

COMBATING TERRORISM IN NIGERIA:
A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK

BY

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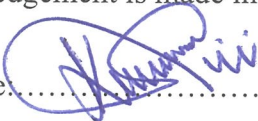
**A THESIS SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR AWARD OF MASTER OF LAWS (LL.M) DEGREE
OF KAMPALA INTERNATIONAL UNIVERSITY.**

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DECLARATION

I declare that this Thesis is the work of INUSA MUSA KARYAH alone, except where acknowledgement is made in the text

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APPROVAL

I certify that I have read this thesis and in my opinion, it conforms to the acceptable standards to scholarly presentation and is fully adequate in scope and quality as a thesis for partial fulfillment for the award of the degree of Master of Laws of Kampala International University, Uganda.

Signature of Supervisor:.....

Name of Supervisor:.....

Date:.....

DEDICATION

This research study is dedicated to my wife Mrs. Zainab and my daughters Afraah and Afreen for their patience, perseverance, and encouragement.

ACKNOWLEDGEMENT

I will first and foremost give glory to Allah most gracious, most merciful for the rare opportunity to undertake and complete this study. A special mention of my supervisor Dr. Bello Magaji FNIM, your valuable guidance and contributions was immense to the completion of this work. My sincere appreciation goes to some of my very senior officers who made it possible for me to embark on this study; AIG B. A. Bolanta (Rtd) and AIG A. T. Shinaba (Rtd). My special gratitude goes to the Dean School of Law KIU V. T. Mbeli PhD, Coordinator LL.M. KIU, the Doctorial committee whose constant criticism brought out the best in me, the entire Staff and students of the school for making my stay enjoyable. My gratitude goes to my brother Mr. Justice Ibrahim Suleiman Galadima whose support was tremendous. Mr. Cornelius of IPPIS Quality Assurance office you are the real 'don Cornelius' I thank you bro. My colleagues Chief Patrick Johnson (PJ), Mahanan, Paul James, Alhaji Faiza, Timothy Jambalang, Yusuf Alh. Bala, Mike Trefa, Nasiru Abdullahi, Alabi lateef Arymanya P and the entire course 21 'we are going family' I can't thank you guys enough. George and Alex my computer operators' thank you so much for being patient with me. I want to also appreciate my cadet in the Nigeria Police Academy for their kind words of encouragement. Those whose names are not mentioned for want of space you are all acknowledge please.

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LIST OF ABBREVIATIONS

AGF: Attorney General of the Federal

AML: Anti Money Laundering Law

AU African Union

ACSRF African Center for Research on Terrorism

A.Q.I.M: Al-Qaida in Islamic Maghreb

CC: Criminal Codes of Southern Nigeria

CPC Criminal Procedure Codes of Northern Nigeria

CAH W C Crimes against Humanity and War Crimes Act

CFT: Counter Financing Terrorism

CISLAC: Civil Society Legislative Advocacy Center

CAC: Corporate Affairs Commission

CFRN: Constitution of Federal Republic of Nigeria

ECOWAS Economic Community of West African states

EFCC: Economic and Financial Crimes Commission

FARC: Fuerzas Armadas's Revolutionaries de Colombia (the Revolutionary Armed Forces of Colombia)

FATF: Financial Action Task Force

FHC: Federal High Court

GDP Gross Domestic Product

G.I.A.B.A: Groupe Inter gouvernementale d'action centree le blanchiment d'agen afrique del'ouest.
(Intergovernmental Action group against Money laundering in
West Africa)

IPOB: Indigenous Peoples of Biafra

ISIL: Islamic State in Iraq and the Levant

Interpol: International Police Organization

ICC: International Criminal Court

I.E.D Improvised Explosive Device

IMF International Monetary Fund

IGP: Inspector General of Police

LFN: Laws of Federation of Nigeria

LGA: Local Government Area

MASSOB: Movement for the Actualization of the Sovereign State of Biafra

MEND: Movement for the Emancipation of Niger Delta

NDVF: Niger Delta Volunteer Force

OAU Organization of African Unity

ONSA: Office of the National security Adviser

OPC: Odu'a People's Congress

P C: Penal Code of Northern Nigeria

S.C: Supreme Court of Nigeria

SERAP: Socio-Economic Rights Accountability project

UNODC: United Nations Office on Drug and Crime

UNSC: United Nations Security Council

USSR: Union of Soviet Socialist Republics

USA: United State of America

U N O: United Nations Organization

U N O D C: United Nations Office on Drugs and Crime

UAE United Arab Emirate

W.A: West Africa

WTC: World Trade Center

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ABSTRACT

Terrorism has been a threat to both the people and of government of Nigeria. The loss of human and material resources is so monumental and set back to the country. The objective of this research is to critically evaluate the legal framework put in place to counter terrorism in Nigeria. The methodology adopted for this research is doctrinal, this enable the researcher examine the mechanism put in place to tackle terrorism and find a means of filling the gap identified. The major findings of this research includes terrorism prevention Act 2011 and Terrorism Prevention (Amendment) Act 2013, s 27 of the Act states that a suspect may be detained for 90 days subject to renewal, while s 28 deals with access to detain person pending the conclusion of investigation while s29 relates to the privacy of the citizens. These provisions run counter to the spirit of the constitution of federal republic of Nigeria 1999 (as amended). It is in the light of the forgoing that this recommendation is made amendment of the above mentioned provisions to conform with constitution as it relates to Fundamental Human Rights.

CHAPTER ONE

1.1 Background to the study

The term “terrorism” was first recorded in 1795 in France relating to the reign of terror by the government, it then followed in Ireland when in 1866 “terrorist” refer to anti government actions or activities, and in 1883 it was used in similar fashion in Russia.¹ Originally the term ‘terrorism’ refers to acts committed by government. The concept of terrorism kept evolving until it got to the state we are now, where the term refers to incidence of wanton destructions of lives and properties of people and government indiscriminately. It could be for political or religious reason or demand from the government to execute a certain request they are making.

Indeed terrorism must be seen from the concept of the modern Nation State where the demise of a leader does not extinguish the state thus the group design strategy to include civilian target to create apprehension and anxiety in other to undermine the government.

There are various terrorist groups around the globe namely Fuerzas Armadas Revolucionarias de Columbia (FARC) in Colombia, South America. In Asia, when the US wanted to kick former USSR out Afghanistan, it sponsored a terrorist group called Mujahidin² among its leaders was one Osama bin Laden. Its fighting force were drawn globally and from then on the seed of today’s Al Qaeda was sown. In the Middle East dozens of terrorist groups exist among which are Hezbollah, Al Nusra Daesh/ISIS/ ISIL among others. Each has territory under its control with the collapse of the government of Iraq.

Africa has its fair share of the terrorist groups for instance in Somalia Al Shabab came into existence, Mali had the Al Qaeda in Islamic Maghreb, while Jama’atul Sunnah lid’ dawatiwal jihad, and here-in-after called Boko- Haram established its base in Nigeria. There were several militias in Nigeria which predate boko haram among which are: the Odu’a People Congress, Egbesu Boys Africa, Sojan bante, Movement for the Survival of Sovereign State of Biafra,

¹ A S Gashimbaki and A U Namaibindiga, ‘I Am Innocent of Terrorism says religion’ (first published Sarumedia publishers, 2015) p8.

² DL Barlett and JB Steele 2000 ‘The Oily Americans’ <https://content.time.com/time/magazine/article/0,9171,450997-92,00.html>. accessed 23/03/2018.

Bakassi Boy³ among others. The modus operandi of boko haram became so complicated that it made them stand out among their fellow insurgent groups.

On the 11th day of September 2001, four commercial jets were hijacked by a cell of terrorists. One of the jets hijacked left Boston Massachusetts and crashed in to the North tower of the World Trade Center (WTC). In the morning of the attack, some eighteen minutes later, a second plane also from Boston owned by United Airlines was used to strike the South tower of the World Trade Center. The twin tower of the WTC collapsed following massive damage of their structure as a result of the crash from the planes of the terrorist. At 09:43hrs Pennsylvania local time, a third hijacked plane belonging to American airline flight 93 also crashed in Somerset County, Pennsylvania South-East of Pittsburg.⁴ The act of crashing the plane into the buildings and the resultant effect was the worst act of terrorism in the history of the U.S.A. in addition to the destruction of properties worth billions of dollars some three thousand lives were lost. The act of the terrorists on Sept 11th sent a wave of shock of the dangers of international terrorism around the globe. The terrorist attack was condemned unequivocally by the International Community and Organizations.

The United Nations General Assembly on the 12th of September passed a resolution condemning the act which resulted to the destruction of properties and loss of lives,⁵ the United Nation while expressing solidarity with the people and government of the U.S.A, called for international cooperation to bring justice to the perpetrator, sponsors or organizers of the crime of September 11th 2001. Similarly, the Security Council on the 12th of September condemned the terror acts calling them ‘a threat to international peace and security’.⁶The UNSC further required Nation States to adopt and implement legal instruments on terrorism, to prevent and suppress the financing and freezing of funds on international matters.

³Abah D. and Hembé A ‘Ethnic Militia and Security in contemporary Nigeria’: an appraisal of Ombatse in Nasarawa State (2015) POLAC Intl Journal of Humanities And Security Studies p5.

⁴cnn.com-chronology of terror-September 12,2001 <http://edition.cnn.com/2001/US/09/11/chronology.attack> accessed 23/03/2018.

⁵ A/ Res 56/1 (12 Sept 2001) www.un.org/ accessed 23/03/2018.

⁶ S/Res/1368 adopted by SC at its 4370th meeting U.N.O.D.C publishing and Lib sec. U.N office, Vienna Feb. 2012 p2.

Further, states were enjoined to assist one another in respect of criminal investigation and proceedings relating to terror acts.⁷ Furthermore, states were encouraged to exchange information regarding terrorists movement, including trafficking in arms and sensitive materials, use of communication and technologies by terrorist, the threat of being in possession of weapons of mass destruction.

In compliance with Security Council resolution calling for a total fight to annihilate terrorist group in the world, the then government of President of Nigeria H.E. Olusegun Obasanjo established the Economic and Financial Crimes Commission (EFCC) in 2003. Prior to 2003 Nigeria experienced different kinds of insurgency leading to destruction of lives and properties. The types of terror acts known to the EFCC Act was absent at the takeoff of the commission, although a group under the name Nigeria Taliban attacked some public buildings and Police Stations in Geidam and Kanamma Yobe State in 2003, they operated in Bama and Gwoza, Borno State in the same manner 2004.⁸ They were subdued by a joint team of the Military and the Police. They went under only to resurface in 2009 to unleashed what is known as Terrorism under the EFCC Act.⁹ Attacks from the terrorist group continued to ravage the land leading to loss of some territory. The terrorist group established their caliphate. The epic center of the insurgency was Maiduguri Borno State.

The Nigeria Police Force Headquarters, Louis Edet house Abuja was bombed by Boko Haram on the 16th day of June 2011. That was the first suicide bombing to be recorded in the history of Nigeria. Subsequently, the floodgate was open in Nigeria. The next bombing by book haram happened on the 26th of August 2011 at the United Nations building in Abuja, this attack leaving 21 dead and 13 injured.¹⁰ Further, the Boko Haram group continued to attack even when the government pronounced technical defeat of the group.¹¹ The Boko Haram group devised a means

⁷ SC Res.7158 (4385) <https://www.un.org/press/en/2001/sc7158.doc.htm> meeting on 28th Sept. The SC unanimously adopted wide ranging anti-terrorism resolution, Res 1373 (2001) created a committee to monitor the implementation.

⁸ Iro A and Oarthe O 'The Boko Haram Uprising: How should Nigeria Respond?' (2012) Third World Quarterly 853-869.

⁹ S.46 Economic and Financial Crimes Commission Act (2004).

¹⁰ <http://mobile.nytimes.com/2011/08/29/world/africa/29nigeria.html> accessed on 23/03/18.

¹¹ Nigeria Boko Haram Militants 'technically defeated' Buhari-BBCNews-<http://www.bbc.com/news/amp/world-africa-35173618> accessed 23/03/18.

of carrying out their nefarious activities such as suicide bombing using mostly women and children at different times and places in the North Eastern Region of Nigeria.

The executive director of the United Nations Office, on drugs and crime (UNODC) stated after the attack on the U N office in Abuja that:

On 26th August 2011 the United Nation office in Abuja, Nigeria was a target of terrorism attack that shocked the world and drew global condemnation. The car bomb that was detonated cut short lives of twenty-four friends and colleagues working for the betterment of 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.¹²

The Executive Director UNODC statement is a sad commentary on the activities of terrorists in Nigeria and the world. The dangerous activities of the terrorists have assumed an upsurge dimension in recent past. This situation calls for concerted efforts by the Nigeria government and non-state actors as well.

The activities of Boko Haram render other ethnic militia that has been in existence causing mayhem on the innocent citizen of the nation as 'holy'. The Odu'a People's Congress, (OPC) mainly a Yoruba group was established to visit Mayhem on their perceived enemies. The Movement for the Actualization of the Sovereign State of Biafra (MASSOB), Movement for the Emancipation of Niger Delta (MEND) Niger Delta Volunteer Force (NDVF) Egbsu Boys, Bakassi Boys Indigenous People of Biafra (IPOB) and Ombatse¹³ these groups had at one time or other wreak havoc on Nigeria and Nigerians. The government failed to do anything to prosecute them thus crating avenue for more groups to surface.

1.2 Statement of the Problem

That the Federal Republic of Nigeria is under the threat of terrorist organizations' is to say the least an understatement. The activity of the terrorist renders the country unsafe for human activities. The constitution of the federal republic of Nigeria and other laws entrust the Attorney

¹²Fedetov N.Y. 'Criminal Justice Response to Support Victims of Acts of Terrorism' United Nation New York, (2011) p6..

¹³Abah and Hembe (n 3) .

General of the Federation and States to prosecute all infractions of the provisions of the laws¹⁴, the A G can instate, takeover, continue and discontinue a case at any stage before the judgment is delivered. Such an action must be done in the interest of the public.

the SC in *Anyebe v. State*¹⁵ Similarly, Administration of Justice Act in s. 106 and 107 has similarly provision to the 1999 constitution.

The manner with which the Federal Government is handled the prosecution of the terror suspects and other crisis that had engulf the country calls for interrogation of the legal mechanism in place to combat terrorism. From the inception of the boko haram crisis in 2009 to date only 13 suspects have been put to trial, 9 convictions gained¹⁶ among the convicts, is Kabiru Umar alias Kabiru Sokoto, the mastermind of Madalla Catholic Church bombing. He was brought on two count charges under the EFCC and the Terrorism Prevention.¹⁷

In October 2017 the Government brought forward a total number of 1669 terror suspects are to be tried in a military facility in Kainji¹⁸, Niger State North Central Nigeria. So much argument was canvassed as to the ability of the judiciary to handle the volume of the cases before it. It is pertinent to state that additional members of the group are to be tried in Maiduguri. A number of the suspect in the custody of the military were missing or unaccounted for. It therefore raises serious concern on human rights abuses by the military as reported by Amnesty International

Similarly, even where panel of inquiry has indicted a person or group of people for their participation in acts of terrorism, they are usually not brought to face the wrath of the law.¹⁹

The justification for the interrogation of the law is the lengthy period it took to put forward such a large number of suspect before court of law in kainji, the researcher will attempt to scrutinize the law and find out where the lacuna lie whether it is the law or the political will that is lacking in the fight. The inability of the government to prosecute suspected terrorist spells doom for the nation.

¹⁴S 174(1) a() (b) (c) CFRN 1999.

¹⁵ (1986) 1 SC 87.

¹⁶<https://www.theguardian.com/world/2017/oct/09/Nigeria-begin-secret-trials-thousands-boko-haram-suspects> accessed 30th January 2018.

¹⁷ EFCC at S.15 (2) 2003 and S. 17 Terrorism Prevention Act 2011.

¹⁸<https://www.vanguardnig.com/2017/10/fg-begins-mass-trials-boko-haram-suspects/> accessed January 2018.

¹⁹ Curbing violence Nigeria (1): The Jos Crisis Africa reports NO 196- 17th December (2012) International Crisis Group.

1.3 Objectives of the study

1.3.1 General Objectives

The general objective of this study is to critically evaluate the legal framework and mechanism put in place for combating terrorism in Nigeria.

1.3.2 Specific Objectives

- (i) To identify the causes of terrorism in Nigeria.
- (ii) To examine the adequacy of the legal mechanism put in place for combating terrorism in Nigeria
- (iii) To determine the causes of terrorism, the impact of government action or inaction in the fight against the menace of terrorism in Nigeria.

1.4 Research Questions

- (i) What is the legal mechanism in place for combating terrorism in Nigeria?
- (ii) How does the court operate in handling terrorism cases in Nigeria?
- (iii) What are the enforcement challenges faced in the fight against terrorism in Nigeria?

1.5 Significance of the Study

This study is concerned with the legal mechanism for fighting against terrorism in Nigeria. It is a known fact that peace and security are prerequisite for any meaningful development in political, economic and social activities to thrive. It is against this backdrop that the study is significant in that it will identify the gaps in the laws relating to the fight against terrorism to the office of the Attorney General at the Federal and State, Legal Practitioners, Researchers and the General Public. All will benefit from the outcome of this work as it will proffer ways to legally fight terrorism in Nigeria.

To the government at the Federal and State, it will assist them to identify the strength and weakness of the existing legal mechanism and find the means of tackling it to ensure no suspect of terrorism is allowed to go scot free.

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The study will be an excellent source of material for future research work by students and researchers in this area of law.

1.6 Scope of the Research

This research is focused on the legal regime on terrorism in Nigeria with particularly emphasis on the North Eastern States of the country. The terrorist group Boko Haram and its activities go beyond the frontier of Nigeria, consequently, reference would be made of its international activities. The scope would not however, include the activities of terrorist groups in other parts of the country like MEND, NDVF, OPC or IPOB.

1.6.1 Geographical Scope

The study was conducted in Nigeria, specifically the North Eastern States of Borno and Yobe, which is the birth place of the terrorist group Boko Haram. Borno State is a boarder State with three other countries Chad, Cameroun and Niger Republic giving the group international outlook.

1.6.2 Content Scope

This study critically analyzed the existing legal mechanism to combat terrorism at the international, regional and national level. The study will further interrogate the conventions ratified and if they have been domesticated and how efficient they have been if not what is causing the hiccups, and proffer a possible solution to the gaps identified.

1.6.3 Time Scope

The time scope for this study was 2001 and 2016 i.e.it covers a period of 15 years. Consequently, the information to be documented regarding the legal mechanism/framework put in place to combat terrorism will be discussed within this time frame. The level of carnage in Nigeria assumed a different dimension since 2001, and with coming of Boko Haram in 2009 the terror acts escalated to a level never heard of before in the country.

1.7 Research Methodology

The methodology of this study will be doctrinal method. Statutes such as the Constitution of the Federal Republic of Nigeria 1999 (as amended), Terrorism Prevention Act 2011, EFCC Act 2004, Criminal and penal Codes Act CAP 77 and 89 Laws of the Federation 1990, International instrument such as the 9 Universal Instrument against Terrorism ratified by Nigeria and case law will constitute the primary sources of this research. While scholarly works of legal scholars, journals, newspaper and articles, speeches, seminar papers, dissertations magazines and periodicals constitute secondary sources for this research.

According to McConville and Wing²⁰, doctrinal or library research is the most common method of research undertaking by those doing research in law. It interrogates the law, by analyzing the legal doctrine and how it was developed and its application.²¹ This is the rationale for adopting doctrinal methods for this research.

1.8 Literature Review

Literature review of other works is an important aspect of this research work because it assisted the researcher scrutinize the works of others, and what they did not do in the area of reducing terrorism in Nigeria and how differently the researcher intends to go about his work in order to achieve result. It is against this background that the selected works below were reviewed.

Okeanonife²² in his book titled *Inter-Agency Intelligence Gathering and Sharing for Effective Crime Control*. From the intelligence perspective, he emphasized the need for the security agencies within the nation to collaborate and cooperate in order to nip the destructive force of terrorism and other forms of crimes in the bud. He went on to state that security agencies need to update the knowledge of their personnel on the latest intelligence gathering techniques. This research will seek to scrutinize the link between failed intelligence and terrorism and proffer solution on the way forward.

²⁰Mc Conville and wing cited in Angela E A ,Trafficking in women and children in South Sudan Analysis of the legal framework (an LL.M. thesis)2017 p11.

²¹ Ibid.

²²C. Okeanonife/*Inter-Agency Intelligence Gathering and Sharing for Effective Crime Control* (2012) p20.

Damilola²³ In his work *Terrorism, Armed Conflict and the Nigerian Child Legal Framework for Child Right Enforcement in Nigeria*, stressed that person under 18 years are among the most vulnerable sets of people in most armed conflict and terrorist attacks in Nigeria. He went on to emphasize that international law over the years has to be a holistic legal regimes design to protect the children as part of the national counter terrorism strategies in Nigeria legal framework. This researcher scrutinized the gap contained in the Nigeria counter insurgency strategies and legal mechanism put in place for the fight against terrorism.

