on the powers of the National Security Adviser and that of Attorney General of the Federation.
- ii. Amendment of Section 27 of Terrorism (Prevention) Act, 2013 which empowers a judge to grant an order for the detention of a suspect for a period up to 90 days subject to renewal. And amendment of Section 32 to include state high court in handling terrorism cases.

- iii. Amendment of Sections 16 and 18 of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) to make the economic and educational rights a fundamental right enforceable by the law
  - iv. Amendment of Sections 214, 215 and 216 of the 1999 Constitution of the Federal Republic of Nigeria to provide for state police.
2. Effective and well -coordinated regulation of the activities of street begging, fund raising of religious bodies and non-governmental organisations.
  3. Enhance intelligence gathering capabilities, particularly in the use of undercover operations and insider information.
  4. Establish formal operational co-operation mechanisms to exchange vital information, ideas and security strategy between and among all the security operatives and other organs of government concerned.
  5. Strengthen human and institutional capacities in order to improve on investigation, prosecution and adjudication for cases of terrorist financing.
  6. **Creation of State Police.**

State Police will bring security closer to the people. Language and unfamiliar terrain barrier which are the bane of centralized police system would be taken care of as each state takes the responsibility of recruiting and maintaining the police in the state. State police would enhance the fight against terrorism in all parts of the country and brings about greater commitment among the police officers since they like the indigenes of

the state speak the same language, have the same culture, live in the same locality, know the criminals and their families as well as the crime routes in the area.

Therefore, the privy knowledge of the people and the area they reside by the police officers is a great asset in tackling terrorism and other related crimes in any state and when our states are free of crimes, the entire country is free of crimes. The security lapses we have continued to witness in the fight against terrorism are partly as a result of the motley nature of the Nigerian Police thus proving aright the logic of an apt Chinese proverb: distant hoses do not put out local fires.

#### **7. Making all the anti-corruption institutions in Nigeria independent and incorruptible**

Corruption is today rife in our country and has permeated all our commanding institutions including our security outfits, simply because the system allowed it to blossom. The Nigerian Government must take a deliberate step in creating a strong, independent and incorruptible anti-corruption institution. That way, terrorism would be defeated.

- 8.** The roles of the National Security Adviser and that of the Attorney General of the Federation shall be clearly delineated in Terrorism Act to avoid overlapping of functions which is capable of eroding the shines off the fight against terrorism.

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