

## Anti-Terrorism Laws and Fundamental Rights: The Nigeria Example

**Anyanwu Ikenna Esq**  
Department of Humanities  
Abia State Polytechnic  
Aba – Abia State  
Email - [barristeriyk@yahoo.com](mailto:barristeriyk@yahoo.com)

---

### **ABSTRACT**

*This work traces the emergency of terrorism in Nigeria, the need for the enactment of anti-terrorism laws to counter terrorism insurgency, the supremacy of the constitution and the long standing history of fundamental human rights in Nigeria before analysing the effects of terrorism and anti-terrorism laws in the face of human rights prisms in Nigeria. The work reveals among other things that terrorism leads to loss of lives and properties as well as create high degree of insecurity in the society which results to great threat to the citizens in Nigeria. The work submits that Nigeria anti-terrorism laws repose enormous powers to law enforcement agents such powers have been subjected to flagrant abuse detrimental to the fundamental rights of the citizens in Nigeria and make recommendations.*

---

### **1. INTRODUCTION**

The threat which terrorism imposes on Nigerians cannot be underestimated. It is envisaged that an attack could happen anytime and nobody knows the venue, and it could be carried out by the Boko Haram Islamic sect<sup>1</sup>. The manner and approach it could take beats everyone's imagination but the destruction carries far reaching consequences. The recent bomb attack on different parts of the state on the North-East of Nigeria points to the carnage unleashed on Nigerians by the terrorist groups as hundreds of persons were lost<sup>2</sup>. The aim is to exhibit a very crucial attack with the purpose of targeting mass casualties and cause damages to basic amenities like schools, churches, mosques, hostels, banks, and government establishments among others<sup>3</sup>. In response to insurgency operation by Boko Haram, the Nigeria security forces engage in brutal actions which made the situation more desperate<sup>4</sup>. Given this situation on ground, the nation is faced to adopt a fire-to-fire counter terrorism response to these challenges<sup>5</sup>. There is no doubt that in furtherance to counter terrorism in Nigeria, the Nigerian government enacted Terrorism Prevention Act 2011, which was later amended by Terrorism Prevention Amendment Act, 2013 which makes provision for extra-territorial application of the Act and strengthens terrorist financing offences<sup>6</sup>. The combined effect of the principal Act and Amendment Act is to bring terrorism to a halt; but

---

<sup>1</sup> Ejembi Rose, 'Gunmen Kill 8 in Benue' The Sun Newspaper( Nigeria, 1<sup>st</sup> August, 2015) 6

<sup>2</sup> Editorial, 'Suicide Bomb Attack Kill Dozens in Nigeria City of Maiduguri' The Guardian (Nigeria, 7<sup>th</sup> March 2015) 4

<sup>3</sup> Okorie Hagler. 'Counter- Insurgency, Rule of Law and the Fight against Boko Haram in Nigeria' (2015)UJL 31

<sup>4</sup> Ibid.

<sup>5</sup> Dakas C.J Dakas, "Nigeria's Anti- Terrorism Laws and Practices: The Imperative of Mainstreaming Human Rights into Counter- Terrorism Administration'(2013) ncicc.org.ng

<sup>6</sup> Okorie Hagler, ' Deconstructing The Terrorism (Prevention) (Amendment) Act 2013'(2014) ABSUJL 4

unfortunately, the rates of attacks are highly unprecedented<sup>7</sup>. Some of the provisions of the Act are not human rights compliant as argued by Amnesty International and other Human Right Organisations<sup>8</sup>. Some of the sections of the Act also violate the fundamental rights as enshrined in the 1999 Constitution<sup>9</sup>.

However, in response to insurgency operation by the terrorist, the Nigeria security agencies engaged in force actions which made the situation fiercer. These actions include; enforced disappearance, torture, extrajudicial execution and detention without trial<sup>10</sup>. It is established that between 2013 and 2014, they have recorded six thousand deaths both men, women and children comprising of civilians and military<sup>11</sup>. This situation of insecurity imposes great threat to the citizens and youth employability in this competitive global economy in Nigeria. It has been argued that the high spirit exhibited by the terrorists in carrying out their brutal actions without a blink of the eye could be attributed to the fact that there is no effective legal frame work and regulations towards arresting such behaviour<sup>12</sup>. Considering the threat posed to the citizens, national peace, security and stability by terrorism and insurgency, it becomes imperative that the Anti –Terrorism Act is needed to urgently tackle the menace and arrest the situation<sup>13</sup>. The question of how far the Act has gone in arresting terrorism with particular reference to the protection of the fundamental rights of the citizens is the crux of our task in this work.

The methodology adopted in this work is a doctrinal approach. It has been argued that legal rules take on quality of being doctrinal because they are meant to be rules which apply consistently into law and legal concepts. The doctrinal method lies at the basis of the common law and is the core of legal research method<sup>14</sup>. This method is in line with our work and enables us to explore the legal literatures available in this field.