Samuel²⁴ in his work, *Terrorism, Counter Terrorism and Norms in Africa*. The erudite scholar of security and international studies wrote on terrorism and its effect on the lives of innocent civilians and the fallout of counter terrorism measures by security agencies and the legislatures, similarly, he stated that counter terrorism measures causes death, miseries to the public just as the terrorist. This researcher looked at the time gap and make observation on what has happened between the times of the research.

Hakeem and Ufo²⁵ in their work *Boko-Haram Terrorism in Nigeria, Man, the State and the International System*, they explore the origin of Boko-Haram, terrorist group, their ideology and motivation of its founders and members. The failures of the Nigeria State and the modern trends of religious terrorism in the international system. This research focused on how the suffering of the general public can be legally mitigated in terms of terrorist attack Vis a Vis the failure of the nation.

In his work *Terrorism in the Aviation Sector: the Human Right Dimension of the use of Body Scanners*.²⁶ The author stressed the need to respect the fundamental rights of the people by law enforcement agencies while fighting terrorism. Counter terrorism effort including the use of

²³S .O Damilola. *Terrorism, Armed Conflict and the Nigerian child Legal Framework for Child Right Enforcement in Nigeria*. Nig. J. R (2015) pps1-12.

²⁴ M.M Samuel *Terrorism Counter-Terrorism and norms in Africa*. Africa security review (2006)p15.

²⁵O Hakeem and O.U. Ufo *Boko Haram terrorism in Nigeria*, Africa security review 21'3,(2012)P24-39.

²⁶C J Dakas being a paper presented at NIALS(Lagos Campus) (2010)p2-21.

body scanner and protection of human rights are not to be used as tradeoffs but rather be seen as complimenting each other to securing the airspace of the world.

This work analyses the forgone text because it has some direct relevance to the research work relating to human rights and terrorism. This researcher also explored the consequences of failure of the security agencies to respect Fundamental Human Rights of the terrorist as well as that of the victims of the terror acts and resultant effects of the failure to observe these rights could fuel terrorism. The extra judicial termination of Mohammed Yusuf life for instance was a catalyst to the crisis of boko haram today.²⁷ To this end the Sectary General of the United Nations Antonio Guterress has this to say

Terrorism thrives when disenfranchised people meet nothing but indifference and nihilism. It is deeply rooted in hopelessness and despair...societies based on respect for human right and with economic opportunities for all represents the most tangible and meaningful alternative to the recruitment strategies of terrorist group²⁸

Tariq²⁹ in his work *The Clash of Fundamentalism: Crusaders, Jihads and Modernity*, chronicled the event of September 11th2001 exposing the negative impact of state terrorism, especially by the so called super powers and their allies, state by their action or inaction leads to terrorism. This draws the researcher's attention, comparing the action of Nigeria vis-à-vis the international community and to see where the country got it wrong thus the terror rain by insurgent. This research explored whether the actions or inactions of the Federal Government of Nigeria created such avenue. In other words, does the failure to follow due process like the killing of Mohammed Yusuf fuel the insurgency of Boko-Haram?

Sirchi³⁰ In his work which he captioned *Criminology and Penology* is on international terrorism, and the International Police (Interpol), stated that to deal with international terrorist group like Al-Qaida, the Interpol has a huge task thus leading to the creation of task force called 'Fusion' in which member states share the most sensitive information they have about such group.

²⁷ Iro and Oarthe (n7 p 865).

²⁸ www.una.org.uk/news/watch-un-secretary-general-deliver-speech-london-countering-terrorism 16th November 2017, accessed 25/03 2018,

²⁹ A Tariq *The Clash of Fundamentalism: Crusader, Jihads and Modernity*, (verso, London 2003) P14.

³⁰ J P S. Sirchi *Criminology and Penology*, (Allahabad law agency, 2004) P5.

This work scrutinized the conflicting roles of the Attorney General and the National security Adviser, on who is the leading officer in relation to fight against terrorism, as opposed to the smooth operations of the Interpol. How does the conflict interfere with the fight against terrorism?

In their work William and George ³¹ *The Mafia the First 100 years, The Deadly Inside Story of Organized Crime* narrated the historical back ground of how organize crimes which include terrorism started in the last hundred years in Sicily through the Italian mafia “The black Hand” their work would have been complete if they had proffered solution of the threat of organized crimes. This researcher analyzed their work and provided legal solution to the fight against terrorism in Nigeria.

United Nations Office on Drugs and Crime³² came up with legal framework against terrorism. This international legal instrument amount to nothing if not domesticated in the country. It is in the light of the foregoing that this researcher did not only analyzed the international legal frame work in the fight against terrorism, but also look into the legal mechanism put in place to combat terrorism with a view to ascertaining the adequacy or otherwise of the instrument in Nigeria.

Chukwurah³³ In his work “Global Terrorism and Rule of Law the Nigerian experience. The Author focuses on global terrorism and rule of law. He made Nigeria his focal point. His work served as a catalyst to this research work because he of the link between global terrorism and Nigeria, however he did not proffer solution to end this endemic crises called terrorism, this research will attempt to proper legal solution to terrorism.

In analyzing this work *Legal Framework for the Punishment of Terrorism in Nigeria a critique of the EFCC establishment Act*³⁴ It seeks to interrogate the efficiency of the EFCC Act in the administration of cases of terrorism. He argued that the existing penal and criminal laws possess similar elements with the offense of terrorism in the EFCC Act.

³¹W Balsomo&G.Carpozi*The Mafia the First Hundred Years*, (Virgin Books London 1997) P2.

³²UNODC :Universal Legal Frame Work against Terrorism, publishing & Lib sec. UN Office, Vienna.(2012) P1.

³³O AChukwurah*Global Terrorism and the Rule of Law: the Nigerian Experience* (Orient press 2011).

³⁴Terwase S,’ *Legal Framework for the Punishment of Terrorism in Nigeria: A critique of the EFCC Establishment Act* [2004] *The Nigeria Army Quarterly Journal* vol.4 (No.3) P1-2.

This researcher looked at other legislations on terrorism like the EFCC Act, terrorism prevention Act with a view to proffer amendment where necessary to give the laws teeth in the fight against terrorism.

Olusegun³⁵In his book, *Power Politics and Death*. A front line account of Nigeria under President Umar Musa Yar'adua. He dwell on Umar Muttallab, a young Nigerian who attempted to blow up a Detroit bound Delta Airline from Amsterdam on 25thDecember 2009, vis-à-vis Boko Haram whose activities back home is a menace to the people. He gave a detailed account how it all started and where it was at 2011. This work would have been perfect because it is from hindsight account but time has over taken most of the account contained therein and this research will bring up to date the legal mechanism put in place to counter the acts of terrorists like Umar Abdul Mutallab.

Ajiboye –Dare³⁶, in her work *Terrorism the Nigerian Perspective*, this work has a direct link to my research study. It dealt with the causes of terrorism which are perpetuated by criminal element in the society and those who claim to be fighting for the cause of religion otherwise holy war for the benefit of humanity. The work identified cause of Boko Haram crisis and provided a way forward. There are gaps in the work relating to the mechanism in place to tackle the menace legally, my work seek to address that gap.

Summary of major gaps in literature review

The efforts put into reading these materials exposed the researcher to new frontier of knowledge in the areas of terrorism and widen his intellectual horizon in the field. It is my humble submission that the level of research put will assist this research in appraising the legal mechanism for dealing with act of terrorism in Nigeria. Some of the works received above is found to here have content gap time or tempered gap and this research will attempt to upgrade the work by filling the gap to the current state of things as it relates to legal mechanism in dealing with acts of terrorism in Nigeria.

Some of the major gaps identified in the literatures reviewed include: the gap of failed intelligence, human rights abuses by both the terrorist and the law enforcement agents saddled

³⁵ O Adeniyi *Power, Politics, and Death, A front-row Account of Nigeria under President Yar'adua*, (Kachifo Ltd Lagos Nig.2011) P102-114.

³⁶ Ajiboye-Dare M F. *Terrorism the Nigerian Perspective* Lambert Academic publishing (2016).

with the fight on terrorism. It was also evident that the government prior to 2015 lack the political will to execute the laws to the latter because of some lacuna in the extant laws on terrorism and *nolleprosequi* powers to discontinue a case at any stage before judgment is delivered.

1.9 Organizational Layout

This thesis is divided into five chapters, with each chapter divided into the following:

Chapter one is on general introduction showing amongst other things the scope of the research, statement of the problems, objectives, research questions, and significance of the study, methodology and the organizational layout of the study.

Chapter Two deals with the conceptual clarification of key terms, concepts of terrorism, concepts of terrorism financing through money laundering and concept of crime under domestic and international law.

Chapter Three deals with the international and domestic legal mechanism for combating terrorism, the causes of terrorism in Nigeria.

Chapter Four is on the general overview of causes of terrorism and constraints faced in combating terrorism in Nigeria.

Chapter Five is the summary of the work, Conclusions, Findings, and Recommendation to cover the existing Lacuna in the fight against terrorism in Nigeria.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS OF KEY TERMS

2.1 Introduction

This work will be made a little easier to comprehend when key terms in relation to terrorism are explained clearly, hence this chapter will be devoted to explain the concept of Terrorism, concept of Terrorist Financing, concept of Terrorist Financing through Money Laundering and concept of Crime under National and International law. The sources of terrorist funding in Nigeria.

2.2 Concept of Terrorism

The concept of terrorism is one of the most difficult concepts to deal with when it comes to definition. There is no agreeable definition for the term 'Terrorism'. It's "this controversy that informed Abdul Rashid Morten title "Contested Concept, Conflicting Perspective and Shattering Consequences" in his examination of the intense debate on the definition and phenomenon of terrorism.¹ Morten's examination of relevant materials relating to the concept in 2010, he came to the conclusion that 'there is no widely agreed definition of terrorism and there seems no possibility of an agreed upon definition emerging in the near future' He asserted that this is because the definition of terrorism are colored by political ideology, location and perspective.²

In the same vein, Thomas Bradley argues that definition dilemma on the concept of terrorism continue given that its existing definitions have fallen into two categories of academic and political"³ he went on to cite the definition provided by Alex P. Schmid in 1988 which to date still has strong influence on the study of the concept of terrorism. Accordingly, he gave a perfect example of the "Academic" definition of terrorism. According to Schmidt terrorism can be defined as 'An anxiety-inspiring method of repeated violent action, employed by (semi)

¹A. R. Morten, *Understanding Terrorism Contested Concept, Conflicting Perspectives and Shattering Consequences; Intellectual Discourse*, 18.1, (2010) P 31- 63.

² Ibid P.36.

³ T.J Bradley *Defining International Terrorism: A Pragmatic Approach to Terrorism and Political Violence 10.1* (1998) P90-107.

Clandestine individual group or state action, for idiosyncratic, criminal or political reasons where by the contrast to assassination the direct targets of violence are not the main targets'.⁴

This definition however failed to take cognizance of state sponsored terrorism. What it did was to consider non state actors action only. The popular political definition "in government circle was that offered by the U.S department of State in 1983. As noted by Bradley and this definition is still being used today. 'Terrorism means premeditated, politically motivated violence perpetrated against non-combatant targets by sub national groups or clandestine agents usually intended to influence an audience'.⁵

Similarly, the British government has defined 'terrorism as the use, or threat, of action violent, damaging or disrupting and is intended to influence the government of intimidate the public and is for the purpose of advancing a political, religious or ideological cause'.⁶

From the forgone definition by the U.S. state department and Britain it is evidently clear that they are biased and did not take into consideration the state "apparent impurity against it citizens' and suggested that only non-state actors are capable of committing terrorism"⁷. This concept allows the U.S and its' allies and indeed any government to call anybody or group that opposes them or their policies a terrorist.⁸ It is pertinent to state further that the political definition allows the state maximum amount of discretion in interpreting event of political significance⁹

A classic example is the case of the Anglo phone- Cameroon seeking for self-determination; the state used the wide latitude at its disposal to label them terrorists, hence licensed to commit all forms of aggression against them with impunity. Contrary to what is happening to IPOB being formally proscribed and declared by the court as a terrorist organization.¹⁰

In 1974 Richard Baxter expressed a general apprehension about the use of "Terrorism" as a concept of law. He stated that: 'We have cause to regret that a legal concept of "terrorism" was

⁴Schmidt A and Longman J.J, *Political Terrorism*. New Brunswick, N.J Transaction Books 1998, P 28.

⁵ Ibid P 11.

⁶ Morten A.R, *supra* p.37.

⁷ Ibid p.38.

⁸ Ibid.

⁹ Bradley (n 37 p 92).

¹⁰ www.thisdaylive.com/2017/09/21/court-formally-proscribes-ipob-designate-it-terroris-organization/accesses
21/01/2018 at 20:13hrs.

ever influenced upon u. The term is imprecise, it is ambiguous and above all it serves no operational legal basis¹¹

Similarly, Rosalyn Higgins in the conclusion of the introduction of the book 'Terrorism and International Law' wrote that

terrorism is a term without legal significance. It is merely a convenient way to alluding to activities whether of states or of individuals widely disapproved of and which either the methods used are unlawful, or the targets protected or both¹²

To further explain the difficulties encountered in the definition of terrorism Oussama D stated that 'defining Terrorism is one of the most controversial task, the first attempt to define terrorism was after the world war 1 in year 1937 in the Convention for the prevention and Punishment of Terrorism¹³, in this regards more than one hundred definitions were put forward in forty five years without consensus.¹⁴

Shaw M.N acknowledged the problem of definition of terrorism when he stated that 'As far as international law is concerned, there are a number of problems that can be identified. The first major concern is that of definition'¹⁵

Mr. Justice potter Stewart of U.S. Supreme Court famous definition of "pornography" being the exception which confirms the rule in the case of *Jacobellisvs State of Ohio*¹⁶, 'I could never succeed in intelligibly doing so (i.e. defining hard-core pornography C.W). But I know it when I see it'.¹⁷

We cannot but agree with the U.K representative at the U.N in his definition of terrorism he stated that "what looks smells and kills like terrorism is terrorism"¹⁸. However, as lawyers we

¹¹ Baxter, R.R, *A Skeptical look at the Concept of Terrorism*, *Akron law Review* 7 (1973/74) 386.

¹² Higgins R. *The General International Law of Terrorism* in Higgins R and M .Flory, *International Law and Terrorism* London (1997) 13 (23).

¹³ Oussama D *The Problem of Responding to Terrorism and International law: Challenges and Responses* p 147-154 in *Terrorism and International Law Challenges and Response* Sanremo (2002).

¹⁴ Laqueau: *Reflection on Terrorism* 65 *Foreign Affairs* (1986-7) p88, Saul : *Attempt to Define Terrorism International Law NILR* (2005) 57.

¹⁵ Shaw M.N *International Law*(6th edition 2008) p,1159.

¹⁶ 378 U.S. 184,197 (1964) .

¹⁷ Ibid.

¹⁸ U.K representative at the U.N statement General Assembly debate on terrorism (1/10/2001).

still need to work on abstract definition of what should legally constitute the definition of terrorism.

The U.N.S.C in its resolution 1566/2004 identified some elements of the definition referring to criminal acts which include and or against civilians, committed with the intention 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 person, intimidate a population or compel government or an international organization to do or abstain from doing any act.

The United States 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'.

In Nigeria S.I (2) of Terrorism (Prevention) Act 2011 defined terrorism thus; in this section an 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
 - 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 structure 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 endangered human life or result in major economics loss

- iv. the seizure of an aircraft, ship or other means of public or goods transport and diversion of the use of such means of transportation for any of the purpose in paragraph b (iv) of this sub section
 - v. The manufacture, possession, acquisition, transport, supply or use of weapons, explosive or of nuclear, biological or chemical weapons, as well as research into and development of 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 effects of which is to endanger human life.
- d) An act or omission in or outside Nigeria which constitute an offence within the scope of counter terrorism protocols and convention duly ratified by Nigeria.

The Ugandan anti-terrorism act of 2002 in s 7 declare the act of terrorism as an offence and of conviction the offender will face death,

(2)A person commits an act of terrorism who, for the purposes of influencing the Government or intimidating the public or a section of the public and for political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property, carries out all or any of the following acts and a long list similar to the one mentioned in the definition in Nigeria.

The researcher adopted the strategy of justice Porter Stewart¹⁹ in defining terrorism is not easy but when I see one I will be able to identify it. In other words ‘any Wanton destruction of lives, properties be it public or private, hostage taking, disruption of essential services with the sole aim of creating fears in the minds of the public and compelling government or international organization from carrying out or refrain from doing something is Terrorism’.

The problem of having an acceptable definition could be attributed to the fact that the difference of ideology between the developed and developing nations, on one hand and the conduct of the United Nations towards the developing nations on the other. There is no doubt that conceptual challenges are enormous at the international circle, the issue of state sponsored terrorism and the

¹⁹ Potter .J (n47).

hypocrisy and double standard exhibited by the so called world powers compound the issue of definitions²⁰.

A classic example is the case of *NICARAGUA v United States (military and Para military activities in and against Nicaragua)*.²¹ The International Court of Justice attempted to deal with the issue of terrorism. It was unfortunate that the court failed to use the term "Terrorism" in its judgment, and this was fundamental to the claims of Nicaragua against the US, that the Contra rebels have caused it considerable material damage and wide spread of loss of life, taking of prisoners, indiscriminate killings of civilians, torture, rape and kidnapping etc. It is contended by Nicaragua that the US effectively control the contras that it designed their strategies and directed their tactics and that the purpose from the beginning was to overthrow the government of Nicaragua. This was confirmed by the findings of the U.S congress when it was discovered that monies meant for the support of the contras was with the Secret Service. This act of the U.S was in contravention of 1970 declaration on the principle of international law which emphasize that;

No state shall organize assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state or interfere in civil strife in another state.

The court declared that the principle of non-intervention prohibits a state from intervening directly or indirectly with or without armed forces in support of internal opposition in another state.²²

The court had the opportunity to remedy itself in the case of *Democratic Republic of Congo vs Uganda*²³ where it held that the armed activities of Uganda in Congo D.R. between August 1998 and June 2003 violated the international prohibition against aggressive use of force, as well as international human rights and humanitarian law. The court failed to mention Trans borders terrorism which form core part of the complaints by the Congo D.R

The U.S double standard is so glaring in relation to terrorism, fifteen out of the nineteen suspects that attacked the U.S on September 11 2001 were Saudi Nationals,²⁴ whom did they

²⁰ Baxter (n45).

²¹ ICJ Report (1986) P.14.

²² Ibid.

²³ ICJ Report (2005) p.168.

²⁴ www.cnn.com/2013/07/27/us/september-11th-hijackers-fast-facts/index.html last edited 28/08/17.accessed 5/3/18.

accused? Afghanistan and Iraq. Similarly the U.S ally Pakistan is a well-known supporter of some terrorist organization within the Indian sub-continent but because of their so-called ties with the U S in the fight against terrorism, the U.S turns a blind eye against it, Pakistan is one of the countries with highest military aid from the U.S.

It is observed that when the U.S is confronted with terrorism, her conduct changes completely for instance when her embassies were attacked in 1998 in Dar salaam Tanzania and Nairobi Kenya, it responded unilaterally by bombing Sudan and Afghanistan. When terrorists hid and operate from Pakistan to attack India, the later wanted to know if it can unilaterally attack. The answer was an emphatic No²⁵ from the US. Conduct like this of the U.S is partly responsible for the growth of terrorism as she is viewed a bully and unjust.

The Security Council after the incidence of September 11 2001, rejected terrorism in all ramifications and urged nation states to refrain from allowing their territories to be used as a base for terrorism. It remains a mystery why the U.S which is one of the sponsors of the resolution to establish International Criminal Court (I.C.C) in The Hague declined to ratify the convention. This is a clear manifestation of the failure to arrive at a consensual definition of the term terrorism.

In conclusion, with the kind of brute display of power and unnecessary politicking, it will be better for one to describe terrorism, than defining same still remain a mirage and will only amount to academic exercise in futility.

2.2.1 Typologies of Terrorism

Terrorism is basically categorized into two

A. International Terrorism which refers to the terrorist activities that are foreign- based and or organized or sponsored by groups outside the nation.

B. Domestic Terrorism refers to the terrorist activities that happen within a nation without foreign aid and it focuses on facilities or population of the nation.

²⁵Ezeugo I.N. – An appraisal of the Legal Frame Work for Combating Terrorism in Nigeria (LL.M. thesis) 2010 P.17.

The basic distinction between domestic and international terrorism is not where the terrorist act occur but the origin of the terrorist. For instance, the bombing of federal building in Oklahoma in 1995 was an act of domestic terrorism, while September 11 terror act was an international one by nature.

The modern day scholars of security have described terrorism within the framework of systemic typological classifications as a means of organization apparently related phenomena²⁶.