The term terrorism has defied universally acceptable definitions as definitions are given by authors depending on their experience or nature of terrorism attack<sup>15</sup>. Between 1936 and 1981, 109 definitions of the concept of terrorism have existed<sup>16</sup>. The United States Department of Defence define terrorism as 'the calculated use of unlawful violence or threat of unlawful violence to inculcate fear, intended to coerce or to intimidate government or societies in pursuit of goals that are generally political, religious, or ideological'<sup>17</sup>. In another development, 'terrorism' is the resort to violence for political ends by unauthorised, non-governmental actors in breach of accepted codes of behaviour regarding the expression of dissatisfaction with dissent form or opposition to the pursuit of political goals by the state whom they regard as

---

<sup>7</sup> Taylor, Lynn. L. "Boko Haram Terrorism: Reaching Across International Boundaries to Aid Nigeria in the Humanitarian Crisis"(2014-2015) 21 Hein Online

<sup>8</sup> Amnesty International, " Nigeria: Trapped in the Circle of Violence", (2012) 47

<sup>9</sup> Agabmuhe- Mbu. May, "Nigeria and Its Human Rights Commission" This Day live(Nigeria, 14<sup>th</sup> April, 2014)

<sup>10</sup> Ibid

<sup>11</sup> Amnesty International, (2012) p 57. Nigeria Security and intelligence agencies have denied these allegations.

<sup>12</sup> Okoronye Innocent , *Terrorism in International Law*, (Whytem Publisher 2013) 7

<sup>13</sup> Ibid

<sup>14</sup> Terry Hutchiso and Nigel Duncan ' Defining and Describing What We Do: Doctrinal Legal Research'(2012)17 Law Review 88, 199

<sup>15</sup> Schmid Alex , *Political Terrorism; A Research Guide* ( Sweet & Maxwell1983)

<sup>16</sup> Omotola S John. 'Combating international Terrorism' (2003)29 NJIA 12, 284

<sup>17</sup> U.S Department of Defence, <http://www.terrorism-research.com>, accessed 20<sup>th</sup> June, 2015.

unresponsive to the needs of certain groups of people<sup>18</sup>.” What it means is that terrorism is a deliberate move to commit murder, maim and kill innocent people with the aim of infusion fear for a required end<sup>19</sup>. The target of terrorists is not limited to human beings but also to government agencies and vital infrastructure<sup>20</sup>. In the Nigeria’s experience, the oil and gas, pipelines breakages, the abduction of expatriates, and indigenous oil workers, attack on military installations, police stations and Barracks, the attack of villages, abduction of school children, and burning places of worship and international agency buildings<sup>21</sup>.

The force or violence is usually targeted on symbolic individuals, places or structures for destructive or dramatic effects which affects a wider audience than the primary victims<sup>22</sup>.

## 2 The Trends of Terrorism in Nigeria: A Historical Perspective

Nigeria stands tall in Africa and gained independence in October 1, 1960 from Great Britain, retains English as her official language but has over 360 languages spoken by the different ethnic groups that make up the country<sup>23</sup>. The three main ethnic groups are Hausa, the Yoruba, and the Ibo<sup>24</sup>. The economy is largely dependent on petroleum drilled from the Niger Delta area of Southern Nigeria mainly the Ijaw, Ogoni, Urhobo, Itshekiri, Kalabari among others who are classified as the minority group<sup>25</sup>.

The Niger Delta area of Southern Nigeria was the main area of terrorist attacks in Nigeria from the mid 1990 to around 2009<sup>26</sup>. However, a number of terrorist attacks also occurred in the North during this period, mainly on political and religious grounds<sup>27</sup>.

The discovery of oil in the Niger Delta in 1995 led to the exploration of oil in commercial quantity thereby leaving the region with attendant environmental degradation and pollution<sup>28</sup>. Under the Nigeria laws, all minerals including oil and gas belong to the Federal Government which negotiates the terms of oil production with international oil companies<sup>29</sup>.

The people mobilized themselves and led a mass protest headed by Ken Saro Wiwa under the umbrella of Movement for Survival of Ogoni People (MOSOP). The activists of the MOSOP were viewed as terrorism and there was gross abuse of the fundamental rights of the suspects. Many attributed it then to lack of a systematic anti- terrorism laws to prosecute effectively the suspect<sup>30</sup>. Indeed, the absence of anti- terrorism laws made it impossible to actually pigeonhole the nature or type of crime committed and the suspects were left to be tortured, subject to all

<sup>18</sup> Juliet Luck, *Terrorism: A Challenge to the State* ( 1<sup>st</sup> edn, Oxford, 1981) 5

<sup>19</sup> Alex Shark, *Political Terrorism: A Research Guide, Theories, Data Bases and Literatures* ( New Jersey, Transaction Boxes, 1983) 45

<sup>20</sup> Imobighe T Anttony, ‘Rethinking Terrorism and Counter- Terrorism’ in imobighe T Anthony and Eguavon Mark (eds) *Terrorism and Counter-Terrorism: An African Perspective*,( H E B. 2006) 9

<sup>21</sup> Banjo Williams ‘Terrorism: A Short Overview’ (1998)19 NIIA 11, 12

<sup>22</sup> Utume, D Alfred. ‘International Terrorism: What Policy options for its control’ (2005)NIIA 31

<sup>23</sup> Webster J Paul & Boahen A.Andrew, *The Growth of African Civilisation: West Africa Since 1800*,( Longman, 1971)

<sup>24</sup> Ibid

<sup>25</sup> Manby Berker ‘ The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s oil Producing communities’(2006) 2 EPLR 1, 5

<sup>26</sup> Ogbu O Nna., *Human Rights Law & Practice in Nigeria: An Introduction*, ( CIDJAP Press, 1999 ) 358

<sup>27</sup> Arowolaju S Bright, ‘ The ‘Talibans’ of Northern Nigeria’ Available at

<http://www.Nigerdeltacongress.com/articles>accessed08/07/2015>

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Agbiboa Daniel “ (SP) Oiling Domestic Terrorism? :Boko Haram and State Response”( 2013) 25 JOSJ 431,438

forms of degrading treatment including depriving them right to life<sup>31</sup>. There was fundamental rights abuse because Nigeria lack anti-terrorism law that should have defined how the suspects should have been treated and managed<sup>32</sup>.

Surprisingly, a crop of militants emerged. The militant armed groups mainly home grown militant carry out their attack against oil workers especially foreigners and installations together with Nigeria oil infrastructure and security personnel<sup>33</sup>.

In respect of the North, the region has witnessed various terrorist attacks mainly against southerners and their economic interest as well as security forces. The motive behind the attacks includes the desire to Islamise Nigeria<sup>34</sup>. The terrorist attacks in the North are carried out by the group called ‘Boko Haram’ which means ‘Western Education is sin’<sup>35</sup>. The militant group which had been campaigning for the imposition of Islamic law (Sharia) in Nigeria launched an attack on a Police Station at Bauchi on 25<sup>th</sup> July, 2009 resulting in violence<sup>36</sup>. The attack spread to Northern states which include Bornu, Yobe, Gombe and Kano<sup>37</sup>.

About 600 persons (mainly youths of the group) lost their lives including a number of police men and soldiers<sup>38</sup>. Their leader, Mohammed Yusuf was also killed in controversial circumstances<sup>39</sup>. It is said to have established links with Al-Qaeda in the Islamic Maghreb and that several of its members from Nigeria had received training in Al-Qaeda’s camp in Mali in 2011<sup>40</sup>. The group has also continued to improve on its tactics, from simple attacks using clubs, machetes and small arms, it progressed to deployment of improvised explosive devices (IED)<sup>41</sup>.

Presently, Boko Haram terrorists have been able to successfully launch several Suicide Vehicle Borne Improvised Explosive Devices (VBIEDS) against several targets in Nigeria<sup>42</sup>. For instance, the first was the attack on the Headquarters of the Nigeria Police at Abuja on 16<sup>th</sup> June, 2011 and second was against the UN building in Abuja on 26<sup>th</sup> August, 2011<sup>43</sup>. Others include the Christmas Day bombing (December 25<sup>th</sup>, 2011) of a catholic church in Madella, Niger State and the series of co-ordinated car bombings and gun battle around Kano that killed 185 people on January 20<sup>th</sup>, 2012<sup>44</sup>. The response to this terrorist insurgency and to protect the lives and properties of its citizens Terrorism Prevention Act 2011 was enacted and was further amended by Terrorism Prevention Act Amendment 2013. Indeed, the situation is worrisome and cannot guarantee youths employability in such a climate characterized by high degree of insecurity.

<sup>31</sup> “The State of Human Rights in Nigeria”, 2005-2006 [www.ng.undp.org](http://www.ng.undp.org)

<sup>32</sup> Ibid

<sup>33</sup> Editorial ‘MEND Kidnaps 20 foreigners’ The Vanguard Newspaper, (Nigeria, 15<sup>th</sup> May, 2009)

<sup>34</sup> Editorial ‘Boko Haram’: Another 140 Kids, Women Rescued’ The Punch Newspaper, (Nigeria, 3<sup>rd</sup> August, 2009) 2.

<sup>35</sup> Federal Republic of Nigeria Official Gazette, “Terrorism (Prevention) ( Prescription Order) Notice 2013”: The Attorney General of the Federation V Jamaatu Ahlis-Sunna Liddaawati Wal Jihad & Anor (2013) FHC 368

<sup>36</sup> Mike Silas ‘ Scores Killed, 200 arrested in Fresh Bauch Violence’, The Punch Newspaper, (Nigeria, 17<sup>th</sup> July 2009)

1-2

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Editorial, ‘ Bomb Blast at Jos’, The Nation Newspaper (Nigeria, 27<sup>th</sup> February 2012) 4

<sup>42</sup> New York times report, February 26 2012.