There are basically eight typologies which try to be comprehensive typologies it is important to know that the list is by no means exhaustive as terrorism is ever changing patterns and the task of categorizations is constantly on in motion:

i. The New Terrorism: this modern terrorist environment arose by the end of the 20th century which ended up with the September 11t attack. This new terrorism is characterized by mass casualty attacks from a cell of terrorist organization, which is new and creative in organization, configuration, transnational religious solidarity and a redefinition of moral justifications for political violence.

ii. State Terrorism: this type of terrorism is committed by state against its citizens' as in the case of Cameroon committed against a state by another.

iii. Dissident Terrorism: this is a kind of terrorism committed by non-state actors against the government, ethno-national groups, religious groups or other perceived enemies.

iv. Religious Terrorism committed by a group motivated by the fact that it was commanded by a supreme being. This I don for the glory the faith and in defense of their true faith for example Boko haram who claim to be fighting Jihad, similarly the Lord Resistant's Army (LRA) in Uganda.

v. Criminal Dissident Terrorism: this type of terrorism is purely business driven, It sometimes has a combination of profit and politics for example organize criminal enterprise make profit for their interest and fund their criminal activities while criminal political groups makes money to fund their political movement.

²⁶ Marsden S and Schmid A Typologies of Terrorism and Political Violence. In A P Schmid (ED.) *the Routledge handbook of terrorism research* (pp.158 -200) New York: Routledge.

- vi. Gender Selective Terrorism: this is a form of terrorism directed towards women or men because of their gender as long as they constitute an enemy population. The systemic violence directed against en because of the perceived fear that the may form an opposition. While violence directed against women populations is to destroy their cultural heritage or compel them into submission.
- viii. Ideological terrorism: this type of terrorism is inspired by the political beliefs, which champion the interest of a particular group as against the other. There is usually justification for violence in asserting the rights of the championed group over the others.
- ix. International Terrorism: this type of terrorist is that which is trans-border and victims are selected because of their international status .they could be internationals or locals like the Chibok girls in Nigeria.

Insurgency is an organized resistance movement that use sabotage, subversion, and armed conflict to achieve their objectives. They often seek to overthrow the existing order and reallocate power within the territory. While Guerrilla warfare is a form of warfare carried out by an irregular group of combatant such as paramilitary personnel, armed civilians using military tactics which include hit and run, ambushes and raids.²⁷

Trans-national crimes are ‘offences whose inception, proportion, and direct or indirect effects involve more than one country’.²⁸ This kind of offences cut across nations and it involves offences like drugs trafficking, human trafficking, illicit trading in arms, trafficking in natural resources, and illegal trade in wildlife, sale of fake drugs, cybercrime, and money laundering, among others. These are multi billion dollars trade done illegally at the detriment of the nation and the world at large by criminal enterprises.

Counter insurgency: this is a strategy put in place to fight insurgent or militias fighting the established and recognized regime politically or militarily. North Atlantic Treaty Organization define ‘counter insurgency to mean comprehensive civilian and military efforts taken to simultaneously defeat and contain insurgency and address it root causes²⁹.’ While counter terrorism means all necessary action taken by government to protect or prevent the act of

²⁷www.britannica.com/topic/guerrilla-warfare/strategy-ad-tactics accessed 4/6/18 .

²⁸Albanese Transnational Crimes in the 21st Century Criminal Enterprise, Corruption, and Opportunity oxford press 2011.

²⁹www.state.gov/documents/organization/119629.pdf accessed 5/6/18 .

terrorism to take place within their territory. This however, is to be within the framework of international human rights law as guided by the UN principle in tackling terrorism which include proportionality legality accountability and necessity this will ensure no nations violates the rights of its citizen on the excuse of counter-terrorism³⁰.

From the forgone analysis it is my humble opinion that groups who undertake pleasure in destroying lives and properties of the public and government with aim of coercing them into taking a decision in their favour or rescind a decision made against them are terrorist, irrespective of what guise they come under.

2.3 Concepts of Terrorist Financing

There are a number of conventions emanating from the U.N aimed at combating terrorism and some of these Conventions predate the incidence of September 2001. The International Convention for the Suppression of Financing of Terrorism was adopted through resolution 54/109 of Dec 1999 of the Gen Ass of the U.N, provides in Art 2 that:

- i. 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 part, in orders 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 civilians, or any other person not taking any active part in the hostilities in a situation of armed conflict, with 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 abstain from doing an act.

For an act to constitute an offence set forth in Para 1, it shall not be necessary that the funds were actually used to carry out an offence referred is in Para 8(a) or (b)³¹

The Breton wood institutions define “terrorist financing” to mean “the financial support, in any form, of terrorism or those who encourage, plan or engage in it”.³² It is observed

³⁰ www.government.nl/topics/counterterrorism-and-national-security/counterterrorism accessed 050618 .

³¹ International Convention for the Suppression of the Financing of Terrorism (1999) [https:// treaties.UN.org](https://treaties.un.org).1999

that like the problem with the definition of terrorism so it is with terrorist financing as not all nations that adopted the convention agreed on the definition of terrorism because they are influenced by different political and religious considerations which bares on the National policy and thinking of the country.

The Financial Action Task Force (FATF) is recognized as the pace setter in combating terrorist financing failed to define terrorist financing, however it does not specifically define the term financing of terrorism in its special recommendation³³. It only mentioned it. (ix special recommendations) which was evolved after the September 11th attack on the U.S.

F.A.T.F calls on the member states of the U.N to adopt and ratify the international convention for the suppression of the financing of terrorism.

The laws dealing with terrorism as well as anti-money laundering did not define the term terrorist financing. Consequently countries adopted the definition contained in Art 2 of the 1999 convention. A cursory look at the EFCC Act³⁴ one will be tempted to say that a definition is contained therein as it states that;

1. A person who willfully provides or collect 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 shall be liable conviction to imprisonment for life
2. Any person who commit or attempt to commit a terrorist act or participate in or facilitates the commission of a terrorist act commits an offence under this Act and is liable on conviction of imprisonment for life

Any person who makes funds, 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 for imprisonment for life.

Although as stated above, the law did not specifically define financing of terrorism but it dealt with it in extensive manner leaving nothing unturned. The Anti-money laundering Act, the

³² IMF and World Bank (2003).

³³ Special Recommendation (ix special recommendations of FATF 2004).

³⁴ S 15 of EFCC Act 2004 dealing with offences relating to Terrorism.

Terrorism Act 2011 and Terrorism Prevention (Amendment Act) 2013 failed to specifically define it as well, and the controversy continues.

2.4 Concept of Money Laundering

Money laundering as a practice is as old as man. One of the earliest documented acts of the practice of money laundering was recorded in China around 2000 BC. Merchant who are wealthy and successful tends to hide their funds from despotic and tyrannical leaders who could cease it from them and banish them from the city.³⁵

However, the modern day concept originated from the activities of criminal element that are organized in groups and deals on different crimes which makes huge reforms for them. The leaders of thus organized cells whose activity led to the creation of this modern concept is one Meyer Lansky. He established an off shore account in a Swiss Bank and transfer into it “dirty money” from criminal activities. The money is returned back through his gangs in the form of loans, thus returning the “dirty money” as clean money to himself.

It is also stated that the term “Money laundering” can be traced to the famous Mafia gang ownership of Laundromat in the U.S.³⁶ At that time the Mafia made so much money from drug dealings/ trafficking, extortion, prostitution, gambling etc., and for them to avoid the law, they bought Laundromats as a means of disguise. The first official reference of the term by the media was by the British Guardian Newspaper during the water gate scandal do describe the movement of money from the U.S to Mexico and back to the us via a company in Miami before donating it to the presidential campaign of Richard Nixon.

The first use of the term money laundering in a case in the U.S was in 1982, in the case of *U.S v \$ 4, 255,625*.³⁷ This decision originated from the district court for southern District of Florida regarding civil forfeiture of some money believed to have been laundered from Colombia. The court held that moving drug money from Molina to Solana to capital bank makes it look more likely than not ‘money Laundering process’ presided over by money whose total drug contact

³⁵Adebayega .A. ‘A review of the Legislative and Institutional Frame work for Combating Money Laundering in Nigeria *N.I.A.L.S Journal of Criminal Justice* (2011) and Gay ford M (1992) the Chinese laundry: International drug trafficking and Hong Kong.

³⁶Kalu K.A. *An Over view of Money Laundering* in Ephyphany A and Castro , C.N (ed) NIALS Lagos (2013) P10

³⁷ 551 F. supp.314 (S.D Fla 1982).

may very well have been no more than dealing with the business. The forfeiture was granted by the bank³⁸

The concept of money laundering has many definitions, however most countries settle for that provided by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (1988) also known as the (Vienna convention). It defines 'money laundering as the conversion or transfer of property knowing that such is derived from an offence for the purpose of concealing the illicit origin of the property, or assisting any person who is involved in the commission of such an offence to evade legal consequences of his action it is the concealment or disguising of the true nature, of the source, location, disposition, movement, rights with respects in such an offence.'³⁹ The concept of money laundering under the Vienna convention define money laundering along the line of the financial misconduct that creates the wealth that are being converted or transferred with the intent of concealing same and the source.

The U.N Convention against Transnational Organized Crime⁴⁰ adopted the wordings of the Vienna Convention substantially but it expanded the scope of the predicate offence to exclude all kinds of organized crimes capable of generating process from criminal activities.⁴¹ The Palermo convention provides dual criminality of the predicate offence and the conversion of the Proceed with intent to conceal it.⁴²

The F.A.T.F which is the watch dog for Anti-Money laundering effects defines the term money laundering to mean 'the processing of criminal proceeds to disguise their illegal origin in order to legitimize the ill-gotten gain from crime'⁴³ FATF adopted the Vienna convention and advocated the expansion of predicate offences to include all serious offence.

The Nigeria statute defined "money laundry" in a more elaborate form in that it classify the predicate offence and went on to draws a list of specific offences.

³⁸ Billy. S. 'money laundering how big is the problem'http://www.laundryman.u-net.com/page1_hist.html.accessed 01-03-2018.

³⁹ Article 3(b) (I &ii) Vienna convention 1988.

⁴⁰ U.N Convention against Transnational organized crime 2000 (Palermo convention).

⁴¹ Article 6(1) (a) (i-ii) of Palermo convention.

⁴² Article 6 (2) (1) *ibid*.

⁴³ FATF what is money laundering? Basic facts about money laundering

The money laundering (prohibition) Act 2011 as amended defines ‘money laundering’ as the act of any person or body cooperate, in or outside Nigeria who directly or indirectly conceals or disguises the origin of; convert or transfers, removes from the jurisdiction, or acquires, uses, retains or takes possession or control of any fund or property, knowingly or reasonably ought to have known that such fund or property is or forms part of an unlawful act; commits an offence of money laundering under the Act.⁴⁴ The Act began by describing what is the offense of money laundering in Nigeria, the Act stated “money laundering is prohibited in Nigeria”⁴⁵ the amendment went ahead to include body corporate as part of persons capable of committing an offence of money laundering. This was absent in the original Act.

The Nigeria court took cognizance of the offence of money laundering in the case of *KaluVs Fed Rep. Nigeria*⁴⁶ and defined “Money laundering” to mean “varied means by which criminals’ conceal the origin of their activities. The term laundering as noted by the court is used because of the technicalities involved in turning an otherwise “dirty money” to “clean money”

2.5 Stages of Money Laundering

Money laundering is a complex activity various scholars have identified three basic stages through which illicit wealth are systematically reintroduce or assimilated into the legitimate economy. The three stages are placement, layering and integrations.

a. Placement stage

This is the process during which monies derived from crimes are used to purchase asset or are deposited in a financial institution. At this point large amount of money are broken down into smaller, less conspicuous amount⁴⁷ and deposited over a period of time in different branches of the same branch. The conversion of smaller notes to larger one often happen at this stage and sometimes exchange money from one currency to another. Asset are also bought and subsequently sold into monetary instrument. The instrument at this stage are cash, money orders, Cheque among others. Further, placement can be done into Casinos and other gambling outfits or the purchase of precious metal, airplanes, Auto mobile or yacht. All this is done with the aim of

⁴⁴ S.15 (2) (9-4) Money laundering (Prohibition) Act 2011 (as amended) 2012.

⁴⁵ S.15 (1) Ibid.

⁴⁶ 2012 LPELR9287(CA).

⁴⁷ This process is referred to as smurfing or structuring.

commingle the illicit wealth within legitimate financial circle. Furthermore, placement can be accomplished by purchase of security or a form of insurance contract.

b. Layering Stage

This is the stage where, the laundering distance the illicit funds from the criminal sources by converting and moving to other institution.⁴⁸ The moved funds could be used to buy other-securities insurances contract or transferable investment instrument thereafter sold through another financial institution. The launderer may even disguise the funds as payment for goods or services or even to shell accounts in the bid to layer the transactions. Lawyers at this stage work with the launderers to circumvent the law and attorney client privileges account to move huge sums of money around the world.

c. Integration Stage

This is the process where illegitimate funds are reintroduced to the launderer in a way that it's apparently legitimate and can withstand financial scrutiny because it looks like legitimate earnings from this legal business. According to Chidiebere A.C. " Integration is the movement of previously laundered money into the economy mainly through banking systems in which way such money appeared to be normal business earnings. The money reenters the main stream economy as legitimate looking in form appearing to have come from legal transactions."⁴⁹

2.6 Terrorist Financing Through Money Laundering

The concept of terrorist financing and money laundering are inter woven, consequently, when explaining the concept of terrorist financing, it is important to draw from the concept of money laundering. Similarly when dealing with concept of money laundering relating to organized crimes its a must for better understanding of the concept.

Terrorist financing and money laundering in most of the countries raises important question regarding to detection, prevention and prosecution, this is because of the complex way such

⁴⁸ Rider, N *Money laundering-An Endless circle? A comparative Analysis of the Anti-money laundering policies of the U.S, U.K Australia and Canada* (Rutledge, Colorado, 2012). P1.

⁴⁹Chidiebere,A.C 'The Economic Impact of Money Laundering: An analysis of the World Bank and IMF Reports in Epiphany, A and Nwabuzor C.C (ed) *Money laundering law and policy* (NIALS) Pub. Lagos 2013) 145.

transactions take place. It often involves multiple financial institutions, multi transfer in and out through multiple instruments and other instrument of value storage.

Money laundering is basically concealment or while terrorist financing is the financial support given to execute terrorism or those who plan, encourage or even carry out terrorism. Terrorist financing and money laundering are Trans-border activities, most often having to do with concealment. The ultimate in both terrorist financing and money laundering is to earn some form of “Reward” those who finance terrorism are rewarded by providing financial support to execute terrorist attack or strategies. In the same manner those who launder money are rewarded with “Legitimate” but disguised illegitimate funds.

The techniques employed to launder money are basically the same with those used to disguise the sources of and used for the financing of terrorism. Basically funds used in financing terrorism, may be from legal or illegal source or from both. It does not matter concealing the source of terrorist financing leaves it open for future financing of their clandestine activities. In the same manner it is important for them to hide the use of the fund from the radar so that the financing goes undetected. Based on the forgone reason FATF recommended that each country ensures that it makes it an offence the financing of terrorism, terrorist act and terrorist organizations.⁵⁰ To designate such offences as money laundering as predicate offence.⁵¹

FATF stated that the 40+9 special recommendations constitute the framework for detecting, preventing and suppressing the two alter ego offences of Terrorist financing and money laundering. For the fight to combat terrorist financing to be effective there is the needs to expand the scope of the Anti-money laundering law (AML) frame to include charities to monitor their activities so that terrorist organization will not take advantage of the situation by financing their activities through such charities directly or indirectly or support terrorist.⁵² Also the counter financing of terrorism requires the scrutiny of alternative money remittance system such as Hawalas and adequate measure to be put in place to prevent launder and terrorist of such business entities.⁵³ It important to state thwart terrorist financing and money launderers engage in their activities with the utmost secrecy and as such are not subjected to statistical analysis. The

⁵⁰ FATF SPEC REC II.

⁵¹ Ibid .

⁵² FATF special Rec. viii\

⁵³ FATF spec. Rec. vi.

reason being those who finance terrorism do not publishes their activities as well as launderers don't make public their gains, however because it's an international transaction it involves huge amount of money according to the IMF it lies somewhere between 2&5% of the world Gross Domestic Product (GDP) this translate to between 590 and 1.5 trillion.⁵⁴ The volume by any standard is huge and deserves the attention of Nations.

2.7 Sources of Terrorist Funding in Nigeria

Generally, Terrorist organization may raise funds for their activities through various means which may include legitimate business and also criminal activities. It is a well-known fact most criminal activities give great fortunes within a short period and most terrorist groups employ the later. The absence of funds will render the terrorist group impotent and irrelevant as such the try at all cost to remain relevant by raising funds by any means. Book-Haram in Nigeria employ these tactics to raise funds are raised to execute their dangerous acts. We shall work at some of these below.

1. Trade

Trading is one of the ways Boko-Haram used in raising funds for their activities. They engage in different kind of trade and businesses to raise funds. The north eastern Nigeria is known for dry fish from Baga in Lake Chad, where they buy the fish and send to their members in other parts of the country, sometimes fishermen are compelled to surrender their fish for them. They also engage in cattle rustling and there after sell off their loots in other parts of the country through their members. At a point Nigerian Army banned the transportation of cattle and fish from Maiduguri to other parts of the country as tough as that decision was, it was aimed at dislocating the sources of income to the Terrorist group. When the raise funds, they purchase equipment to make improvised explosive devices (IED) pay rents, drugs for their consumptions, and feeding.

2. Self-funding/Extortions

In some cases, terrorists groups get funding from within its members, this include family and nominal members who are rich and influential like the late member of Boko-Haram Buji Fai who was a commissioner for Religious affairs in the government of Ali Modu Sheriff. He financed

⁵⁴ Albanese J.S *Transnational Crime and the 21st Century* (Oxford University Press) (2011) New York p.111.

the activities of the groups and his farm was used as training camp for the group, unfortunately he lost his life in the 2009 Fracas.⁵⁵ The group sometimes task it members to make contributions towards the activities of the group.

A number of political figures and business men were compelled to contribute or face the wrath of Boko-Haram, failure to comply usually means death sentence to the person whom demand is made from. It is pertinent at this point to state that since one of the sources of funds for Boko-Haram is through self-funding and extortion, it is therefore difficult to detect. Consequently, the intelligence community needs to enhance their capabilities of detecting such information from the terrorist group of Boko-Haram. Self-funding can include cases in which relatively autonomous external financial facilitators who is not directly involved in planning or carrying out an attack but none the less contribute funding.⁵⁶

3. Smuggling

Book-Haram being a terrorist organization and most terrorist are involved in activities relating to smuggling as a means of raising funds for their activities. The terror network is unique and groups loyal to another assist each other with arms, drugs or even facilitate the transactions relating to these items. Book-Haram for example engages in transaction with its affiliates AQIM who smuggled arms for it state and such supplier are used to terrorize the north east and indeed Nigeria. From their end here they sometimes smuggled hard drugs to other part of the word with fake travelling documents.

Similarly it is the same methods they employed to ferry money given to it by it bigger affiliate like Al Qaida, money are moved through states that are not having the requisite resources to monitor the flow of funds as the system has collapsed. Sometimes women are used as couriers to deliver cargos to their members in other parts of the country, the exploit the law dealing with searchers since they are aware that most of the check points don't have women officers with them and the C.P.C provides for only women to search women.⁵⁷ This is some of the ways Boko-Haram used to move funds and other materials within the country.

⁵⁵ www.Nigerianbestforum.com, accessed 4th March 2018.

⁵⁶ FATF/OECD 2008 Terrorist financing P14 .

⁵⁷ S.44 (3) C.P.C.

4. Kidnapping

The Boko-Haram group have exploited kidnapping as a means of raising funds, the group got some monies from the government for the release of the chibok girls in 2017, the sum was undisclosed as the NGO that negotiated refused to revealed the amount. Also in addition to money their demand was met with the exchange of some of their commanders for the girls. The Ansaru was involved in kidnapping of some expatriates in Bauchi State and they were making demand for money before they could be released.

5. Drug trafficking

Drug trafficking is an attractive sources of funds for terrorists groups. It enables them to raise huge sum of money. The Boko-Haram has embraced this means of raising funds as the form a network with other groups and get their chunk of money. There is the need for the government to strengthen the measures against drug trafficking in Nigeria based on the reality of the terrorist groups' involvement in drugs dealings. Terrorist groups in Afghanistan deal in opium pulp to raise funds.

6. Trafficking of Humans

Boko-Haram trafficking in Humans, there are so many unaccounted girls and women that were forcefully taken away by the group in Maiduguri, they also boost on their videos that they will auction the chiboks girls in the market. This they do to raise funds. They also engaged themselves in robbery and raiding communities for funds and food.

There is no doubt terrorist organization rely heavily on funds for their organizational, personal and operational needs. Cutting down their sources of income is a critical step weakening them and eventually bringing them on their knees. Investigating, apprehending and prosecuting the financiers of terrorist groups will serve as a deferent to others.

The destructive nature of terrorism makes it imperative to understand and address the question of terrorist financing because it destroy the peace, security and thus truncate development of any society.

There are a thousand and one methods Boko-Haram raises fund, the security agencies needs to understand these methods and try to block it. Once the sources of income are truncated, ability to move the funds blocked, it become easy to check their activities because of the lack of funds.