<sup>43</sup> Editorial, ‘ Massacres in North East Nigeria’ The Nation Newspaper, (Nigeria, 12<sup>th</sup> March, 2012) 6

<sup>44</sup> BBC News, ‘ Nigeria Unrest: Suicide Bomb Targets Church in Jos’ ( BBC News Africa, 26 February, 2012)

### 3 The Foundation of Human Rights in Nigeria

Nigeria is known to be the giant of Africa and the most popular Black Country with huge population of about 180 million<sup>45</sup>. The country belongs to so many international organisations and has ratified most of these treaties. The United Nation Charter and the Universal Declaration of Human Rights formed the foundation upon which the protection of citizens' rights as an international yardstick rest<sup>46</sup>. They set standard for evaluation by which the status and rights of citizens in any given society can be compared. In addition, at the regional and national level, the African charter on Human Rights and People's Right (1981) makes adequate provisions for the protection of the citizens' right in the state<sup>47</sup>. Indeed, the charter form part of the municipal law in Nigeria thus, providing a stronger normative standard for the protection of citizen's fundamental rights in conjunction with the constitution<sup>48</sup>. It stresses on the protection of rights and equal treatment of men and women in the society. The cardinal aim of the charter among others include: to provide a safeguard and protection to the rights of the citizens so as to resist any form of violation against their fundamental rights<sup>49</sup>. The protocol that came into force in 2004 has quite number of rights which include fundamental rights<sup>50</sup>.

The 1999 constitution is full of provisions on protection of rights. Section 17 (1) states that "the state social order is founded on ideals of social objectives, equality and justice". The subsection 2 states also that "in furtherance of social order (a) every citizen shall have equality of rights, obligations and opportunities before the law." Also, S.33-45 listed the fundamental rights guaranteed by the constitution. These provision provide the basis for the promotion of human rights and direction of state policy on human rights<sup>51</sup>. They are indeed, justifiable and form the basis upon which extra-judicial summary and arbitrary execution, torture, cruel, inhuman or degrading treatment or punishment and other forms of deprivation practices could be challenged as such violation is targeted on human right abuses on the citizens<sup>52</sup>. Interestingly, Nigeria's bid to display commitment towards the protection of human rights established the Nigeria Human Right Commission (NHRC) in 1995. Its primary objectives include monitoring human rights in Nigeria and helping in the formulation of the Nigeria Government policies on human rights<sup>53</sup>.

It is worthy to note that the acceptance of any law within the legal system in Nigeria is on its agreement with the supremacy of the Constitution and that the law must not be in conflict with any section of the Constitution of the Federal Republic of Nigeria for the time being in force which the Anti-Terrorism is not an exception<sup>54</sup>. In addition, it is clear in section S. 21 that it is the responsibility of the state to protect, preserve and promote the Nigeria practices which enhance the human dignity and are consistent with the fundamental objectives provided in it<sup>55</sup>.

Interestingly, the fundamental right provision in the Constitution, the establishment of the Constitution, the establishment of the Human Right Commission and the International Human

<sup>45</sup> National Population Commissions (N PC) 2015 www.population.gov.ng

<sup>46</sup> Article 13 (3) and 55 (c) of UN Charter; and 2 and 7 of UNDHR. Similar provisions are contained also in Articles 1 and 2 of the African Charter on Human Rights and People's Rights.

<sup>47</sup> Articles 1 and 2 of the African Charter on Human Rights and People's Rights.

<sup>48</sup> African Charter on Human and People's (Enforcement and Ratification) Act, 2004 Cap

<sup>49</sup> Article 18 (3) of the African Charter.

<sup>50</sup> Articles 3 – 21 of the Protocol

<sup>51</sup> Articles 1 and 2 of the African Charter on Human Rights and People's Rights

<sup>52</sup> ibid

<sup>53</sup> NHRC 1995 as Amended by NHRC Act 2010,

<sup>54</sup> S.1 and S. 2 of 1999 Constitution

<sup>55</sup> S. 21 of 1999 Constitution



Rights Standards ratified by Nigeria, form the pillar upon which the protection of fundamental rights of the citizens and other forms of human right abuses against the citizens is advocated<sup>56</sup>. It is indeed worrisome that despite these provisions, Nigerian citizens still suffer all manner of human rights violations emanating from its anti-terrorism laws<sup>57</sup>. This calls for attention, having acceded to international treaties and enacted a constitution that abhors such practices<sup>58</sup>. It is within this context that this work critically examines the Nigeria anti-terrorism laws and its impact on the protection of fundamental rights of the citizens from the constitutional standpoint. Thus, the accounts for the history of human rights in Nigeria predates the advent of colonial rule. Human rights and fundamental freedoms are recognised in the traditional Nigeria societies<sup>59</sup>. The idea of rights was not however conceived in the modern notion. Values such as right to family, kin and clan membership and association, right to enjoy private property and right to participate in governance of the affairs of the society were jealously guarded<sup>60</sup>.

The entrenchment of fundamental human rights in Nigeria, in the modern sense, could however be traced to the 1960 independence constitution and those that followed. The Independence Constitution of 1960 and the Republican Constitution of 1963 have provisions for the protection of fundamental human rights catering for civil and political rights in chapter iv and providing for fundamental objectives and directive principles of state policy in chapter ii, which recognises economic, social and cultural rights<sup>61</sup>. The entrenchment of human rights provisions in our constitution is aimed at creating a society where there is political freedom, social and economic wellbeing of the people<sup>62</sup>.