2.8 Concept of Crime under Municipal/Domestic Law and International Law

Crime as define by the criminal code means

An acts or commission which renders the person doing the act or making the omission liable to punishment under this code, or under any act or law is called an offence.⁵⁸ Similarly the penal code provides as follows. Except where otherwise appears from the context, the word 'offence' includes an offence under any law for the time being in force⁵⁹

The sections above emphasized the age long principle which states that where there is no law, there is no sin, and where there is no sin, there can't be punishment. Thus for an act to constitutes an offence, it must be so defined in any law, Act of the National assembly, state or any instrument made under them.⁶⁰ The term criminal is derived from crime, the word crime is synonymous with offence⁶¹ and are both inter changeable. The hall mark of crime therefore is the singular criterion of the act or omission complained or alleged being designated a crime in a statute, be it an Act of the federation, edicts of a state, or bye-laws of Local Government.⁶² It can be seen above, the domestic concept of law is absolutely clear as these laws emanate from National or State Assemblies or the Local Government Council of the land. These laws must be codified and punishment prescribed for each.

At the global scene, international law and instrument provide for means to prevent international crimes such as crimes against humanity, genocide war crimes and crimes of aggression.⁶³ The International Criminal Court with headquarters at The Hague is having jurisdiction over such crimes. The acts of terrorism are regarded as a crime and a threat to international peace and security.⁶⁴ The act of terrorism does not fall within the ambit of international crimes to warrant the I.C.C assume jurisdiction. Sadly the United States which initiated the global war on terror

⁵⁸ S, 2 of the C.C of Nigeria.

⁵⁹ S.28 P.C.

⁶⁰ ADEBAYO AM *Criminal Code Act and other related Act (Annotated with cases)* Princeton Publishing co Lagos (2012)p.69.

⁶¹ AG V Awoyele (1952) 19 NLR52.

⁶² DOHERTY O *Criminal Procedure in Nigeria Law and Practice*, Blackstone press ltd (1990) p1.

⁶³ Article 5 Rome statutes confers jurisdiction on I.C.C. over such crimes.

⁶⁴ SC/Res/1368 (n5).

denied the I.C.C the jurisdiction to try terrorism suspects, the reason behind the rejection of terrorism was to probably prevent itself from multiple charges of terrorism that would be brought against it. Bernie Sanders has this to say 'Most recently in Iraq based on mistaken analysis of the threat of Saddam Hussein's regime, the U.S invaded and occupied the country in the Middle East. In doing so we up ended the regional order of the Middle East and unleashed forces across the region and created a problem the world will be dealing with for decades to come'.⁶⁵

The U.S also recruit, train, arm, finance, supply and otherwise, encourage, support, aid, and direct military activities in and around Nicaragua.⁶⁶ This and many other activities of the U.S around the world could be one of the reasons behind denying jurisdiction to I.C.C to try terrorism. The absence of adequate domestic capacity to discharge that duty of treating terrorism cases, the repercussion will be on counter terrorism as it will fail woefully.

Essentially, the criminal justice system response to terrorism is therefore framed by National laws, these national laws must comply with international laws. There are countless parts of the international law that are directly relevant to the criminal justice response to terrorism.

The ratification of the universal legal instrument against terrorism and other legally binding obligations imposed through the relevant UNSC resolutions on counter terrorism, state have their obligation under the following aspects of international law among which are international human rights, humanitarian, refugee and customary international law.⁶⁷ These bodies of laws complement each other while the international humanitarian law applies in times of armed conflict, the human rights law is applicable at the theme. The aim of these laws is protections of lives and property, wellbeing of the persons, and the dignity of the human person.

National courts and international tribunals recognize the application of these two bodies of laws following the advancement in technology and communications, the world has become a global village, crime is no longer restricted a particular area, it has assumed a transnational dimension. A clear definition is provided for in Article 3 of United Nations convention against transnational

⁶⁵ Bernie S. speech in Alex ward: Bernie Sanders big Foreign Policy Speech 2nd sept 2017 www.vox.com accessed 6th march 2018.

⁶⁶ *Nicaragua V U.S ICJ report (1986)* p4.

⁶⁷ United Nations Handbook on Universal legal frame work against terrorism (2012) publishing and lib. Section Vienna p.1.

organized crime 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, directing or control takes place in another state.
- c) It is committed in one state but involves an organized criminal group that engages in criminal activities
- d) It is committed in one state but has substantial effects in another state.

The transnational nature of terrorism like most organized crimes it becomes a huge problem for the national criminal justice system to deal with. The criminal justice system of a country deals with suspected terrorist since the International Tribunals do not have such a power except where it presents some element of international crimes which the ICC can adjudicate, it is very difficult to investigate or prosecute a person suspected of terrorism where such a person is outside the territory of the state. Generally, where key evidence or victims or proceed of crimes are located outside the country's jurisdiction or where the legal and judicial systems which they must cooperate are different from those of their country.

At this point, practitioners cannot work within the confines of their nation's territory. They have to cooperate with their colleagues from other countries to achieve the goal of bringing the suspects who are responsible for terrorism to face justice. However, sometimes you may face cooperating countries for some reasons will want to protect their own. *Lockerbie case*⁶⁸ is an example where one of the suspect was a member of the Libyan Intelligent Service, it was suspected that the government of Libya will not do justice to the case, Libya objected in line with the Montreal Convention that it has set out its machinery in motion for the investigation and subsequent trial of the suspect. The crux of the matter was that territoriality is the utmost ground for jurisdiction over a matter. But above all, the ability to cooperate will effectively deal with suspected terror actors⁶⁹.

⁶⁸ BYIL, 1992, P 722, CR 92/3, Pp 11-12, UKMIL

⁶⁹ UNODC, Vienna Module 3, International Cooperation in criminal matters, counter terrorism, legal training curriculum, UN NY 2012 P 4.

There are so many forms of cooperation in criminal matters within Nations States encouraged by the UN as can be seen in the international legal practice and some forms of doctrines, they are:

1. Mutual legal assistance
2. Extradition
3. Transfer of criminal proceedings
4. Execution of foreign sentences
5. Recognition of foreign criminal judgment
6. Collection and exchange of information between intelligence and law enforcement agencies
7. Confiscation of the proceeds of crime
8. Regional and sub-regional legal forums access to justice.

Nations/countries have laws aimed at curbing the acts of crimes and criminality within the frontiers of their nation state, for example offences like money laundering, terrorism, kidnapping/hostage taking, armed robbery/assassination, illegal bunkering and corruption are provided for under their criminal justice systems. Legal Practitioners owe a responsibility to ensure that the criminal justice system is in compliance with the norms of applicable international laws. The Judiciary and Legal Practitioners (Prosecutors and Defense) who are ministers in temple of justice are saddled with the compliance level of the judicial system works properly. The Media and Civil Society Organization are not left out, they are to remain vigilant and play their roles of ensuring things are done properly by the judiciary.

There are various laws enacted in Nigeria aimed at combating crimes and organized crimes like terrorism and money laundering. Some of these laws are Money Laundering (prohibition) 2011 Act, Terrorism Act 2011, Terrorism (prevention) (Amendment) Act 2013, EFCC Act 2004, Corrupt Practices and Other Related Offences 2003, Criminal Code, Penal Code, criminal procedure Act and criminal procedure code, the Administration of Criminal Justice Act 2015, etc.

The relevance of international law and conventions in relation to the law relating to terrorism cannot be over emphasized. The types of cooperation exploited by most countries are the extradition and mutual legal assistance. Nigeria exploited the situation and extradited one AminuSadiqOgwuche who is suspected of the being the master mind of the twin Nyanya

bombing which left more than seventy people dead and many more injured.⁷⁰ Aminu was placed under wanted list by the Interpol and was arrested in Sudan where he went to take refuge after executing his mission. He was returned to Nigeria to face the law. In Uganda Issa Ahmed Luyima was extradited from where he went to take refuge in Mombasa, Kenya after masterminding the bombing in Rugby club and Ethiopian village Kabalagala Kampala. He and 12 others were charged and tried in the court in the *Prosecutor v Hussiein Hassan Agade & 12 Others*⁷¹

A more complicated situation played out in the Lockerbie in 1988, The U.K and U.S together issued indictment against two Libyan suspects and demanded their surrender to either jurisdiction.⁷² The Libyan government declared and stated that they will be tried in Libya pursuant to Montreal convention as it was entitled and obligated by article 7 of the convention. The concern of the U.K and U.S is whether Libya will provide genuine platform to try them because one of the suspect is a Libyan Secret Agent. UN became involved at the instance of the U.K and U.S.A and U.N.S.C Res. 731 urged Libya to respond to the request for extradition of the suspects.

The Security Council in 1992 in Resolution 748 stated that the failure of Libya to respond adequately to Res. 731 amount to threat to international peace and security. Subsequently, acting under chapter vii of the U.N charter, the Security Council demanded compliance with the request for surrender of the suspect and went ahead and imposed economic sanctions on Libya. On the other hand the I.C.J was to adjudicate over the matter brought by Libya against the U.K and U.S under article 14 of the Montreal convention. In the application, Libya argued that it had complied substantially with its obligation under the convention and sought the court to issue interim order restraining U.K or U.S from taking any action that will compel it to surrender its national to any other jurisdiction. The court refused the applications of Libya on the ground that resolution 748 takes precedence over Montreal convention by operation of article 103 of the U.N charter. The case came to an eventual end when parties in 2003 agreed to discontinue the proceedings “without prejudices”.

⁷⁰ www.vanguard.com published 15th July 2014 visited on the 7th of march 2018 @ 0615 am.

⁷¹ Criminal Session Case No.0001 of 2010.

⁷² Shaw MN (n47) 686.

The valuable lesson learnt from this case is that parties obligation to extradites or prosecute as found in article 7 of Montreal convention and found in many instrument of counter terrorism, may give rise to disputes between arresting and requesting states regarding the right party to try a terrorist offender who has escaped to other jurisdiction to avoid trial⁷³.

When extradition is refused and the refusing state prosecute the suspect the international community in some quarters see it as a failure of international Counter Terrorism efforts. It could however be a tactics employed to prevent the suspects from facing the wrath of the law. Bipartite agreement which lies as the bedrock of the counter terrorism law is made to ensure that offenders are brought to book,⁷⁴ and cannot enjoy immunity by escaping jurisdiction after committing an offense as in the case of AminuOgwuche.⁷⁵ No state can insist that a suspect must be extradited based on the extradition agreement or because it is believed that the prosecuting state does not have the requisite judicial system in place thus would not do justice to the case as a basis for enforced extradition.

It is generally believed that all Nation States have a good working criminal justice system to punish offenders.

There are many ways in which disputes such as the one mentioned above can be resolved. The settlement procedures that is Diplomatic and Legal play a vital role in facilitating international cooperation in extradition and prosecution of alleged suspects to a jurisdiction satisfactory to all interested parties i.e. Lockerbie case is a clear example where parties used a facility in the Hague to try the offenders using Scottish Judges and laws although in the Nederland.

The U.N counter terrorism treaties include a distinctive provision of compulsory dispute resolution to arbitration or I.C.J. the Libyan government exploited such avenue when the U.K insist that the suspect be extradited and approached the I.C.J on the strength of article 14 of the Montréal convention. Cooperation is a condition precedent for the fight against terrorism to be successful between international and National laws.

⁷³Ibid.

⁷⁴Ibid.

⁷⁵Ibid.

2.8.1 Adoption and Incorporation of International Instruments in to Municipal/National Laws Countries.

Uganda

The constitution of Uganda in chapter six⁷⁶ provided that only the Parliament can make laws on any subject for the entire country. In that regards international treaties and convention even after being ratified can only become law in Uganda when the parliament takes any of these steps. For example the domestication of the convention of the I.C.C into I.C.C Act 2010. But where the government does not want it domesticated, the government after ratification tabled it before the parliament by the Attorney General for a motion to be moved and adopted as part of the Ugandan laws to be observed in government policies, practice and procedure. Uganda like most countries needs treaties to first pass through the arm of government saddled with the responsibility of making laws otherwise it becomes impossible to apply in Uganda.

Nigeria

The National Assembly is the only body responsible for making laws for good governance of the country⁷⁷. The courts in Nigeria do not subscribe to the doctrine of universal jurisdiction as such for relevant international instrument or conventions and treaties to be incorporated and domesticated into the Nigeria laws, it must be through legislation by the National Assembly⁷⁸, the S C held in *Abacha v Fawehinmi* that in line with S. 12 (1) of the constitution international legal instrument must be domesticated into our municipal law to be effective.⁷⁹ The National Assembly has enacted laws covering terrorism, hostage taking, kidnapping, to meet Nigeria's obligation under international agreements.

Canada

In Canada, the Crimes Against Humanity and War Crimes Act S.C.2000 (CAHW) has incorporated the following as domestic crimes: Genocide, crime against humanity, war crimes, breach of responsibility by military commander or a superior, offences against the administration of justice of I.C.C and possession or laundering of proceeds derived from crime. Usually,

⁷⁶Article 79 of Constitution of the Republic of Uganda 1995.

⁷⁷ S. 4 Constitution of The Federal Republic of Nigeria 1999 (as amended).

⁷⁸ S 12 (1) Ibid.

⁷⁹ SC 45/1997 .

criminal jurisdiction is exclusively territorial but (CAHW) invoke universal jurisdiction as defined under customary international law.

United Kingdom

S.51 (1) of the I.C.C Act 2001, the offence of genocide and crime against humanity committed either in the U.K or by U.K national abroad can be prosecuted as a dualist nation. Otherwise prosecution can only be done where the U.K has acceded to convention and treaties that create the offences including war crime, torture, enslavement and forced labor. The criminal jurisdiction is presumed territorial in the absence of express provision and based on the presence of the accused within jurisdiction, there are several other legislations that provide for criminal liability of an offender in UK and a non U.K nationals who commit particular acts outside the UK but can be prosecuted when such offender is in the U.K or when visiting the U.K. the other alternative is for the U.K to partner with others to seek for extradition from the other state. This played out when James Ibori was extradited from U.A.E to London for him to face justice⁸⁰. Mr. Ibori has since served his sentences and is back to Nigeria.

Conclusion

In conclusion, from the foregoing analysis there is no better way for combatting terrorism and other transnational organized crimes and criminality than a synergy between the international law and national laws nation states for the war to be a success.

⁸⁰ [www.thenational.ae/uae/courts/britain-seeks-the-extradition-of-former -Nigerian-governor](http://www.thenational.ae/uae/courts/britain-seeks-the-extradition-of-former-Nigerian-governor)/accessed 08/03/18 .

CHAPTER THREE

AN OVER VIEW OF THE INTERNATIONAL AND DOMESTIC LEGAL MECHANISMS FOR COMBATING TERRORISM IN NIGERIA

3.1 Introduction

Terrorism is a global menace because of the ease with which movement of humans, goods and services are conveyed. The advancement in telecommunication also exacerbated the activities of terror outfits. The world now is a global village hence fighting terrorism is not a nation affairs as such countries have to come together to assist one another with the fight against terrorism, this is paramount if the world wants to get rid of terrorism.¹

It is important to have a very strong criminal justice system that is guided by normative legal frameworks and embedded in the principles of the law, respect for human rights, and due process. The international legal instruments against terrorism identify terrorist as criminals and should be taken care of by the national criminal justice of countries because it is the most appropriate and equitable mechanism to achieve justice for the accused. Furthermore, criminal justice approach to terrorism also provides for effective means of prevention, which include intervening in their funding, terrorist organization, intercepting plans to carry out attacks.

The United Nations Security Council resolution and treaties forms the bedrock of the international legal framework for combating terrorism, states are expected to fulfill the obligation imposed on them by the other branches of international law, customary law, international human rights law, humanitarian and refugee law.² This is in addition to the ratification of the treaties and the UNSC resolutions in counter terrorism.

In addition, the municipal regime in fighting terrorism includes the EFCC Act 2004, Terrorism Prevention Act 2011, Terrorism Prevention (amendment) Act 2013, National Security Agencies

¹ UNODC International- Corporation in Criminal Matters: Counter Terrorism UN, New-York 2010.

² UNODC Publication: Hand book on criminal Justice Response to Terrorism. UN publication 2009 p.9.

Decree no 19, the Criminal Code and Penal Code and the Constitution of Federal Republic of Nigeria 1999(amended) among others will be examined and a critic of the legislations will be made with a view to pointing the gap and a possible way forward.

3.1 International Legal Regime against Terrorism

The international legal regimes are bodies of law which complement each other with the aim of maintaining world peace, lives and the dignity of the human race. International human rights law are laws applicable at all times; peace time and in time of war or armed conflict.

On the other hand, an international humanitarian law applies during armed conflict. The application of these laws concurrently has been recognized by different national courts and international tribunals.³ States are under obligation to extradite or try the suspected person accused of these offences.

The international community has failed to come to terms with the definitions of terrorism. This is influenced by the political ideology, location and the religious belief, for instance the Organization of Islamic Countries is of the opinion that carrying arms against oppressors like Israel is not terrorism. However the general assembly is negotiating a comprehensive definition of the term in a convention on international terrorism.⁴ When this convention takes effect it will boost the existing legal frame work against Terrorism. It will further enhance the guiding principles already present in the earlier regime which includes: Eliminating legislation that establishes exceptions to such criminalization on political, philosophical, ideological, racial, ethnic or religious grounds, criminalization of terrorist offences and ensuring they are punished by law, extradition of offenders' acts, states taking action to prevent terrorist acts .and the need for mutual assistance in information sharing and mutual legal assistance.

The international community from 1963 came up with a set of universal instrument meant to prevent terrorism. They consist of convention and protocol which covers every possible terrorist acts. To date there are 19 legal instruments which were developed by the UN and its specialized agencies.

³ Emanuel-Chiara G. *The complementary Nature of Human Rights Law international Humanitarian and Refugee law: challenges, responses in Terrorism and International Law (Sanremo 2002)* p5-52.

⁴Ibid.

The UN and the agencies developed these instruments based on their understanding of international terrorism as it terrorizes international peace and security. The most recent instrument was adopted in 2014 which brought major changes to the first thirteen instruments including the amendment to the convention on physical protection of nuclear materials.⁵ This is in addition to the amendment to both protocols of 2005 convention for the protection of unlawful acts against the safety of maritime navigation.⁶ And the protocols of 2005 for supervision of unlawful acts against the safety of fixed platform located on the continental shelf.⁷

The 8 international instruments dealing with terrorism ratified by Nigeria include;

- 1) 1979 International Convention against Hostage-taking
- 2) 1988 Convention for the Suppression of Unlawful acts against the safety of Maritime Navigation
- 3) 2005 Protocol to the Convention for Suppression of Unlawful act against the Safety of Maritime Navigation.
- 4) 1988 Protocol for the Unlawful Suppression of Unlawful Acts against the Safety of fixed Platform located on the Continental Shelf.
- 5) 2005 Protocol to the Protocol for the Suppression of Unlawful acts against Safety of fixed Platforms located on the Continental Shelf
- 6) 1991 Convention on the Marking of Plastic Explosive for the Purpose of Detection
- 7) 1997 International Convention for the Suppression of Terrorist Bombing
- 8) 1999 International Convention for the Suppression of the Financing of Terrorism⁸

Instruments mentioned above create obligations on the state parties to adopt substantive criminal and procedural law to counter various acts of terrorism. The administrative measures taken will combat the financing of terrorism. The aim of the instrument is to equip the practitioner with effective means to lawfully prevent and punish terrorism, it is also design to have the dual effect of prevention and inhibition of the acts of terrorism.⁹ The dissuasive angle or facets of the

⁵ Convention for the Suppression of acts against Nuclear Terrorism adopted (2005), www.un.org/en/counter-terrorism-legalinstrument.

⁶ Ibid.

⁷ United Nations, Treaty Series, vol.2178no.38349 www.unodc.org/tldb/pdf/protocol.

⁸ www.un.org/en/counter-terrorism/legal-instrument.ishtml accessed 10/4/18

⁹ UNODC (n6) p11.

instrument partly to attempt for bring to harmony criminal legislation of states, and to strengthened law enforcement and criminal justice cooperation. The effective criminalization of terrorist acts by all Nations will eliminate safe havens for terrorist. It will on the whole support international cooperation among states agencies involved in the war against terrorism.

3.2 The African Union effort in Combating Terrorism

The African Union (AU) efforts in preventing and combating terrorism dates back to 1992 at the then Organization of African Unity O.A.U meeting at its 28th Ordinary Session in Dakar Senegal where it adopted resolution no. AHG Res.213 (xxviii) on the strengthening of cooperation and coordination among African States. The A.U in the resolution adopted pledge to fight extremism and terrorism.

In June 1994 the A.U at its 30th Ordinary Session held in Tunis, Tunisia the then O.A.U adopted the declaration on the code of conduct for inter African relations in which, it rejected all forms of extremism and terrorism whether under the pretext of sectarianism, tribalism, ethnicity, or religion. The declaration also condemned as criminal all terrorist acts, methods and practices and expressed its resolve to enhance cooperation to combat such acts.¹⁰

The zenith of the efforts of the A.U was manifested in 1999 under the name of (O.A.U) at its 35th ordinary session in Algeria. The 1999 convention on the prevention and combating terrorism was adopted. The convention demands that state parties to the convention criminalize terrorist's acts under their national laws as it is defined in the convention. The Convention went on to further define area of cooperation among states, establishes state jurisdiction over terrorist act, and provides a legal frame work for extradition as well as extraterritorial investigations and mutual legal assistance.¹¹ The convention came into force in December 2001 and to date 40 members have ratified it.