Nigerians and human civil society groups condemn the activities of terrorists in the country but are clamouring for a better society governed by constitutionalism, the rule of law, social justice and respect for human rights<sup>63</sup>. Any law enacted to fight terrorism that does not seek for the promotion and protection of human rights in Nigeria is inconsistent with the provision of the Constitution. Such law seems not to have recourse to the supremacy of the constitution.

#### 4 Supremacy of the Constitution

Every nation has a constitution which regulates its affairs by setting out the functions and powers of the different components of government via the executive, the legislature and the judiciary<sup>64</sup>. In Nigeria the constitution is a basic or necessary document which also regulates the relationship between the citizens of the State<sup>65</sup>. It is the duty of the various arms of government to ensure the enforcement of the constitution since they are bound by the constitution. A constitution is

<sup>56</sup> Published by the Federal Ministry of Women Affairs and Social Development,( 2000, 2009 )and Chapter 4 of the 1999 Constitution

<sup>57</sup> Amnesty "Stars On Their Shoulders, Blood on their Hands: War Crimes Committed by the Nigeria Military" (June 3, 2015)

<sup>58</sup> ' Terrorism and Human Rights in Nigeria' (2014)< <http://www.hrw.org/world.../nigeria>>accessed11/07/15

<sup>59</sup>Umzurike U Omar, 'The African Charter and National Law: The Issue of Supremacy' (ed), *Current Themes in the Domestication of Human Rights Norms*, (Fourth dimension Publisher, 2005)

<sup>60</sup> Ajomo M Amog 'Fundamental Human Rights under the Nigeria Constitution' in Awa Kalu &Osibanjo Young (eds) *Perspectives on Human Rights*,( Federal Ministry of Justice, 1992) 77.

<sup>61</sup> Ngwakwe Chioma, *Issues in Human Rights Guarantees*,( Hudson Jude Press, 2008) 1-6

<sup>62</sup> Osita Nnoli, *Human Rights Law and Practice in Nigeria*,( Cidjap Publishers. 1999)

<sup>63</sup> Banjo Williams 'Terrorism: A Short Overview' (1998)19 NIIA 11, 12

<sup>64</sup> Egburuonu Emmanuel and Harglar S Okorie, *Constitutional Law in Nigeria*, (Basic Rights Publication Ltd, 2011)

<sup>65</sup> Ibid.

defined as a fundamental body politic stating how organisation is constituted and governed as was said in *Imonikhe vs Attorney General of Bendel State*<sup>66</sup> cited with much approval by the Court of Appeal in the celebrated case of *Adeleke vs Oyo State House of Assembly*<sup>67</sup>.

The Nigerian Constitution is supreme and ranks very high above any other piece of legislation enacted by either the National or State House of Assembly<sup>68</sup>. In *Registered Trustee of ECWA Church v Ijesha*, the Supreme Court held that S.390 CPC and S.28 of Area Court Edit that deprives a person right to counsel conflicts S. 36(6) of the 1999 constitution and the two sections were declared null and void to the extent of its inconsistency with the constitution<sup>69</sup>.

## 5 Analysing Nigeria Anti-Terrorism Laws and Fundamental Rights

The TPA which covers 41 sections has a far reaching provisions ranging from definition and prescription of crimes of terrorism, to intelligence gathering, prevention, investigation and prosecution of terrorist suspects and other miscellaneous offence<sup>70</sup>. From fundamental rights perspective, some sections of the TPA are in line with constitutional provisions of fundamental rights. However, several provisions raised fundamental rights concern as enshrined in the constitution<sup>71</sup>. Worthy of note are sections 9, 12, 26 and 28 of the TPA that give tremendous powers in the National Security Adviser, Inspector General of Police and the State Security Service with little or no oversight for accountability<sup>72</sup>. For example section 28 provides that where a person is arrested under reasonable suspicion of having committed any offence under Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 13 or 14, the National Security Adviser or Inspector General of Police or a delegated officer not below the rank of superintendent of Police or its equivalent may, subject to the sections direct, that the person arrested be detained in a custody for a period not exceeding 24 hours of his arrest “without having access to any person other than his medical doctor and legal counsel of the detaining agency”<sup>73</sup>. The term “without having access to any person other than his medical doctor and legal counsel of the detaining agency”, conflicts with section 35 (2) of the Nigeria Constitution, which states that, “any person who is arrested shall have right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice”<sup>74</sup>. In the same vein, section 32(1), which states that the Federal High Court “shall have the sole jurisdiction to try an offence and impose the penalties specified in this act,” contravenes the Child’s Rights Acts 2003, which states that, “a child (a person below the age of 18) is to be tried by a family court.”<sup>75</sup>

Amnesty International in its report states that the key provisions of the Acts are incompatible with Nigerians Human Rights obligations<sup>76</sup>. The organisation goes further to state that the provisions of the Acts used terms that are overbroad in scope, violating the “legality”