For the 1999 Convention on Counter Terrorism and other international convention to have a concrete commitment and obligations, a meeting of the high-level inter-governmental committee on the prevention and combating of terrorism in Africa was held in Algeria in 2001 and adopted the A.U action plan for the prevention and combating of terrorism. This plan or action tackle's

¹⁰ AHG/Del.2 (xxx) adopted at the O.A.U. ordinary session in 1994 Tunis Tunisia.

¹¹ www.peacceau.org/conter-terrorism accessed 09/04/18 .

Africa security challenges among which are police and borders control, legislative and judicial measures, financing of terrorism and exchange of information. The implementation of the action plan culminated in the establishment of the African Center for the Study and Research on Terrorism (ACSRF) in 2002 with the aim of centralizing information, studies, analysis on terrorism and terrorist groups and to develop counter terrorist capacity building programs.¹²

An additional protocol to 1999 Convention was adopted in Addis Ababa in 2004 the protocol recognize the growing threat of terrorism in the continent and the links between terrorism, drug trafficking, transnational organized crimes, money laundering and illicit proliferation of small arm and light weapons.

The implementation of the relevant provision of the 2002 A.U Plan of Action on the Prevention and Combating of Terrorism with the task of providing advice on matters relating to counter-terrorism action, which includes preparation of model legislation and guide lines to help members states. African model on counter terrorism was equally developed by the commission.¹³

The member states were encouraged to take advantage of the model so as to strengthen and update their national laws. The model law is developed to aid the Nations state implement the provision and continental instruments. The 1999 AU convention and its related protocol inclusive.

In conclusion the A.U had put some effort in combating terrorism, its effort dates back to 1992 almost a decade to the attack on the twin towers. The AU encourages cooperation and coordination among African States in a bid to fight extremism, sectarianism, tribalism, ethnicity, or religion. Furthermore, it condemned terrorism in all ramifications and all forms of criminality.

3.3 Economic Community of West Africa States Regional efforts in Combating Terrorism-

West African States under the auspices of ECOWAS resolved to ensure that territory within their control are free of terrorism. This decision was made on the month of February 2013 through a declaration on common position against Terrorism and this contained a counter terrorism strategy and implementation plan adopted at the council of head of state of (ECOWAS)

¹²Ibid.

¹³ Adopted at the 17th Ordinary session of the assembly of the Union in July 2011in Malabo [Assembly/AU/Dec.369 (xvii)].

Economic Community of West African State. In Yamoussoukro, Cote d'Ivoire at the 42nd session. This process began in 2009 where international, regional, national experts, civil society and the media organizations were included in the fight and map out strategy to achieve the set objectives.¹⁴

The W/A plans is to ensure that the international, continental and regional instrument on counter-terrorism is provided a common framework for operation.

The effort of ECOWAS was celebrated at a period like this, where the W/A have been plagued by different types of crisis with the kind of activities of the government, coups, counter coups, civil wars, activities of mercenaries groups among others. The activities of Fulani herdsmen especially in Nigeria, Niger delta militants, Boko Haram since 2009, the activities of AQIM in Mali and beyond created a sense of insecurity provided by terrorism hence a threat to peace, stability development and territorial integrity.¹⁵ This is counterproductive to the ideals of the ECOWAS. One important lesson about the current trend of terrorism is the international dimension it has adopted, activities of a group could be planned in a country, execution in a different country, just to ensure that they are stealthy and cover up their tracks. In addition terrorist organization in Western African have pledged allegiance to other foreign terrorist organization like Al Qaeda, ISIS among others in addition they also align with international criminal networks such as arm smugglers, cigarette smugglers and drug traffickers. The declaration and strategic plans were made in the light of these considerations.¹⁶

One fundamental question is how the declaration and strategy put in place by the ECOWAS will resolve the already complicated problem of Terrorism in the region? It is the view of this author that the effectiveness of any law/instrument or convention is based on the level of state parties' preparedness to implement for results to be achieved, a story systematic action is required in enforcing the instrument. A stake holder commitment is required from these stakeholders who include member nation's regional actors and international organization.

At this juncture it is important to take a look at the strategy, characteristics and some key promises therein. Firstly the ECOWAS has embraced the need to prevent and combat terrorism,

¹⁴FATF Report Terrorist Financing in West Africa.

¹⁵ Ibid.

¹⁶ Ibid.

the major step taken by ECCOWAS was the Declaration and strategy that constituted the policy frame work to deal with the problems of terrorism and the other form of calamity within the region. The policy serves as a toolkit for the implementations national, regional and international legal instrument against terrorism. The principle of collective offence and attack was embedded in such a way that ‘an attack on one is an attack on all members’ state.’¹⁷ Secondly, the strategic measures is based on the measures provided by the UNSC resolution which include 1373, 1267, 1566, 1540 and General Assembly Global CT strategy to provide comprehensive step that state must take individually and collectively to tackle the threat of terrorism. The strategy rest on a Tripod which forms three main pillar of the policy. Prevention of terrorism, pursuing of terrorist, and reconstruction of society after terror attack. The most important of the pillar is the first which ensures states take wide range measures to prevent terrorism. This includes ratifying and effectively implementing the relevant legal regime, addresses and eliminate all conditions conducive to terrorism as contained in the UN General Assembly 2006 Global CT strategy, which ensures early warning signs are addressed by dealing with root cause of terrorism amongst which are; poverty, economic and political marginalization, human rights abuses, corruption weak security institutions and illegal trans boarder activities. It also out lined measures counter terrorist propaganda, discouraging people from seeking refuge with terrorist and equally denying terrorist access to funds to carry out their activities.¹⁸ The second pillar is meant to ensure rapid timely and effective response to terrorism, it also takes measures to intercept investigate and prosecute perpetrators of terrorism and their supporters as provided by the law. Cutting off terrorist funding, access to equipment, finance, training and meeting ground in other to create a hostile environment for terrorist in the region.¹⁹ The third pillar deals with the aftermath of a terrorist act, and is aimed at rebuilding society and enabling the state to heal the social wounds caused by terrorist and counter terrorism.²⁰ Some of the major feature of the strategy are, An ECOWAS Arrest Warrant, An ECOWAS Black list of Terrorist and criminal network, and An ECOWAS counter-Terrorism coordination units.²¹

¹⁷Ibid.

¹⁸Ewi M A. *Complex Dimension of Terrorism in Wet Africa: Vulnerabilities, Trends, and Notorious Terrorist Networks* .presented at SWAC/OECD 2012.

¹⁹Ibid.

²⁰ Ibid.

²¹ Ibid.

The Institute for Security Studies came up with some programs among which are: building national counter terrorism capacity, regional counter terrorism capacity building, technical Assistance, developing EOCWAS counter –terrorism training manual, ECOWAS CT strategy and implementation. When fully operational (then strategy and manual) peace and security will be enhanced within the sub region.

The ECOWAS Blacklist of Terrorist and criminal network and ECOWAS search warrant will enhance trans-border cooperation among security agencies and thereby ensuring there is no safe place for terrorist within the region. This in place the kind of confusion seen in Nigerian during the heat of the Boko-haram crisis will disappear as the communication lines will remain open through the ECOWAS counter-terrorism coordination unit.

However, we cannot be espousing the beauty of the instruments and strategies without looking at the shortcomings likely to be encountered in the cause of the implementation of the strategies one of the challenges strategies will be the political will to implement those strategies. The strategies created require huge amount of resources (human and materials) will be required to achieve its goals and we all know that such kinds of monies are not available within the region. The strategy may suffer because of financial status thereby creating a sort of competition between the CT strategy and other pressing needs of the countries. In so far as the country is not attacked it pays little attention to the implementations. Furthermore, the absence of discussion on the CF strategy at the highest organ of the community is cause for concern because the organ is where the political will is mustered and channeled down, the lack of enthusiasms by the head of governments and states will affect the implementation.

The ECOWAS strategy is not the solution so the problems of terrorism within W/S region however, it provide a legal frameworks within which to challenge terrorism to stand still for the potential to be realized, it must be fully implemented in the whole of the region and levels. The ECOWAS commission should ensure that the counter-terrorism coordination unit is put to use and a monitoring mechanism is put in place.

Groupe Intergouvernemental d'action contre le Blanchiment d'Argent en Afrique de l'ouest GIABA translated to mean (the intergovernmental Action Group against Money laundering in West Africa) GIABA is specialized institution of the Economic Community of West African State

saddled with the responsibilities of strengthen the capacity of member state towards the prevention and control of money laundering and terrorist financing in the west African Region.

It is a regional body modeled after FATF. The institution was created in the year 2000 by the authority of the heads of state and government. The institution achieves its responsibilities through AML/CFT Research grant established in 2011 to facilitate research in the area of money laundering and terrorist financing by providing funds to researchers in that area aimed exposing the activities of money launderers and financiers of Terrorism with the hope of bringing them to justice.²²

The pace with which these mechanisms are ensuring are so rapid it is in the bid to keep peace with the growing threat of organized crimes, terrorism and corruption.²³

The researcher is of the opinion that the international legal instruments/convention will amount to nothing even though it remain the best option to have happened in this C.T effort, if it is not implemented in whole and dispassionately. The way it is implement at the moment creates more challenges than resolving it. The so called super powers get away with state sponsored terrorism, while smaller nations are there, Iraq is suffering today because it annexed Kuwait, but the U.S is having the best for the catastrophe it caused the middle east and beyond.²⁴ Russia annexed Crimea to form part of its territory, as it stands now nobody had mentioned a word. Double standard jeopardizes the implementation of the instruments.

Domestic Legal Regime

3.4 The Economic and Finance Crimes Commission (EFCC) Establishment Act 2004

S.15 of the EFCC (establishment) Act 2004 states that:

Offences in relation to terrorism

- (1) Any person who willfully 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

²²www.giaba.org/about-giaba/index-656.html accessed 13/04/18.

²³Jousten M 'The Evolution of Cooperation in Criminal Matters within the E.U: The Record so far in Abma R and Vilsaven T (eds)*International key Issues In Crime Prevention and Criminal Justice (Helsinki 2006)* p 67-91.

²⁴Bernie S (n94).

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 attempts 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 reason to commit or attempt to commit, facilitates or participated in the commission of a terrorist act is liable to imprisonment for life.

S.15 of the EFCC Act, is the only section dealing with terrorism, and the section is dealing with provision of funds for the commission of the terror act. The problems of definition continues with the EFCC Act like many counter terrorism laws around the globe existing without defining what terrorism is? What constitute terrorism? How to conduct investigation in respect of terrorist acts? It equally did not provide the agency that is saddled with the responsibility of investigation and prosecution of the suspects in the event of an attack. The Act did not comment on the seizure of terrorist funds and property, mutual assistance, an extradition among others. The section of the EFCC Act was not comprehensive enough in dealing with terrorism. It has just a section dealing with it. The reason for having a section on counter terrorism was to fulfill the request put forward by U N S C to fight terrorism seen as a threat against international peace and security after the terrorist attack in the US. When the Act came in to force Nigeria was not having security challenges that constitute terrorism. However, few years into the existence of Commission, security challenges degenerated to a point the country had no option than to promulgate another Act specifically to tackle terrorism which it call Terrorism (Prevention) Act, 2011.

3.5 Terrorism (Prevention) Act, 2011

In 2011, the Terrorism (Prevention) Act came into effect. The Act is aimed at preventing, prohibiting and combating acts of terrorism, the financing of terrorism in Nigeria and for the implementation of the convention on the prevention and combating of terrorism and convention on the suppression of the financing of terrorism. The Act provide for punishment upon infringing its provisions.²⁵ The Act is divided into eight parts and contains 41 sections.

²⁵Explanatory memo to the terrorism prevention Act 2011.

It prohibits the Acts of terrorism and it went on to define terrorism. The prohibition is contained in:

S. 1. A person who knowingly

(a) does, attempt, or threatens to do an act preparatory to or in furtherance of an act of terrorism

(b) commits to do anything that reasonably necessary to promote an act of terrorism: or

(c) assist or facilitates the activities of persons engaged in an act of terrorism commits an offence under this Act.²⁶

The Act went on to define terrorism to mean 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 –
 - (i) unduly compel a government or international organization to perform or abstain to performing any act,
 - (ii) Seriously intimidate a population
 - (iii) Seriously destabilizes 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) attack upon a person life which may cause serious bodily harm or death

(ii) kidnapping of a person

(iii) Destruction to a government or public facility, including any information system, a fixed platform 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 transport any of the purposes in para (b)(iv) of the subsection

²⁶ S. 1 (1) Terrorism Prevention Act 2011.

(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 to water, power or any other fundamental natural resources, the effect of which 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 convention duly ratified by Nigeria²⁷.

The Act however, created an expectation clause to the term 'Disruption' where it states that an act which disrupts services but done in pursuance of a protest, demonstration or stoppage is not a terrorist act within the meaning of the definition provided that the act is not intended to result in any harm referred to in the Act²⁸ in sub-section 2) (b) (i), (ii) or (iv) of the section.

However, a closer look at the section one will be forced to ask some questions in relation to S.1 (2) (b) (i) which seek to deal with people who intend to "unduly a government or international organization to perform or abstain from performing any act ..." industrial action is exactly aimed at doing that which the act seeks to deter. For example strike action by medical workers where patients are allowed to die in the hospitals unattended. Will this not be intended to threaten the population so as to mount pressure on the government to meet their demands? Human life is being destroyed, won't this constitute an act of terrorism? The strike action by the medical personnel demanding for their rights or improved working conditions cannot be a terrorist action because most strike actions are backed by the labor law of the country and the constitutional guaranteed right of freedom of association.

One other problem with the section definition referring the international organization as the only body capable of being attacked by the terrorist. The provision like many other provisions in many other Acts are just copied verbatim from the international convention and

²⁷ Section 1 (2) Ibid.

²⁸ Section 1(3) Ibid.

other instruments on terrorism without looking up the extent of the meaning and application of such provisions in the municipal scene. As a municipal law it should have considered the local organizations together.

An organization may be proscribed as a terrorist organization on the application made by the Attorney General of the Federation, the inspector General of police, or the National Security Adviser to a judge in chambers. This application must however be on the approval of the president of the country²⁹. The section provides conditions to make sure that fairness and equity is attained in proscribing an organization other than using a presidential fiat.

The judge is the authority empowered to proscribe an organization, and a consequential order to publish the proscription in official gazette, two National dailies, and at any other place the judge in chamber may decide. The section went on to state that once one organization is proscribed, it becomes an offence punishable with twenty years imprisonment to belong to such an organization³⁰. IPOB proscription went through this process.³¹ The section provided a defense to a person who was once a member of the proscribed organization before the proscription, but took no further step after the proscription is not liable to an offence under this section.³² The AGF upon the approval of the president may withdraw the orders if satisfied that such proscribed organization stopped to be a terrorist organization.³³

One thing that is very clear and a defect of the Act in that it took away everything as far as terrorist organizations from state government by making the whole process pass through the president and not the state³⁴. The Act made the AGF, the NSA and IGP as those responsible for such application. This provision of the Act may have some consequences which are unintended. In the constitution of the federal Republic of Nigeria crime and punishment is contained in the concurrent legislative list which makes the state and federal government having jurisdiction on the matter. As much as the section gives the court the final say as to whether the group is to be proscribed or not, it did not grant such right to the group to challenge the executive in the court whenever it is proscribed. The provision effectively takes

²⁹ S.2 Terrorism (Prevention) Act 2011.

³⁰ S.2 (2) Ibid.

³¹ S.2 (3) Ibid.

³² Suit No FHC/DB/ 871/2017. AG Vs IPOB.

³³ S.2 (4).

³⁴ S.2 (5.)

away the right of the group to fair hearing as provided by the constitution.³⁵ It should be remembered that the proscription trial is ex-parte and without the other party. If the group cannot challenge the decision, two fundamental rights are taking away, the right to fair hearing and the right freedom of association as contained in S.40 of the constitution.

S.3 of the Act makes it an offence punishable with ten years imprisonment for who arranges, manages, assist in arranging or managing or participates in a meeting or an activity which he vinous is connected with an act of terrorism. Furthermore, anyone who provides logistics, equipment or facilities for the meeting or an activity which he knows is connected with an act of terrorism or attend a meeting of proscribed organization.³⁶

When a person solicits or renders supports for acts of terrorism or proscribed organization shall be punishable with 20 years' imprisonment³⁷ however, where death was the results of such activity, the offender shall be punished with death.³⁸ As for harboring of a terrorists and provide for the terrorist, the Act provide for 10 years imprisonment as the maximum punishment.³⁹ Any person who knew and provide from and instruction to making or the use of explosive, or any lethal weapon to the terrorist low to carry out terrorist or any person preparing to engage in the commission, of terrorism shall be liable to 10 years imprisonment.⁴⁰ Also failure to declare information about acts of terrorism attracts 10 years,⁴¹ in the same vein obstruction of terrorist in resignation by way of informing the suspect, interfered with materials relevant to the investigation shall be liable to 10 years imprisonment.⁴² However there is a defense contained in this Act in the following sub section where it states that any disclose made in good faith without prejudice is defense, in the same manner where the disclose is made in a client /solicitor relationships not being a disclosure in furtherance of the criminal act.⁴³

The president is empowered on the recommendation of N.S.A and IGP to declare a person or group, as an international terrorism or terrorist group, where such a person acquire citizenship

³⁵ S.36 of the Constitution of the Nigeria 1999 (as amended).

³⁶ S.3 (1) (4) & (iii) of Terrorism (prevention) Act 2011.

³⁷ S.4 Ibid.

³⁸ S.4 (2) Ibid.

³⁹ S.5 Ibid Terrorism Prevention Act 2011.

⁴⁰ S.6 Ibid.

⁴¹ S.7 Ibid.

⁴² S.8 Ibid.

⁴³ S.8 (2) and (3) Ibid.

not by birth, may be deprive such a citizenship.⁴⁴ The Act empowered the A.G.F to make regulations to provide rules for the freezing of his or its funds, financial assets or other economic resources,⁴⁵ for the prevention of his or its entry into or transit in Nigeria.⁴⁶ For the prohibition of his or the direct or indirect supply sale and transfer of arms, weapons ammunition, military vehicle and equipment, spare parts and related materials⁴⁷ among others, and where such directive is contravene the person shall be liable to imprisonment to 5 years.⁴⁸ For the provision and collection of resources for terrorist activities, attracts 10 years imprisonment.⁴⁹ In the same manner hostage taking attracts 10 years.⁵⁰

Part II of the Act deals terrorist funds and property; the Act empowers the NSA or IGP to seize the cash of terrorist which is intended to be used for purpose of terrorism, or belongs or held in trust for a proscribed organization; or property obtained through terrorism.⁵¹ The issue of concern here is that the court is saddled with the powers to order the seizure of the funds of the terrorist.⁵² In the same manner the act gives the N.S.A or IGP the same powers to seize these funds with or without any proceeding before a court of law; the Act is probate and reprobate.⁵³ This eroded the potency of the section.

The Act provides for 10 years imprisonment for the offence funding the terrorist but soliciting, receiving, provides or possesses monetary or others issues.⁵⁴ The act places a duty of reporting suspicious transaction relating to terrorism.⁵⁵

The Act dealt with how people who involved in dealing with terrorist property this may include; The NSA and IGP were given powers by the Act to interfere with such a guaranteed constitutional right by a mere phrase of as “it appears to him to be necessary” to take away such right. This power is subjective and prone to abuse, a means of checking the NSA and IGP should

⁴⁴S.9(1), (3) Terrorism Prevention Act 2011.

⁴⁵S.9. (6) (a) Ibid.

⁴⁶S.9. (b) (b) Ibid.

⁴⁷S.9 (6) (c) Ibid.

⁴⁸S.9 (6) (d) Ibid.

⁴⁹S.10 Terrorism Act 2011.

⁵⁰S.11 Ibid.

⁵¹S.12 (1) (a-c).

⁵²S.12 (4).

⁵³S.12 (3).

⁵⁴S.13 Ibid This section seems like a repetition of s.10.

⁵⁵S.14 Ibid.

be devised. The Act provided an authorized officer may issue a detention order in respect of conveyance if he is of the opinion that a threat has been made to commit an offence or an act of violence is likely to be committed against the conveyance or person or property on board the conveyance.⁵⁶ The concern here is that those given the authority were just to use their opinion i.e. 'if in his opinion', this is also subjective like the preceding section. The only difference here is that the operator of the conveyance can object to a detention order and can apply to the court, however he has a problem here instead of the judge making an order, instead he is to confirm, vary, or cancel the order on the advice of the AGF who works in concert with the detaining bodies.⁵⁷ The rationale of subjecting the court to executive review is uncalled for as the unfettered power of the court has been compromised. This part further deals with the detention for offences related to terrorism. Where a person is arrested under reasonable suspicion of having committed any offence under section 1,2,3,4,5,6,9,10,11,13 or 14 may be detained within 24 hours without access to his counsel, doctor or family members, but the detaining agency lawyers and doctor. This is a breach to his fundamental human rights to a legal practitioner of his choice.⁵⁸ The question is how does the counsel of the detaining agency further his cause? This provision should be abrogated because it does not conform to the spirit of the constitution of Nigeria.

Part VI of the Act deals with the prosecution of offences captured under the Act, the Act reiterates the powers of the AGF to institute criminal proceedings on behalf of the government of the federation.⁵⁹ The absence of the State High Courts and AG of states from prosecuting the offence of terrorism makes the offence a 'Federal offence'. A well-known fact is that offences created by the EFCC Act are tried by State High Courts consequently, terrorism should not be exempted. As it stands now the F.H.C is overburdened with other litigations and Terrorism is an added baggage to the long list of burden of the court having given the jurisdiction to try offenders by the Act.⁶⁰ The Act provides for witness protection by the court suo motu or by the prosecuting agency.⁶¹ The court where it ruled to protect the witness may hold its proceeding in a place to be decided by the court.⁶² The court may avoid naming the witness and address in it

⁵⁶S.27 Terrorism (prevention) Act 2011.

⁵⁷ S.27 (4) *ibid*.

⁵⁸ S.36 (6) (c) CFRN 1999 (as amended).

⁵⁹ S.28 T P A 2011.

⁶⁰ S.30 T P A 2011.

⁶¹ S.31 *Ibid*.

⁶² S.31 (2) (a) *Ibid*.

records to the proceedings.⁶³ The court shall prohibit the publication of the proceeding in any manner.⁶⁴ The court may order the public to stay away from the proceedings in the public interest.⁶⁵ The Act grants the F.H.C shall have the sole rights to try and impose the penalties specified in the Act shall order for forfeiture.⁶⁶ However, the Act contained a provision that is contradictory in that the court can only impose a penalty not exceeding 20 years⁶⁷ However, the Act makes provision for death and life sentence especially when the offence results to death.

Part VII of the Act under review deals with charities that are related to terrorist and the power of the registrar of the corporate affairs commission C.A.C to refuse the application or revoke the license of charities associated with terrorist based on intelligence report from security organization.⁶⁸

Part VIII of the Act deals with the miscellaneous provisions and it provides among other things; provision for information relating to passengers of vessels and aircraft and persons for the powers to prevent entry and order the removal of persons whom he reasonable believes has been, is or will be involved in the commission of terrorist Act,⁶⁹ powers to refuse refugee application.⁷⁰ The A.G.F has power to make regulation for the effectiveness of the Act as he deems fit especially types of financial services not to be provided to proscribed organization and the record of custody and the video recording of suspects held under the Act.⁷¹ The part also contain the interpretation section.⁷²

Some key sections 27,28, ad 29 of the Act runs counter to the Fundamental Human Rights provision of the constitution of the Federal Republic of Nigeria and other international conventions on human right such as the Universal Declaration of Human Right, International Convention on Civil Political Rights, African charter on Human and Peoples Right among others. It also use terms that are imprecise and ambiguous as earlier mentioned violating the

⁶³ S.31 (2) (b) Ibid.

⁶⁴ S.31 (2) (d) Ibid.

⁶⁵ Ibid.

⁶⁶ S.32 (2) Terrorism Act 2011.

⁶⁷ S.32 (2) (a) Ibid.

⁶⁸ S.32 (2).

⁶⁹ S.33 (1) (a) (e) Terrorism Act 2011.

⁷⁰ S.35 (1) Ibid.

⁷¹ S.36 (1) Ibid.

⁷² S.37 (1) Ibid.

Human rights of individuals it seeks to protect. The Act did not provide for any agency as the leader in terms of counter terrorism war thus the lack of synergy in the counter-terrorism war. It is because of the flaws of the 2011 Act that the National assembly (NASS) amended the Act in 2013.

3.6 Terrorism (Prevention) (Amendment) Act 2013

The Terrorism (Prevention) Act 2011 as discussed in the preceding subtopic discloses a number of defects that warranted the NASS in 2013 to amend some provision of the Act to make it workable. The preamble of the 2013 Terrorism (Prevention) (Amendment) Act was to provide for an extra territorial application of the Act and strengthening of terrorist financing offences and for other related matters.⁷³

At the beginning of the amended Act, a new subsection (1) has been included to the existing s.1 which states that all ‘acts of terrorism and terrorist financing is hereby prohibited’. Also inserted is a new subsection (2) this gives an elaborate definition and a number of offences that can be punished under the section. It went on to provide for death penalty as a maximum punishment for offenders.⁷⁴ In the amended Act the Office of the National Security Adviser (ONSA) will coordinate the agencies saddled with the fight against terrorism.⁷⁵ The 2013 amendment provided for clear roles for the AGF, NSA and the law enforcement agencies carrying out Counter Terrorism.⁷⁶

As stated earlier ONSA is the coordinating body of the law enforcement Agencies, while the A.G.F shall be the authority for the effective implementation and administration of the Act. These are two offices playing the roles of leading the fight against terrorism.

A potential friction is created by the Terrorism (prevention) (amendment) Act 2013 for the two offices. There is the need of a proper delineation of their roles and who takes charge even though constitutionally, the AGF has upper hand, but the NSA has closer ties with the Commander in Chief.

⁷³ Terrorism (prevention) (Amendment) Act 2013.

⁷⁴ S.1 (2) (I) Ibid.

⁷⁵ S 1A (I) Ibid.

⁷⁶ S.1A (I) – (b) Ibid.

In the amended Act of 2013, new sets of S.3-25 were provided as replacement for 3-8 in the 2011 Act. These new section cater for some offences that were not taking cognizance of in the 2011 Act. The new section takes care of offences such as offences against internationally protected persons,⁷⁷ terrorist meeting,⁷⁸ soliciting and giving support to terrorist groups for the commission of terrorist act.⁷⁹ It also provide for the obstruction terrorism investigation and the hindering arrest of terrorist⁸⁰ the Act further provides for provision of training materials or instructions.⁸¹

The concealing of information about of terrorism⁸² provision of device to a terrorist group and recruitment of persons to be members of terrorist group⁸³ or to participate in terrorist acts.⁸⁴ There were not in the principal Act of 2011. The offence of incentive, promotion or solicitation of the property for the commission of terrorist act,⁸⁵ the provision of facilities in support of terrorist⁸⁶ act even though were covered under the 2011 Act, it was not as detailed as it is in the amendment or 2013. The amendment also caters for financing terrorism⁸⁷ just like the principal Act, however, some form of duplication is manifesting here, it would have been better for the S.13 to be merged with section 5 dealing with soliciting and giving support to terrorist group. InS.5dealing with terrorist property, hostage taking and membership of terrorist group or proscribed organization were dealt with in the principal Act of 2011and 2013 amendment.⁸⁸ The 2013 Act insert are new provisions on conspiracy,⁸⁹ aiding and abetting in the commission of terrorism⁹⁰, Escape, or aiding and abetting escape⁹¹ furthermore, new sections were inserted into the 2013 amendment Act that were not in the 2011 principal Act. The new sections are attempt to

⁷⁷S.3 Terrorism prevention (amendment) Act 2013.

⁷⁸S.4 Ibid.

⁷⁹S.5 Ibid.

⁸⁰S.6 T P A (amendment) 2013.

⁸¹S.7 Ibid.

⁸²S.8 Ibid.

⁸³S.9 Ibid.

⁸⁴S.10 T. P. A. 2013.

⁸⁵S.11 Ibid.

⁸⁶S.12 Ibid

⁸⁷S.13 Ibid.

⁸⁸S.14.15 and 16 Ibid.

⁸⁹S.17 Ibid.

⁹⁰S.18 Terrorism Prevention(Amendments) 2013.

⁹¹S.19 Ibid.

commit an offence under this Act⁹², preparation to commit terrorist acts,⁹³ unlawful assumption of character of officer of any law enforcement security⁹⁴ and any tampering with evidence and witness.⁹⁵ These innovation were due to the exigency of time. Obstruction at any officer of the law enforcement or security agency.⁹⁶ In my humble opinion this section seems to perform the same function with the section meant to prevent terrorist investigation in 6 of the Act. Another section added is offences by an entity, the management will be held liable for any neglect, the director, manager, secretary of the entity or any person purported to act in that capacity, the officer shall be liable to life imprisonment⁹⁷. There was a substitution of S.10 of the principal Act with a new S.10 in the amendment was introduced. It deals with funds to support terrorism by a person or body cooperate, and found guilty shall be liable to 10 year imprisonment while the corporate body shall be liable the fine of not less than #100,000,000.00 Principal Officers of the body corporate shall be liable to 10 year and the winding of the company and prohibit its reconstitution or incorporation under any guise. S.11 and 13 were deleted from the principal Act 2011 and replaced with a new S.13 in the amendment 2013 which prohibits any person natural or legal within or outside Nigeria to raise fund for the terrorist organization to commit acts of terrorism shall be liable to imprisonment of not less than 10 years and not more than life.⁹⁸ S.12 was amended the word 'cash' was substituted with 'funds or property' in (5) (6) and (7) deleting (8).

The criminalizing of acts done outside Nigeria ensures that terrorist can't come back to Nigeria and claim we committed the acts outside the shores of Nigeria and municipal laws does not cover such S.14 of the principal Act was amended providing stiffer punishment of 10,000,000 as a fine or a maximum of 5years for the offence.⁹⁹ S.15 of principal Act has been amendment, the amendment gave the A.G.F the sole powers to apply to a judge in chambers.¹⁰⁰ S.16 and 17 of the principal Act are deleted, and S.24 of the principal Act substituted with a new S.24 in the 2013 amendment. It grants the power to apply for warrant to a law enforcement officer instead of

⁹² S.20 Ibid.

⁹³ S.21 Ibid.

⁹⁴ S.22 T P A 2013 (amendments).

⁹⁵ S.23 Ibid.

⁹⁶ S.24 Ibid.

⁹⁷ S.25 Ibid.

⁹⁸ S.13 (i) Ibid.

⁹⁹ S 8 Ibid.

¹⁰⁰ S 9 T P A (amendment)2013.

the NSA or IGP¹⁰¹ S.25 of the principal Act was substituted with a new S.25 dealing with investigation and search with or without warrant.¹⁰² The amendment provides for a new S.26-34, substituting S.26-29 of the principal Act, the new S.26 provides for recording, measuring samples, photograph or finger print impression during investigation. This is a novel path taking by the 2013 amendment¹⁰³ S.27 and 28 of the amendment provide grounds for thorough investigations for offences relating to terrorism and access to a detained person pending conclusion of terrorist investigation. Any form of contact can lead to interference, or destruction of the evidence connected to the crime, altering both members of the cell and hinders the tracking, search and seizure of terrorist property.¹⁰⁴ Terrorist investigation is a lengthy and difficult because it requires stringing of little pieces of evidence the detention are often sanctioned by the court where the court feels otherwise it grant bail .

However, where bail is granted within the first 90 days, the law enforcement agency can place the suspect under house arrest until the investigation is concluded¹⁰⁵. Improvement was made with the new S.29 in the amendment, which grants the court the power to intercept communication of the citizens, the court order will contain such details as the time frame, the persons, and the nature of the communication to be intercepted and retained.¹⁰⁶ Also introduced is the issuance of evidenced certificate certifying if a substance object is actually a weapon or a hazardous, radioactive, or harmful substances, toxic chemical, or other biological agent or toxin.¹⁰⁷ S.32 of the principal Act was substituted with a new S.32 which states that the Federal High Court sitting in any part of country shall have jurisdiction to try offence under the Act or any other related enactment.¹⁰⁸ It is the researcher's expectations that the State High Court will be added which has coordinate jurisdiction with FHC, and it has unlimited jurisdiction to try offences. One more innovation in the 2013 amendment in the interpretation sections where the definition of the term terrorist is contained¹⁰⁹ unlike the 2011.

¹⁰¹ S 11 Ibid.

¹⁰² S 12 Ibid.

¹⁰³ S.13 Ibid.

¹⁰⁴ S.27 and 28 2013 Terrorism Act as amended.

¹⁰⁵ S.28 (4) Ibid.

¹⁰⁶ S.29 Ibid.

¹⁰⁷ S.13 Ibid.

¹⁰⁸ S.15 Ibid.

¹⁰⁹ S.19 (e) Ibid.

By and large the 2013 amendment royal to mitigate the problems contained in the principal legislation of 2011. It still did not completely resolved the dispute of the N.S.A and A.G.F because another battle is about to ensue with time onto who leads the fight against terrorism.

3.7 Regulatory Regime Predating the EFCC & TPA (amendments)Acts 2013

The Nigerian penal laws that is made of the criminal code for the South and the penal code for the North, although did not contain provision against the act of Terrorism, it however, contains some provisions of counter terrorism that criminalize certain specific acts of violence such as murder/homicide, unlawful assembly, criminal intimidations among others some of the provisions include;

- i. acts committed against the safety of maritime navigation;

S.349 cc states that;

Any person, who knowingly sends by any vessel, or carries in any vessel, any explosive substance, or any acid, or other thing of a dangerous or destructive nature, under false description of the substance or thing, or with a false description of the sender there of, is guilty of a felony and liable to imprisonment for three years.

However, the offender cannot be arrested without warrant.

- ii. Deprivation of liberty; the criminal code in S.365 provided that any person who unlawfully confines or detains another in any place against his will, or deny another of his personal liberty is guilty of a misdemeanor and liable to imprisonment of two years.
- iii. Assault and violence to the person,¹¹⁰ Homicide, infanticide¹¹¹ and offences endangering life or Health ¹¹²can be used to prosecute acts of terrorism.
- iv. Furthermore in respect of offence committed with explosive, the explosives Act cap 117 law of the Federation Nigeria 1990 s.13 states ‘no person can buy, sell, or otherwise dispose of explosives save under and in accordance with a license granted by the relevant authorities.’ This is equally contained in the Fire Arms Act which prohibits the

¹¹⁰ Chapter 25 cap 77LFN 1990.

¹¹¹ Chapter 27 Ibid.

¹¹² Chap 28 Ibid.

acquisition of a prohibited firearm and importation without the authorization of the competent authority.¹¹³

- v. The prohibition of Quasi-military organization; the Public Order Act provides for the prohibition of any quasi-military association whether corporate or not for carrying out criminal acts¹¹⁴ similarly S.62-88 C.C. prohibits unlawful societies and provides for a sentencing of up to seven years imprisonment
- vi. The issues of money laundering were completely addressed by the money laundering decree No 3 of 1995. It provides among others the mandatory disclosure of information by financial institutions, and it establishes offences for both the natural and legal person.
- vii. The penal code contains similar provision as the criminal code. The remarkable difference between the two codes is that penal code is much stringent in punishing the offenders,

S.271 of the penal code deals with kidnapping, any person found guilty shall be liable to imprisonment up to 14 years if life is threatened

S.97A deals with unlawful society where a person is found guilty can be liable to imprisonment of up to 7 years or fine or both.

S.220 penal code is provision dealing with Culpable Homicide which states that whoever causes death:

(a) By doing an act with the intention of causing death or such bodily injury as is likely to cause death; or

(b) By doing an act with the knowledge that he is likely by such act to cause death; or

(c) By doing rash or negligent act, commits the offence of culpable homicide.

There are a number of sections devoted to mischief in the penal code which among others includes the following; mischief to public road, bridge, river or channel making it impossible for the use of the road, river, bridge or channel shall be liable to imprisonment of up to 5 years or with fine in both.¹¹⁵ The Penal Code went on with mischief by fire or explosive with intent to cause damage to any property shall be

¹¹³ Cap 128 LFN 2004 S.3 3 part V of the Act.

¹¹⁴ Cap 128 LFN 2004 s.6.

¹¹⁵ S.332 of the Penal Code CAP 89 (LFN) 1990.

¹¹⁶ Section 63 of the Penal Code

¹¹⁷ Section 63 of the Penal Code

¹¹⁸ Section 63 of the Penal Code

¹¹⁹ Section 63 of the Penal Code

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¹¹³ Cap 128 LFN 2004 S.3 & part V of the Act.

¹¹⁴ Cap 152 LFN 2004 s.6.

¹¹⁵ S332 of the Penal Code CAP 89 (LFN) 1990.

¹¹⁶ Section 63 of the Penal Code

¹¹⁷ Section 63 of the Penal Code

punished with imprisonment that may extend to 7 years or fine.¹¹⁶ The PC went on to state that mischief by fire or explosive with intent to destroy house used for worship, or a dwelling place, or a place for custody of property shall be punished with life imprisonment or any less term and shall be liable to fine.¹¹⁷ Mischief to vessel decked with intent to destroy it or render it unsafe,¹¹⁸ the suspect shall be punished to 14 years or fined or both.¹¹⁹ Or the suspect shall be punished for life¹²⁰ The offence of criminal intimidation shall be punished with imprisonment for a term which may extend to two years or with fine or with and where the threat be to cause death or grievous hurt or to cause offence punishable with death or with imprisonment for a term which may be extend to 7 years.¹²¹

These provisions can be invoked to deal with terrorism effectively before the enactment of the EFCC and the TPA 2013 (amendment) amending the provisions of the penal law as the UNSC resolution 1373 demands.

- viii. The applicable law relating to extradition and mutual legal assistance is governed by the Extradition Act (Cap 125 LFN 1990) S.1 and 4-14 are the relevant section relating to terrorism.

3.8 National Security Organization.

The special branch of the Nigeria Police Force was excised from the police force. The branch was responsible for the intelligence gathering for the police. The branch was reconstituted into the National Security Organization independent of the police. In 1986 the General Ibrahim Babangida administration signed Decree No 19 of 1986 which transformed the National Security Organization to three different outfit and named it National Security Agencies. The preamble of the decree is there shall, for the effect of the conduct of security, be established the following national security agencies, that is to say-

- (a) the Defence Intelligence Agency;

¹¹⁶S336 ibid.

¹¹⁷S 337 ibid.

¹¹⁸S338 ibid.

¹¹⁹S 339 ibid.

¹²⁰S 340 ibid.

¹²¹S 397 ibid.

(b) the National Security Agency; and

(c) the State Security Service. Each of the agencies is giving it specific task aimed at securing the internal and external territorial integrity of the nation.

General Duties of National Security Agencies

1) **The Defence Intelligence Agency** shall be charged with the responsibility for-

- i.) the prevention and detection crime of a military nature against the security of Nigeria;
- ii.) the protection and preservation of all military classified matters concern the security of Nigeria, both within and outside Nigeria;
- iii) such other responsibility affecting Defence intelligence of a military nature, both within and outside Nigeria , as the President ,or Chief of Defence Staff, as the case may be, may deem necessary .

2.) **The National Intelligence Agency**

The national intelligence agency shall be charged with the responsibilities of

- i. the general maintenance of the security of Nigeria outside Nigeria ,concerning matters that are not related to military
- ii. such other responsibilities affecting nations intelligence outside Nigeria as the National Defence Council or the President as the case may be, deem necessary.

3) **The State Security Service**

The State Security Service shall be saddled with the responsibility of;

- i.) the prevention and detection within Nigeria of any crime against the internal security of Nigeria;
- ii.) the protection and preservation of all non- military classified matters concerning the internal security of Nigeria; and
- iii.) such other responsibilities affecting internal security within Nigeria the National Assembly or the President, as the case may be, may deem necessary.

The law establishing the National Security Organization was repealed by the signing of the decree

The office of the Coordinator of the National Security shall with the duty of advising the president on matters relating to intelligence of the agencies, make recommendations in respect of the activities of the agencies, and correlating and evaluating intelligence report relating to national security and providing the medium of disseminating the intelligence within government.

The role of each agency of the intelligence community is clear. The question one may ask is why is difficult the activities of criminal cells goes under the radar undetected? If agencies are up and doing activities of boko haram and indeed other clandestine groups would be nip the bud.

3.9 Enforcement Mechanisms of the Laws on Terrorism;

Generally the laws on Counter Terrorism vested the power to try suspects for the crime of terrorism on the Federal High Court. It's a trite law the F.H.C is one, but with several other divisions to entertain cases. The FHC was originally known as the Federal Revenue Courts which is saddled with the dispensation of justice relating to revenue, and disputes within states, companies and the government, and states and the FHC. As time evolved the court began to entertain criminal matters because of the provision of the constitution that gave it such powers.¹²² The EFCC Act empowers the Federal High Court, State High Court or High Court of Federal Capital Territory to try offences contained in the Act.¹²³ In the same manner the Terrorism Prevention Act of 2013 confers on the F.H.C jurisdiction to try matters relating to terrorism and allied offences.¹²⁴ The researcher of this work finds it difficult to understand why only the FHC is granted powers to try the offence thereby limit the option or choices to forum. States High are Courts of unlimited jurisdiction to entertain any matter on the face of the earth. The criminal code provides the general legal framework governing the exercise of jurisdiction by the Nigerian courts as laid down in part1. Chapter 3 of the code deals with offences committed wholly or in part in Nigeria.¹²⁵ Similarly, the C.C provides for offences procured or counseled

¹²²S.251(s) (2) and (3) CFRN 1999 as amended.