<sup>66</sup>(1992) 7 SCNJ 97

<sup>67</sup>(2007) 21 ALL FWLR 345 p 253

<sup>68</sup> S.1 of 1999 Constitution

<sup>69</sup> ( 1999)13 NWLR 668

<sup>70</sup> See TPA 2011

<sup>71</sup> S. 9,12,26,28 TPA among others

<sup>72</sup> Ekundayo Vera, ‘Nigeria Terrorism Act : A Step Forward’ *The Punch* ( Nigeria, 24<sup>th</sup> January, 2012)

<sup>73</sup> S.28 TPA

<sup>74</sup> S. 35 (2) Of 1999 Constitution

<sup>75</sup> S. 113 Child’s Right Act 2003

<sup>76</sup> Amnesty International, ‘Nigeria: Trapped in the Cycle of violence’ (2012) 47

requirement for criminal offences; and or unlawfully restricting a range of rights<sup>77</sup>. Such breach of rights include freedom of thought, conscience and religion; freedom of opinion and expression, freedom of association and freedom of assembly, thus failing to adhere to demonstrable proportionality, same provisions relating to investigation, detention is not consistent with various provision of human right laws; some administrative provisions lack any provisions for meaningful access to effective legal remedies and procedural safeguards; consequently infringing on the right of due process in fair hearing<sup>78</sup>.

It is worthy to note that on February 21, 2013, the TPA was amended by the Terrorism Prevention Amendment Act 2013 (TPAA). The new Amendment Act brought some changes and addresses some Human Right issues of the TPA<sup>79</sup>. For instance, the enormous powers of the National Security Adviser, the Inspector General of Police and the State Security Service under the TPA is now vested on the Attorney General of the Federation or in a manner as prescribed by the Act as “shall be the authority for the effective implementation and administration of this Act, and shall strengthen and enhance the existing legal frame work to ensure – (a) conformity of Nigeria’s counter terrorism laws and policies with International Standards and United Nations Conventions on terrorism,” while the office of National Security Adviser shall be the coordinating body for security and enforcement agencies<sup>80</sup>. In fact, the expression “without having access to any person other than his medical doctor and legal counsel of the detaining agency has been replaced with the phrase “a medical officer of the relevant law enforcement or security agency or his counsel<sup>81</sup>.”

In addition, the death penalty provisions of the Act is not in consonance with the global fight for the abolition or elimination of death penalty as propagated by the second optional protocol to the international covenant on civil and political rights and similar initiatives as found under the European Human Rights Law<sup>82</sup>. In addition, another serious fundamental right issue of the TPA is found in the new section 28 (1), which provides that ‘where a person is arrested under reasonable suspicion of having committed any offence or security, an officer may direct that the person arrested be detained in custody for a period of not exceeding forty-eight hours’’. This provision potentially contravenes section 35(4) (5) of the 1999 constitution

Similarly, the new section 28 makes provision that where a person arrested under the Act is granted bail by a court within the 90 days detention stipulated by the Act, ‘the person may, on the approval of the Head of the relevant law enforcement agency be placed under a house arrest’ and shall be monitored by its officers, such a person shall have no access to phones or communication gadgets and speak only to his counsel until the conclusion of the investigation<sup>83</sup>. We must state that house arrest, without a valid order in this circumstances is illegal and undermines the authority of the court and runs contrary to the tenets of the fundamental principle of the constitution and rule of law<sup>84</sup>. The court is the last hope of the common man in any democratic society but where the Nigeria Anti-Terrorism laws claps down on the power of the court, the implication is that the law has opened a gateway for the fundamental right abuses and

---

<sup>77</sup> Ibid

<sup>78</sup> Ibid

<sup>79</sup> Ibid

<sup>80</sup> S.1A (2) (a) 97

<sup>81</sup> Section 1A (2) of the Terrorism (Prevention) (Amendment) Act, 2013.

<sup>82</sup> UN General Assembly Resolution 54/164. “Human Rights and Terrorism”, UN GAOR (54<sup>th</sup> Session, Agenda Item 116 (b), UN Doc. A/Res/54/164 ,2000)

<sup>83</sup> S. 28 TPAA 2013

<sup>84</sup> See chapter v of 1999 constitution



that accounts why there are serious human rights violations prevailing in Nigeria today. Furthermore, the law that places a person on house arrest strictly contravenes the person's fundamental right to liberty and movement as contained in the constitution<sup>85</sup>. Similarly, the counter terrorism laws such as ours that deprives one access to phone or communication gadgets but allows him to speak only to his counsel until the conclusion of the investigation is anti-human right compliant and violates the person's right to privacy and family life and freedom of expression as enshrined in the constitution<sup>86</sup>. Lord Hoffmann would argue that, "the real threat to life of the nation ...comes not from terrorism but laws such as these"<sup>87</sup>. This statement placed in Nigeria context is true of the present Anti-Terrorism laws in Nigeria and its human rights violations personified by TPA and TPAA. This is indeed disturbing and major threats to youth's employability in Nigeria as the youths are attacked by the same law that sought to protect them.