¹²³S. 19 EFCC Acts 2004.

¹²⁴S. 32 Terrorism Prevention Act 2011.

¹²⁵S. 12 of the C.C. Cap 77 LFN 1990.

by persons outside of Nigeria,¹²⁶ The code also takes care of a person procured in Nigeria to be committed out of Nigeria.¹²⁷

Civilian Joint Task Force

The Civilian JTF was a Vigilante group formed in 2013 at the peak of the Boko Haram insurgency to assist the Joint Military Task Force operating in Maiduguri. the military task force are drawn from various divisions of the military in Nigeria, basic local Knowledge of the theatre of operation was unknown to the troops, hence they suffer various degrees of defeat from the insurgent group, in response to every attack the military cordon and search the area, arrest all young able bodied men for interrogations some never to be seen again. This modus operandi created human rights abuses and the Civilian JTF came up as a bridge to support the military fish out any insurgent in the community once there is an attack. It is a form of community policing the CJTF knows everyone in the community while the MJTF are strangers to be guided by their collaborators. The CJTF help in restoring peace and security in Maiduguri and environs.

3.10 A Critical Analysis of the Domestic Legal Regime in the Fight against Terrorism in Nigeria.

There are several legislations at hand to be used in the fight against terrorism in Nigeria, an attempt will be made by the researcher to critic the laws having analyzed it in the preceding sub-topics above.

3.10.1 The EFCC Act: - when the EFCC establishment Act was passed by the National Assembly two sections were included by the draftsmen which is related to Terrorism and a definition contained in the definition section of the Act. As at the time the Act came into existence Nigeria experiences in the hand of insurgent groups even though violent it could not be termed terrorism in the real sense of the word. Perhaps that was the reason that a mere two sections were allotted to it dealing with financial crimes relating to provisions of funds and participations in the offence of terrorism. However, the Act did not properly define what constitute the offence of terrorism, what is a terrorist act, how and what agency is to conduct the investigation and prosecution of the offenders. The Act equally did not take into account the seizure of terrorist funds and properties, mutual assistance and extradition among others. It is my

¹²⁶ S.13 *ibid.*

¹²⁷ S.14 *ibid.*

humble submission that the EFCC Act is not detailed enough to deal with the offence such as terrorism. One will think it was because the country was a member of the United Nations and the UN in the aftermath of September 11 bombings in US called on member States to stand up for the fight against terrorism and in response to the call Nigeria went ahead with the implementations without taking into considerations of all factors. A few years after the coming into effect of the Act Nigeria came under attack from boko haram terrorist group, from 2009 to 2015 the group fought the country ferociously claiming territories in the North Eastern States especially Borno State losing about 15 Local Government Areas to the terrorist. It is in the light of the forgoing that the Government had to promulgate of an Act to specifically deal with terrorism.

3.10.2 Terrorism Prevention Act 2011:- From the analysis of the Act a number of questions were agitating my mind one of which is the question of the International Organizations and the government being victims of the terrorist act. It is apparent that the draftsmen only copied verbatim the provisions from the international instrument without taking local situation into considerations that the citizens suffer from the acts of terrorist groups for instance destroying their means of livelihood and community rendering them refugees in their homeland. A domestic legislation should have considered that non internationals are also capable of being victims' terrorism.

The Act provide that an organization can be proscribed as a terrorist organization on an application made by either Attorney General or the Inspector General of Police or the National Security Adviser to a judge ex parte ,the application must be brought pursuant to the approval of the president.¹²⁸ This arrangement is to a large extent a fair arrangement for the proscription to take place it must pass through the court not the whims of the government. The proscription order must be published in two national dailies and the official Gazette and at such other places as the court may decide.¹²⁹ If an organization is proscribed participating in its activities attracts 20 years imprisonment for belonging to such organization. A member of an organization that is proscribed and took no further participation in the activities after the proscription of the organization is not guilty of their activities.

¹²⁸ Section 2 Terrorism (Prevention) Act, 2011.

¹²⁹ S.2(2) *ibid*.

One of the challenges of the proscription is that there is no provisions for the members to go to court and challenge the proscription in court, this amount to a breach of the right to fair hearing which is a constitutionally guaranteed right as contained in Section 36 of Constitution of the Federal Republic of Nigeria and S.40 which deals with the freedom of association within the limit of the law.

S.26 of the Act provide for the NSA and the IGP for the purpose of intelligence gathering to give a direction to appear to him to be necessary to any communication service provider specifying the maximum period a service provider to retain data. This provisions give the agents of government unrestricted powers to interfere with correspondences of citizens' breach their constitutional rights to privacy and respect to their dignity with regards to telephone conversation, telegraphic communications of the citizen how secured are they when the NSA and IGP are granted powers to interfere with such right on a mere conditions 'as it appears to him necessary'? Any form of derogation from the constitution requires stringent conditions for such derogation detailing why such derogation must occur. The position now is quite subjective and can be abused by NSA, IGP and the AGF. Perhaps this was the reason that the north eastern state were cutoff communications for about three months knowing how important communications are in the fight against terrorism, sometimes the citizens will want to pass vital information that will assist in the fight but the mean of communications is severed.

S 27 of TPA 2011 grant security personnel the power to detain a conveyance without any reasonable conditions all he needs is if in his opinion which is subjective insofar as his formed opinion tell him the conditions listed in the section is likely to occur he can order the detention of the conveyance without incurring liability, however where the owner is dissatisfied he can approach the court unfortunately the judge can only vary or cancel the order on the advice of the AGF the worry here is that the powers of the court is subjected to the decision of the executive arm through the AGF. This kind of discretion is subject to abuse by the security personnel for their personal gain.

S 28 states that where a person is detained for an offence under this act such a person can be detained for 24 hours with access to doctors and counsels of the detaining agencies. The question here is how does the counsel of the detaining agency benefit the suspect? The right of the suspect

as contend in S. 36 of CFRN has been breached as it relate to having counsel of his choice, and detention for 24hrs with no contact.

S.32(2) (a) provides for a penalty not exceeding 20 years but the same Act in s.33 (1) (a) and (e) life imprisonment particular when the actions of the suspect resulted to death. It is pertinent to state here that our laws still supports death penalty for the offence of murder therefore there is no justification of this section besides it contradicts the preceding section.

S.2, 2(2), 26, and 28 Terrorism Prevention Act 2011 among others violates the fundamental rights of the citizens as guaranteed by the constitution. In this regards the foregoing sections should be amended or the provisions of the constitution remains superior to it. Some of these defects in the 2011 Act compels the National Assembly to make an amendment in 2013 this came with some innovations as discussed earlier in 3.6 of this chapter.

3.10.3 Terrorism Prevention (amendment) Act 2013

The 2013 amendment was a whole new innovations because a number of introductions were made, as contained in the 3.6, however, there are also a number of concerns that were missed in the earlier analysis that will be captured here.

S 27 of the Terrorism Prevention (amendment) Act 2013 empowers a judge in chambers pursuant to an ex parte application detain a suspect under the Act to a period not exceeding 90 days subject to renewal for another 90 days until the conclusion of investigations and the matter for which he is detained is dispense with. This section runs counter to the spirit of the constitution of Nigeria because it offends the principle of personal liberty. S 35 (4) state that 'any person who is arrested or detained in accordance with subsection (1) (c) shall be brought before the court of law within reasonable time' it is apparent that S. 27 of the TPA 2013 this is notwithstanding the provisions of S. 35 (7) (a) of the Constitution since the constitution did not grant security agencies blanket order to detain for as long as they wish.

Also S. 28 of the TPA 2013 is confusing in that where a suspect is granted bail by the court within the stipulated 90 days by a court the Act the person may on the approval of the head of the relevant security agency be placed under house arrest and shall be monitored by its officers, have no access to phones or communication gadgets and shall only speak to his counsel until the

conclusion of the case. The question is does this amount to bail in the eyes of the constitution and law? If the suspect is allowed only access to his lawyers what about his family? Another question is why should the power to order the house arrest vest with the relevant law enforcement agency instead of the court that is granting the judiciary bail? The implications of the provisions is that the terms of bail by the court may be varied by the administrator and probably imposed new one.

The provision of S32 states that a Federal High Court sitting anywhere within Nigeria can sit and determine the case of terrorism, also a caveat was put in favour of plea bargaining where a suspect is cooperating and the information led to ore arrest and recovery of exhibit may be grant a soft landing for his cooperation. My submission on the jurisdiction is that I expected a special court within the FHC to come on board to reduce the workload of the Federal High Court since the offence of terrorism worldwide is a federal offence.

Decree No.19 of 1986 repealed Decree 16 of 1976 which gave birth to the NSO. National Security Agency decree has three different agency with various scope of responsibilities, the one which is of concern to me is the State Security Service (SSS) which is responsible for gathering intelligence for internal security because they ought to work covertly however they have change their strategy to mostly overt as they are seen in uniforms with inscription 'DSS' ad this is one of the challenges of faced by the organization. The chain of processing information too call for concern because they are answerable to the chief executives by the time the information is passed it has become staled. Synergy is practically absent among the covert operators and the police and other agencies that operate overtly¹³⁰. These and many more challenge affected the internal security of the nation at the inception of the boko haram insurgency making a difficult terrain to fight.

The crux of intelligence sharing whether at the national or international level lies with cooperation and synergy among the security agencies and nation states respectively. The absence of which spells doom for the internal security of the Nigeria.

¹³⁰Onovo O, Interagency Intelligence Gathering and Sharing for effective Crime Control: Perspective from the Police. (ed) Alemika E and Chukwumal, in *Crime and Policing in Nigeria Challenges and Options* (2004) p150.

CHAPTER FOUR

GENERAL OVERVIEW OF CAUSES OF TERRORISM, CONSTRAINTS AND IMPACT FACED IN COMBATTING TERRORISM IN NIGERIA

4.1 Introductions

This research as can be noted earlier shows how cooperation remains the pillar of the Criminal Justice response against terrorism. It is true that no international tribunals or court has the jurisdiction to try acts of terrorism whether it is international or local.

The municipal or domestic courts are saddled with the responsibilities to bring suspects to book. The nature of counter terrorism operations is international in scope, it becomes necessary to have effective national laws to fight terrorism and terrorist financing.

In response to the 2001 world trade towers attack in Manhattan New York, U.S.A. the U.N condemned the attack through numerous resolutions from the general Assembly and Security Council, calling the terrorist attack as threat to world peace and security.

The resolution of importance to this researcher is resolution 1373 which called members of the U.N to either amend their laws to accommodate terrorism or create a new law to deal with it. Nigeria in response to the U.N calls established the EFCC and a section was included to deal with the terrorism in the EFCC establishment Act 2004.

This chapter will examine all the enactments on the terrorism in Nigeria among which are: The Economic and Financial Crimes Commission Establishing Act 2004 Terrorism (Prevention) Act 2011, Terrorism Prevention (Amendment) Act 2013, the Criminal and Penal codes.

4.2 Causes of Terrorism in Nigeria

Nigeria as a nation today suffers from the challenge of security across the country. No Geo political region is secured as it is today. North West suffers from the Fulani herdsmen especially in the dense grass land of Zamfara and Katsina, North East is suffering from the attacks and

kidnapping from Boko-haram.¹ The North Central is bedeviled by the Fulani herdsmen in search of pasture for their animals. The South East has activities of IPOB, cultist, kidnapping gangs among others, South-South region suffers similar faith with their south east neighbor's except that the activities of groups like MEND, NDVF, and EBA is added to their woes. The South West is dealing with Cult groups like thebadoo cult groups, armed robbery and kidnapping among others. Nigeria had been a peaceful country, with minor kind of infractions like communal clashes here and there, but for crimes against humanity, terrorism and banditry to take the center stage of security, certain factors must have been responsible for it. The societies in which the terrorist group germinate and grows furnish the support for them.² To the end the Nigeria Nation is not an exception most especially with regards to Boko-Haram where they were given protection initially by the communities until they turned against them. The researcher will now look at the possible causes of terrorism in Nigeria

i. Injustice

Injustice is one of the causes of terrorism in Nigeria. Where injustice prevails, justice has taken flight out of that area. The concept of justice denotes equality before the laws.³ Justice can be seen from two perspectives

Social justice

The legal justice

Social justice

Social justice is anchored on the ideals of freedom equality and justice.⁴ Where the state could not provide the basic necessity of the citizenry it then calls for concern, especially where the nation is not poor but because of mismanagement and corruption leading to the depletion of the government purse thus neglecting the basic social needs of the nation.

¹ www.Abc.com/news/world-africa-43177237 and www.abc.com/news/world-africa-43193477 accessed 26th Feb. 2018.

² Watson F M *Political Terrorism; the threat and Response*. R. B. Luce Co. Inc. Washington-New York(1976) p117

³ S 17(2)(a)CFRN 1999 (as amended).

⁴ Ibid s.17.

the effort of the present administration to curb corruption. This rating goes to confirm Achebe's assertion where he stated that: 'Nigerians are corrupt because the system under which they live makes corruption easy and profitable; they will cease to be corrupt when corruption is made difficult'.¹¹

On its part Civil Society Legislative Advocacy Center (CISLAC) stated that: 'the fresh setback in the fight against corruption confirms that grand corruption, political corruption, nepotism, favoritism, and bribery persist in Nigeria at all levels.'¹²

The global financial integrity agency based in U.S stated that between the years 2000 -2009, a total sum of \$182 billion was stolen from the National coffers and kept in foreign account. Mal. NuhuRibadu, one time EFCC chairman said this about corruption: 'Between 1960 and 1999, Nigeria officials had stolen or wasted more than #440 billion. That is six times the Marshall plan, the total sum needed to rebuild a devastated Europe in the aftermath of the Second World War'.¹³

He went on to state further that: 'I have seen corruptions 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...'¹⁴

In this submission on corruption AbdukareemAzeez stated that: "corruption has killed more people than the entire offences under crimes against humanity! Corruptions murder and deliberate extermination of civilian population, it is hostishumani genris and must be treated as such".¹⁵ The Socio-Economic Rights and Accountability Project annual report published in April 2018 stated that '55 politicians and others stole 1.354 trillion naira in seven years, the amount of money embezzled, misappropriated or stolen by public officials and leaders in the private sectors between 2006 and 2013 has galloped beyond the contemplations of average Nigerians. Evidence

¹¹Ibid.

¹²www.premiumtimesng.com/259494/perception-corruption-worsens-nigeria-ratings accessed 14/04/18.

¹³Nuhu R Capital Loss and Corruption: the example of Nigeria. Testifying before House Financial Services Committee of Nigeria National Assembly in May 2009.

¹⁴Ibid.

¹⁵Azeez A, *Corruption as a Crime against Humanity Any Justification?* KIJJ Vol.1 Issue 1 Jan.20017p106-122 at 122

abound that judges, judicial officers, lawyers and military officers are participants in the frenzy of despoliation of national wealth'.¹⁶

Consequently, from the above the researcher is of the opinion that the colossal sum of money spent in the war against Boko-Haram insurgents without corresponding success presupposes there are merchant of death in the government circle and are benefiting immensely from the insurgency. Consequently will do everything to ensure that it persists and they keep drawing funds from the government coffers in the name of fighting insurgent group. Corruption therefore is one of the main causes of terrorism in Nigeria

iii. Unemployment/ Poverty

Unemployment and poverty cannot be discussed in isolation because one leads to the other. The vast majority of Nigerian youth are unemployed and a large number are graduates of various tertiary institutions of the country. There is no doubt that the level of poverty is greater in the north and even more in the north east where the insurgency started and is dominant. This is not to say that there are no activities that generate resources within the region. Statistics has it that 'about 70% of Nigerians are unemployed and live on less than 1.25 US dollars, the socio-economic statistic shows that the north are the worst in Nigeria, with 72% of the people living in poverty compared with 27% in the south and 35% in Niger Delta.¹⁷ The saying 'an idle mind is the devil workshop best describe the state of affairs in the country, where unemployment reigns, poverty takes charge and the unemployed will do anything to survive including taking arms against the state if given the opportunity. All the security challenges in the country whether from the south or north are perpetrated by the youth. It does not matter under what guise they come, as freedom fighters or religious warlords. It's simply because they are not gainfully employed. This is not doubt a good reason to participate in terrorism in Nigeria, specifically the Boko-Haram group who pay their foot soldiers.

iv. Leadership failure/institutional collapse

¹⁶<http://theeagleonline.com.ng/55-politicians-often-are-participants-in-the-frenzy-of-despoliation-of-national-wealth/>

¹⁷Omotola S J 'Combating Poverty for Sustainable Human Development in Nigeria: The Continuing Struggle' *Journal of Poverty*, 12(4)2008 p496-517 in Aghedo&Osumah (2012) *The Boko Haram Uprising: How Should we Respond?* 3rd World Quarterly Journal p 853-869 .

The security challenges that bedeviled the country is as a result of bad Governance that is occasioned by bad leadership. What is leadership? Leadership can be said to mean the judicious use of the commonwealth for the betterment of the general public. It can also mean leadership by example. Furthermore, it could mean the welfare and security of life and property which they swore to defend but what we have in Nigeria is nothing but contrary to the ideal. It is all about looting, deceit, sycophancy, and flamboyant life style of the ruling class. It's all about how to remain in power in perpetuity. Impunity, corruption, unemployment, poverty, terrorism and under development are all byproducts of bad leadership which is seen in all facet of life in Nigeria. It is because of bad leadership that everything that can make a person comfortable is completely absent, light, water, good roads, hospitals are provided by individuals as that of the government is not forthcoming.

The one time speaker of the House of Representative AminuMasari cried out blaming security challenges on leadership failure while speaking to pressmen in kwara state. He said

...it is very sad that people are being killed and properties are being destroyed, this should not be the case. The failure of the security is the failure of leadership because it the responsibilities of leadership to provide security for live 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.¹⁸

The amount of energy and enthusiasm and commitment displayed during campaign one begin to assume that better days are here but when sworn in things change completely the commitment of Gov. Masari is still relevant today.

Where bad leadership is prevalent the next thing that comes to the forefront is impunity, and institutional collapse. Individuals become more powerful than the institutions this does harm to the society and breeds a lot of disenchantment within the youths in the nation leading to terrorism. Achebe has this to say on leadership "Nigeria remained what it is because of the crops of leaders it has."¹⁹ Good leadership is condition sine qua non to good governance which in turn

¹⁸ The Nation Vol. 07 no. 2439 Saturday 23rd March 2013.p60.

¹⁹ Achebe C. in Olusegun Ariyo Estimated Billing in 'ikedcEgbeda Undertakings' and the Corruption within"www.urbanexpresslive.com/2018/04/estimated-billing-in-ikedc-egbeda-undertakings-and-the-corruption-within/ accessed 22/04/18

provide the citizens the required services. Anything short of that is leading to poor infrastructures, nepotism, corruption, and above all arms struggle like Book-Haram and others.

v. Monetary Benefit and Other Perquisites

There is a link between poverty and recruitment of young men into the group. There are a different reason that motivates members of the public to enlist into Boko haram terrorist group. It is not all that are motivated by the religious ideology of the group, some are in it because of the money they are paid, others because of the money stolen from banks after attack or booty they get from the raid on villages and markets, others are their because of the women they kidnapped from the affected communities like the chibok girls and those taken in Bama and Gwoza that are unaccounted for, some are strictly on revenge mission from what the security agents have done to their families or communities. In most cases there are directed payment to the members who recruited into the group. A classic example is AbubakarAbdulrashed who told journalist that he was paid \$500 USD to train in Afghanistan and promised another \$35,000 US Dollars upon returning for training as bomb specialist.²⁰ Money is being used as bait to recruit a suicide bombers, the bomber of the Nigeria Police Force Headquarter Abuja Mohammed Manga was paid four million Naira which he willed to his family²¹ before carrying out the attack and he successfully executed the mission.

From this assertion the researcher is of the opinion that, monetary and others perquisites account for the recruitment drive of the group.

vi.) Failed Intelligence

One of the most important way to combat Boko-Haram and terrorism as a whole is a good intelligence network. A failure of the good intelligence will allow the terrorist operate freely. A number of factors is responsible for the failed intelligence amongst which are: interagency wrangling, corruption, and negligence of security personnel.

The researcher in the course of the study discovered that prior to Boko-Harram crisis "a series warnings and reports were made to the police and government of imminent danger of the group

²⁰ www.africanews.com/16127.html accessed 16/4/2018.

²¹ Ishaya Ibrahim theBoko Haram killings News watch, 28th July 20n. www.newswatchng.com/index.php?option=com_content&task=view&id=3344&itemid=26.accessed 16/4/18.



by Imams within the area of operation.²² The police and government did not respond to the call until the clash between the group and security agents in July, 2009. In the same vein the mastermind of the U.N building attack was arrested by the DSS and released by the same security services, it was reported that top members of the government of President Umar Yar'adu'arallied for their release after facing sham trial.²³ It was further gathered by the presidential panel commissioned to probe the menace of Boko Haram crisis that "there is no effective and coordinated intelligence gathering and deployment to forestall crime following the roles recent attack by the group".²⁴ Similarly in April 2018 the Senate had reasons to call on the President to intervene in the cold war raging on between some key security agencies namely: EFCC, DSS and NIA.²⁵ These are bodies saddled with the responsibility of fighting insurgency of any kind.

Corruption as a catalyst for fueling Boko Haram, is dual dimension, one on individuals and the institution. The individual security agent deployed for the field suffers from deprivation from the institution that is responsible for his welfare and must survive in the fields hence the poor nature of the roads suspects only needs token to access the roads freely with all their equipment for attacks. On the other hand, the leadership of the Security outfits in Nigeria wants out smart each other and gets a large chunk of the Security budget, most of which diverted into their personal pockets. Hence the inability to work in concert and synergize their strategy to benefit the society. Traditionally, the DSS as an intelligence gathering outfit, information gathered will be release to the police for execution. Today no information are shared rather they report to the state government or presidency as the case may be to earn the credit before such information could be relayed to the police for execution it will be stale information and the suspects must have executed their acts and left the scene. This is done with the intent of boxing the executive for more resources while blackmailing another institution for inefficiency.

²²Onapaja&Uzodike, *Boko Haram Terrorism in Nigeria: African security review* 1 (2011).

²³Government arrest, released UN suspected bomber in 2007, punch, 2nd sept. 2011 in OnapajaUzodike, *Ibid* P.32.

²⁴Ikunuola How to Stop Boko-Haram bombing <http://nigeriavillagesquare.com/forum/threads/how-to-stop-Boko-haram-bombing.657211> accessed 14/4/18.

²⁵www.polisonline.com.ng/2018/4/131arrest-dispute-nsa-magu-on-vendata-mission-dss-dg-tells-senate accessed 16/04/18.

vii) Illiteracy

Illiteracy is also a strong factor used in breeding terrorism in Nigeria. An illiterate can be convinced with ease for the lack of knowledge to interpret some basic information transmitted to him by his so called teachers. This illiteracy does not necessarily mean Western education, but even the Islamic religions knowledge, they rely heavily on the preachers to interpret the scriptures for them. It is in this process that they are manipulated to becoming members of the terrorist cell when they are promised heaven for killing a soul contrary to the Qur'an injunction as contained in surah Al-Anam 6 v 151 'Say come, I will rehearse what Allah has prohibited you from; join not anything as equal with him; be kind to your parents: kill not your children on account of want; we provide sustenance for you and for them, come not near to shameful deeds. Whether open or secret; take not life which Allah has made sacred except by way of justice and law; thus doth he command you that you may learn wisdom'.²⁶

Corrupted preachers don't dwell on verses like this because the followers will ask questions since they lack the capacity to read, they swallowed hook line sinker the corrupted teaching passed to them by those scholars among which is radicalization and then terrorism.

In conclusion corruption, injustice, unemployment/poverty, leadership failure, institutional collapse, monetary and other perquisites, failed intelligence and illiteracy are chiefly responsible for the growth of terrorism in Nigeria and Boko-haram in particular tackling these causes can immensely reduce or even eliminate them completely from the country.

4.3 Impact of terrorism in Nigeria.

The impact of terrorism on Nigeria is unquantifiable because the activities of group such as Boko haram, MEND, Fulani herdsmen, Ombatse, among others renders all sectors of the affected area of the country to a comatose.

Terrorism encumbers peace and developmental progress of the country. Many scholars have discussed the impact of terrorism according to their school of thought, this researcher has also

²⁶ Qur'an Chapter 6 vs. 151.

with it on the following front; education, economic, political social and environmental impact of the terrorism.

i.) Educational Impact

Education here means western and Islamic education, both forms of education suffers during the insurgency because all will be displaced and everyone will be looking for a secured environment pending the return of normalcy. Although the Boko- Haram insurgent try at all times to ensure formal educations are the one that are attacked but in the long run even the mosques are not attended because after every attack a curfew is imposed which restricts movement. Further, the Boko Haram insurgent have destroyed virtually all the schools built by the government in the north east, thus dragging education backwards. It is a known fact that north east ranked the top amongst the other regions of Nigeria, with the action of the terrorist group it has dragged the region even worse. The money meant for other areas will now be channeled to reconstruction of the destroyed infrastructures of the institutions. Schools like FGC Buniyadi, GSS Mamudo, and School of Agriculture allin Yobe State, GGSS Chibok, University of Maiduguri among others have at various times been affected by the activities of terrorist group, this leaves teachers, lecturers, students, and every other persons linked to the educational sector in jeopardy, hence a total collapse to the education in the area. To put it in clear perspective, statistics has it that from 2013-2018, in Bornoalone more 1400schools were destroyed by the insurgent, more than 2000teachers' killed, and about 1000 students abducted. This is aimed at discouraging education in the region backward and the impact is grave on the educational sector.

ii) Economic impact

In Nigeria today, the activities of boko haram and other groups with similar goals created apprehension and thus disrupting the economic activities in the area. For instance in north east where agriculture is the main stay of the economy, farmers are chased of from their farmlands, live stocks are rustled from herders and fishermen at the lake Chad cannot fish because of the activities of the terrorist. They have relocated to the urban center which are relatively secured and are kept in the internally displaced persons camp (IDP) in the camps they rely solely on the relief materials given to them by the government or the international humanitarian organization such as red cross/crescent, OX farms, action aid among others.

People are scared of coming together because of the fear of being attacked so markets are closed, banks run on limited time not more than 3 hours a day and all other business activities come to a halt. Maiduguri is a border town with three countries as such is an international market to people as for as Sudan and Central Africa Republic who come to transact business but the Boko Haram terrorist affected that activity. It is the light of the above that the prevailing poverty created in the region by the terrorist activities is boundless and will continue for a longtime to come even after the war on terrorism has been concluded. Activities of MEND and other Niger delta groups to destroy pipelines carrying crude create a huge vacuum for resources to run the government and destroy the marine environment thus affecting the economic activities in the area since that is the main source of livelihood of the riverine communities.

iii) Political Impact

Politically the impact of terrorism on the nation politics cannot be underestimated, because the group has actually succeeded in pitching the north against the south on political front and making them look as if they are enemies. What makes a nation is the coming of different geopolitical groups under the same umbrella as a nation. Boko-Haram has made it almost impossible to actualize that, one of their objectives is establish their caliphate. The strategy adopted by them is to destroy the entity called Nigeria. It is because of the impact of terrorism some of the goals of good government officials to siphon resources under the guise of fighting terrorism.

Iv.) Impact on the Society

Social development has been described as the process of the societal wellbeing and its realization assured of the collective action taking place in the country's policies, economic and social life of the people.²⁷ Some of the typical social development programs destroyed by boko haram include the family, health housing, educational, among others. Most of the schools, hospitals and roads in the area including bridges and houses have been destroyed and will require total reconstruction. This hinders social development in the negative way.

v) Environmental Impact of Terrorism

²⁷Agu B., Simon, N.P., Onwuka I. *Combating Money Laundering in Nigeria*, *International Journal of Business and Law* (2016) p29-38

Development does not occur in a vacuum but the environment and terrorism are closely linked. For example when a pipeline is vandalized by the terrorist group it does not only affect the economy alone, the environment is the one that suffers because the spilling of the crude kills the vegetation, the marine life and the fresh water used by the community is polluted, on the other hand the Boko Haram destroys everything on their way in a bid to capture a community. Similarly the counter terrorism war also destroys environment either as a friendly fire i.e. destruction in error as that which occur in Doran Baga. The epic center of the war is Sambisa forest and large catch of ordinances were expended in the forest and it destroys the vegetation and everything within the radius of the exploded bombs and missiles.

In conclusion, the activities of the Boko Haram insurgents adversely affects the education, economy, politics, environment and social wellbeing of the nation, thus hindering the development of this affected community and by extension the country.

4.4 Constraint in Combating Terrorism in Nigeria

There are a number of challenges or constraints faced by Nigeria in the fight against terrorism.

There is no gain saying that Nigeria has suffered from the acts of terrorist and terrorism some of the constraints among others are as follows.

4.4.1 The Courts/ Judiciary

The court is the temple of justice and the last hope of the common man. However, the conditions with which our judge's work is to say the least difficult. The judges write in lone hand, the courts are dilapidated, the library is poorly stock as the judge begs counsels for authorities and the court. A combinations of these factors make their work very difficult.

Terrorism cases are feionious in nature and needs to be dispensed with quickly to give the victims of the dastard acts of terrorist a sense of justice. The equitable principle of Justice delayed is justice denied and justice hastened is justice denied as well should be adhered to. One of earliest cases of terrorism handled in Nigeria by the courts was that of the Boko-Haram members in FHC Abuja. The suspects were tried on five count charges following 8th April 2011 attack on the Independent National Electoral commission in Suleja, Niger state. In addition to other bombings that took place in Abuja and Suleja, two years later the judgment was delivered

in 2013. This notwithstanding the fact that Terrorism is criminal case and requires criminal analysis to establish the facts which must be proved beyond reasonable doubt, the court deserved commendation in that regards. Early dispensation of terrorism case will send a strong signal to those that are perpetrating same, that there is no hiding place as the long arm of the law will catch up with them as can be seen in the case of *FRN VS Shunbir Hassan & Quatada & 5 others*.²⁸

4.4.2 Lack of Basic Tools of Research, Intelligence and Investigation

The security agencies suffer from multiple constraints in the fight against terrorism, poor intelligence gathering and investigation which is a condition precedent for diligent prosecution makes it difficult for the success in combating terrorism. The lack of synergy between the law enforcement agencies which include the Armed Forces, Nigeria Police Force, Department of State Security (DSS) Nigeria Intelligence Agency (NIA) the Nigeria Immigration Service (NIS), Nigeria Security and Civil Defense Corps (NSCDC) and the coordinating office of the fight against terrorism office of the National Security Advisor (ONSA). The absence of such cooperation makes it difficult and illusionary to fight terrorism the way it ought to be.

The forensic department of Nigeria police is nonexistent, because there are no personnel in forensic section, ballistics, poor data collection and analysis and drawing comparison between previous data collected like DNA samples, fingerprints, photographs of suspects and materials collected from the crime scene. The forensic lab of police in Lagos meant to scientifically carry out criminal investigation built in 1982 had the capacity to handle seven different kinds of investigation and it has seven units. They are; chemistry, Biology, photography, Ballistics, Foot mark, disputed document, and GSM information extraction. The laboratory today is abandoned with no activities there. Some reasons attributed to the neglect is poor budgetary allocation to the force and poor training and working conditions, this makes it difficult to scientifically investigate terrorism and predict to prevent further attacks.

The cooperation among the law enforcement agencies no matter how cordial and information sharing excellent, the lack of such cooperation amongst the law enforcement and communities spells doom for combating terrorism. Some of the reason is that security agents divulge the identity of their informants to the terrorist, no community members is willing to risk their lives

²⁸FHC/ABJ/CR/113/2011.

to sharing information with the securities. Also some unscrupulous or rogues officers aids the terrorist or kidnapping gang for the rate of kidnapping as they are partner in crime.

4.4.3 Poor Enforcement of the Terrorism Laws

It's important to state that poor enforcement of the law is responsible for the deadly attack by terrorist group and cells. The lack of will from the government could not be overemphasized.

It is common knowledge that the passage of the law on terrorism did not aid in the fight. As mentioned in this work earlier, only some 13 persons were charged between 2009 and 2017 were prosecuted. However, in October 2017, 1669 persons were brought by law enforcement agencies for prosecution. This number alone is a huge problem. The suspected terrorist convicted eventually got the maximum punishment of life, when the T.P.A 2013 makes provision for death penalty yet the courts are passing life sentence. This singular acts of the court is encouraging the terrorist. If the maximum punishment is put to use i.e. death on the terrorist it will deter some members from participating in terrorist act. The unfortunate thing is that most if not all financier of the terrorist act still walk freely as no investigation or arrest and prosecution.

The terrorists have caused pains to the nation in general and the families affected in particular.

From the passing of the T.P.A the terrorist activities were expected to be slowed down but it was escalated. Suicide bombs were introduced to the game after coming in to effect at the police force headquarters, Nigeria Armed Forces Command and Staff College Jaji, UN building Abuja, were all bombed

Those who take the lives of others should not be allowed to go unpunished for whatever reason. In other words the courts should be a place where people get sources and the guilty punished.

4.4.4 Poor or Inadequate Funding of the Security Agencies by the Government

Since the terror war stated in Nigeria the government budgetary allocation on the security particularly those fighting terrorism was unprecedented. running into trillions of Naira. This money ought to have improved the quality of the service renders the armed forces with technologically improved gadgets, or equipment. It is also meant to improve their welfare, retraining of the personnel, conducive accommodation for officer and men. On the contrary, the military are having windfall for fighting insurgency the others are languishing in penury especially the Nigeria police force which suffers a setback in such a way that the police lack

modern gadgets and equipment for the policing, poor training and absence of re-training, inadequate man power, and poor welfare generally of the police force. These affect the morale of the men.

The police is the first line of defense in every crisis situation and therefore puts their lives in line in the course of defending the lives and properties of the citizens and making the country safe. Patriotism is the driving force of the Nigeria police certain factors kill such patriotic tendency of the officers and men. Some of these killer factors include but not limited to lack of adequate and adequate care of one's family in the event of death.

4.4.5 Lack of Good Governance

The Nigeria government by its very nature is combating terrorism is filled with high level of insincerity and the will to render good governance to the country. Most of the government officials think of themselves and family first not the nation, even after huge monetary allocations the military has not been able to win the fight against terrorism as Boko Haram still kidnapped in Dapchi, Yobe state dealing a blow to the propaganda of the military of destroying them. The government official has seen the terrorism as a means of siphoning monies from the government. It has government officials losing their position under President Muhammadu Buhari. The Secretary to the Government of the Federation (SGF) in this post. According to the immediate past President Goodluck Jonathan 'Boko Haram is a mule in the government' to allow them carry on taking money from the government to fund the fight of terrorism. When incorrigible people are elected into office nothing good will come out of the leadership and by implication no services will be rendered to the public.

4.4.6. Corruption

One of the major challenges in the fight against terrorism is corruption. Corruption is in such a large scale that monies budget for the fight are either squandered or outright stolen by the leadership of the force or the civilians as can be seen in the revelation of the investigation into the expenditure of the 2.1 billion dollars of the past administration was nothing but scandalous. It was money meant for equipment but was diverted into politics, for prayers, propaganda electioneering campaign at the detriment of securities as revealed by the NASS. This is a major challenge to the fight on terrorism.

4.4.7. Porous Borders

The Nigeria border at the north is basically open in the sense that the recognize are so many that policing it is very difficult thus making criminal element easy access to smuggle small arms and munitions. The law enforcement agents posted to the borders fail in their duties either due to corruption or outright dereliction of duties allowing terrorist easy passage to and from other countries as the Boko-Haram insurgent having gone to Mali and trained in the camp of groups like AQIM and Ansarudeen in Mali.²⁹ The porous border allows the increase in small arms and light weapon in Nigeria thereby increasing different kinds of attacks. It should be noted that it is not only the northern borders that are porous, the maritime borders are too. In 2012, two containers containing some arms were intercepted by the customs in Lagos. This makes the fight against terrorism a daunting task.

The fight against terrorism requires patriotism, professionalism, and incorruptible men of law enforcement agencies for the fight to be achieved.

Conclusion

In conclusion this chapter analyzed Terrorism Act and the constitution of the federal republic of Nigeria with the aim of pointing out the gaps and weaknesses found therein and seek possible amendment for the fight against Terrorism achieve success through the legal means in Nigeria.

²⁹ Daily Trust of Wed, Feb 6th 2013 Pp 1 & 5.

CHAPTER FIVE

CONCLUSION

This Chapter will present the Summary of the Findings, Conclusion and Recommendations of the research study undertaken by the researcher.

5.1 Summary of Findings

The study found that Terrorism Prevention (Amendment) Act 2013 S.27 provides that a suspect may be detained for 90 days subject to renewal for a similar period until conclusion of the investigation this is subject to abuse and it violates the constitutional provisions of 24hrs and 48 hrs., during weekends for a suspect to be presented be a court of competent jurisdiction.

S.28 of the terrorism prevention Act 2013 provides that when a person suspected to have committed an offence under the may not be allow to see any person except the counsel of the detaining agency and medical doctor this is in sharp contravention of the constitution, it went further to state that in sub section (4) that where the court grants bail after the expiration of the 90 days the detaining agency may lace the suspect under house arrest and denied access to communication gadgets and can only speak to his lawyers.

S.29 provides that the law enforcement agency can apply to the judge to intercept communications of a person on mere suspicion and in the bid to prevent terrorists activities, this is another violation of the right to privacy of the individual.

Corruption as a Major Threat in the Fight against Terrorism

The fight against terrorism has become a gold mines for some unscrupulous element in the Military and civil service of the Federation as such monetary demands are frequently made from the government through the Office of the National Security Adviser where prior to the 2015 General elections, 2.1 billion US dollars was released for the purchase of equipment for the fight against terrorism but as can be seen the extra budgetary allocations was either misappropriated or out rightly stolen.

Poor Enforcement of the Terrorism Act

Although the defect of the 2011 Act was extensively cured by 2013 Terrorism prevention(Amendment) Act, the problems of the judiciary still reverberate because Terrorism is a complex, difficult, and very lengthy proceeding that requires specialized knowledge and technique to prosecute the suspects. The court is not equipped with the requisite personnel to handle such cases. This includes the entire chain from the investigators and prosecutors. Furthermore, the decision of the court leaves much to be desired, the case of Kabiru Umar, who caused the death of people was only sentenced to life when the law allows for death penalty as the maximum punishment.

Lack of Basic Tools for Intelligence gathering, Investigation, and Research

The absence of intelligence gathering, research and scientific investigation create a huge vacuum in the fight against terrorism. Where there is no functional Forensic Laboratory, it becomes difficult for the investigator to arrive at a scientific conclusion and box the suspect to the crime using elements such as D.N.A samples, ballistics investigations, finger prints, samples collected from the scene to aid the court. Where science is absent the proceeding will be difficult and gaining conviction will be dependent on the chance.

Manifestation of Bad Leadership and Governance

The researcher found out that decades of bad leadership experienced in Nigeria encourages Terrorism, because the leaders failed to deliver the dividend of good governance thus creating tension in the society and giving the Terrorist easy access to now recruits into their folds as a means of venting their anger and frustration. This is in response to the absence of socio-economic guarantees which the government ought to provide.

The study discovered that judiciary is overloaded and requires additional specialized ad-hoc Federal High Courts to deal with terror related cases.

provisions, the National Assembly should do the needful by repealing or amending them to meet the realities of the current situation.

Strengthen the human and institutional capacities of the Law Enforcement Agencies and Judiciary. This will improve on intelligence gathering, investigation, prosecution and adjudication of terrorism cases. This can be done through provision of necessary equipment and training. The civil society group assist the government in capacity building of security personnel and that of the judiciary in the best practices

Providing Good Governance is a panacea to Peace and Security, the political leaders must display good qualities of leadership by ensuring the basic necessities of life are provided such as good education, jobs, world class medical facilities, good roads, and Conducive environment for socio-economic activities to thrive among others. Where this is done terrorism cases will be reduced to the barest minimum.

The judiciary should be overhauled and make provision of specialize or ad hoc court as a division of the Federal High Court to handle such cases as the laws dealing with terrorism is a federal offence terrorism trials are specialized and very technical therefore the need to have such kind of courts.

Furthermore, the impact of terrorism on the educational sector can be assuaged by ensuring that all destroyed infrastructures should be refurbished and adequate security provided to enable the students study with ease.

The presence of adequate security in the nook and crannies of the areas will provided the necessary catalyst for all other activities like socio-economic activities to thrive thus discouraging the participation of the idle youths in terrorism.

Mechanism to tackle constraint in combatting terrorism:

Some of the constraint inhibiting the fight against terrorism can be remedied in the following ways:

The government should provide the enabling environment and necessary working tools to the court such as the latest law reports dealing with terrorism from other jurisdiction to avoid miscarriage of justice.

The security agencies saddled with the responsibility of combatting terrorism must be adequately equipped with the needed tools to aid in intelligence gathering, investigation and research by the federal government of Nigeria.

The government must summon the courage to implement the terrorism prevention Act to the latter. It will serve as a deterrent to other who will want to take to terrorism and other related offences. This action must cover all those involved from the sponsors, organizers and actors.

Corruption which is a product of bad governance must be tackled in all ramifications with fear or favor. All corrupt individuals and corporate bodies must be sanctioned according to the laws of the land.

The porous borders must as matters of importance are tackled by providing the Nigeria Immigration Service the equipment to patrol the borders of the nation. This could be in the form of drones, vehicles or planes. The constant patrol will prevent illegal movement of person and dangerous weapons.

The government must exhibit the political will to pursue all cases of terrorism to its logical conclusion and punish all those found guilty by a court of competent jurisdiction without fear or favors. This singular act will serve as a deterrence to would be Terrorist.

The environmental impact can be handled by ensuring that all the destroyed vegetation is replenished either by tree planting exercise or turning the area into a green belt zone to allow it recover naturally.

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