## 6. Conclusion and Recommendations.

This work has shown that terrorism and Nigeria Anti-Terrorism laws impose great threat to the citizens' rights in Nigeria. The Acts violate the fundamental rights of the citizens despite the supremacy of the Constitution. The Acts have failed to answer the question that worries the mind of Nigerians as whether the provisions of the Acts are adequate in addressing the fundamental human right violations occasioned by the Nigeria terrorism situation and create an atmosphere conducive for citizens in Nigeria. There are inadequate provisions of the supervisory functions of the judiciary over the activities of law enforcement agencies in relation to investigation and prosecution of terrorists<sup>88</sup>. The Acts are reactive and not proactive. There are no provisions to prevent people from turning away to terrorism by tackling the factors or root causes of terrorism such as economic deprivation, employment, religious extremism and radicalization. The Acts make no provision on how to manage and minimize the consequences of terrorist attacks by improving capabilities to deal with it and how to promptly respond to the immediate and long term need of victims<sup>89</sup>. The Acts are silent on the responsibility of the government to protect Nigerians and other inhabitants of the country from terrorist attack. It does not reflect enough commitment from the government on how to reduce the vulnerability of Nigerians to terrorist attack through enhanced security of borders, transport and critical infrastructure<sup>90</sup>. The only court empowered by the Act with jurisdiction over terrorist related offences is the Federal High Court. Considering the present congestion of the Federal High Court and the number of years it takes to get judgement under the present Nigeria judicial system, one would have expected that provisions would have been made in the Acts, enabling the creation of court especially for trial of terrorists and terrorism related matters<sup>91</sup>. The sweeping powers given to law enforcement agencies to more or less do as they please in the course of enforcing the provisions of the Act is worrisome. It is worrisome to observe that since the introduction of the Act despite stiffer measures of the Acts, the rate of attacks are on the increase, thus suggesting that the Act is not all

---

<sup>85</sup> S.35 and s.41 of the 1999 constitution

<sup>86</sup> S. 37 of 1999 constitution & s.39 of 1999

<sup>87</sup> John Glaser, 'Anti- Terrorism Laws in Nigeria Threaten Civil Liberties '(Antiwar, 3<sup>rd</sup> September, 2011) <<http://news.antiwar.com/2011/09/03/anti-terror-law-laws-nigeria-threaten-civil-liberties>>accessed 8/8/2015

<sup>88</sup> Ekundayo Vera, 'Nigeria Terrorism Act : A Step Forward' The Punch ( Nigeria, 24<sup>th</sup> January, 2012)

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Ibid

that is needed to combat terrorism<sup>92</sup>. No matter how well a law is drafted, if the mechanisms are not put in place to enhance its effective implementation, it will amount to glorious waste of time and a worthless piece of paper.

Although the laws appear to be a good law in principle, in practice it poses a threat to the citizens it sought to protect. The Acts should provide clear definition of some vague terms and a narrower definition of terrorism among others. It should come up with a precise and binding guidance on the use of anti-terrorist powers as to guarantee the citizens' rights. In confronting terrorism that promotes arbitrary violence, one would expect government to fight vigorously, demonstrate such as rule of law, human rights and equal treatments. On the contrary the TPA and TPAA play into the hands of the terrorists in a manner that undermines the core Nigeria values and democratic principles<sup>93</sup>. While Nigeria should persist in government and military reforms as well as her anti-terrorism reforms, the international community should modify policies in order to provide immediate assistance to the victims of human rights abuses and those most vulnerable to terrorism; the Nigeria anti-terrorism laws have failed to protect and safeguard these rights. However, establishing common ground and international corroboration is essential to curtailing violations meted by the Acts and protecting recognised human rights<sup>94</sup>. This is because Nigeria has long been held as Africa's pre-eminent nation. In political, economic, and military terms, its influence is felt throughout Africa. Consequently, when Nigeria is in turmoil, the rest of Africa and the entire world watch with great interest<sup>95</sup>. In addition, civil society organisations should play a complimentary role by taking advantage of the fact that NHRC Amendment Act empowers her to "deal with all matters" relating to the promotion and protection of human rights including to "monitor and investigate all alleged cases of human rights violations" in Nigeria occasioned by the Anti- terrorism laws<sup>96</sup>. The Nigerian Coalition on the International Criminal Court (NCICC) needs to sustain their efforts at stemming acts of impunity perpetrated by Anti-terrorism laws in Nigeria under the guise of counter-terrorism so as to guarantee the citizens human rights in Nigeria.

## REFERENCES

- Adams D and Ogbonnaya U M, *'Ethnic and Regional Violence in Nigeria: Implications for National Security'* (2014) 20 HeinOnline
- Ajomo M A, *'Fundamental Human Rights under the Nigeria Constitution: Perspectives on Human Rights'* (1992) FMJ 77
- Afolayan Michael, *'(SP) Oiling Domestic Terrorism? Boko Haram and State Response'* (2013) 25 JOSJ 431, 438
- Agbamuche-Mbu M, *'Nigeria and Its Human Rights Commission'* (2014) This Day live <http://www.thisday.com.ng>>accessed 08/08/2016
- Amnesty International, *'Nigeria: Trapped in the Circle of Violence'* (2012) p. 47
- Amnesty International *'Nigeria: End Police Intimidation of National Human Rights Commission'* (April, 2012) pp1-2 <http://www.amnesty.org/en/latest/news/2012/04/accessed%3E13/08/15>

<sup>92</sup> Ibid

<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> Afolayan Micheal, *'In the Absence of the Cat... Making no Sense of the senseless situation in Nigeria'* (2014) 7 JAM 207, 220,

<sup>96</sup> Ibid

- Amnesty ‘*Federal Government must end Impunity,*’ The Nation Newspaper, (Nigeria, 29<sup>th</sup> June 2015)
- Amnesty International ‘‘Stars on their Shoulders, Blood on their hands: War Crime Committed by the Nigerian /Military’’ [www.amnestyusa.org/research/reports/stars-on-their-shoulders-blood-on-their-s-hands-war-crimes-committed-by-the-nigerian-military](http://www.amnestyusa.org/research/reports/stars-on-their-shoulders-blood-on-their-s-hands-war-crimes-committed-by-the-nigerian-military)
- BBC News, ‘*Nigeria: Good luck Jonathan Declares Emergency in States*’, (15<sup>th</sup> May, 2013) [www.bbc.co.uk/news/world-africa-22533974](http://www.bbc.co.uk/news/world-africa-22533974) , [www.co.uk/news/world-africa-22533974](http://www.co.uk/news/world-africa-22533974)
- Banjo W. ‘*Terrorism*’ *A Short Overview*’ (1998) 19 NIIA
- Cassese A, ‘*Terrorism is also Disrupting Some Crucial Legal Categories of International Law*’ (2001) EJI 12
- Dakars C J D, ‘*Nigeria’s Anti- Terrorism Laws and Practices: The Imperative of Mainstreaming Human Rights into Counter-Terrorism Administration*’ (2013)
- Dakas C J D ‘*Responsibility for International War Crimes, Peace and Security in West Africa: Issues Dilemmas and Challenges*’ (2004)NBA 15
- Danfulani J, ‘*Kaduna University Professor Petitions Nigeria Human Rights Commission Over Zaria Shiites Killings*’ The Sahara Report,( New York, 26<sup>th</sup> July 2014)
- Ekundayo V, ‘*Nigeria Terrorism Act : A Step Forward*’ The Punch ( Nigeria, 24<sup>th</sup> January, 2012)
- George E M, ‘*Nigeria: Which Way Forward?*’ (1993) 4 pt. 2 Department of State Despatch 598 Hein Online
- Iro A & Oarhe O ‘‘*The Boko Haram Uprising: How Should Nigeria Respond?*’’ (2012) 33Third World Quarterly, pp 83-869
- Jerrold M P, Mc Ginnis C and Moody K, ‘*The Changing Face of Terrorism in the 21<sup>st</sup> Century: The Communications Revolution and Virtual Communication of Hatred*’, (2014) 32 Behavioural Science and Law
- Juriscope, ‘*Understanding Human Rights & Laws Relating to Marriage*’’ (2006) LQP 47
- Kofi A, ‘*A Global Strategy for Fighting Terrorism*’ (2005) ISDTS 47  
[http://summit.clubmadrid.org/keynotes\(accessed>July 15,2015S](http://summit.clubmadrid.org/keynotes(accessed>July 15,2015S)
- John G ‘*Anti-Terrorism Laws in Nigeria Threaten Civil Liberties*’(September 3, 2011 news.antiwar.com/2011/09/03/anti-terror-laws-in-nigeria-threaten-civil-liberties
- John M, ‘*Death toll in Nigeria Boko Haram massacre rises to 160: Locals*’ The Guardian, (Nigeria, August 19, 2015)[www.ngrguardiannews.com/2015/08/death-toll-in-nigeria-boko-](http://www.ngrguardiannews.com/2015/08/death-toll-in-nigeria-boko-)
- Lemi U, ‘*NJC suspends Talba over N32b Pension Fraud Verdict*’, The Guardian (Nigeria, April 26, 2013)<http://www.ngrguardiannews.com/index.php?option>
- Lemi U, ‘*NJC Suspends Talba over N32b Pension Fraud Verdict*’, The Guardian (Nigeria, April 26, 2013)
- Malu S V L, ‘*Responsibility for International War Crimes, Peace and Security in West African Sub-Region*’ (2004) NBA 38.
- Monday A, ‘*Borno elders blast Jonathan, insist he should treat Boko Haram Insurgents like Niger Delta militants*’ Premium Times (10<sup>th</sup> July 2013) <http://premiumtimesng.com>accessed>18/07/2016>
- Natsanet B, ‘*Why Nigeria Needs to Address Impunity,*’The Nation Newspaper, (Nigeria, 17<sup>th</sup>)
- ‘National Human Rights Commission, UNDP and NORAD, ‘*The State of Human Rights in Nigeria,(2005-2006)*[www.ng.undp.org>accessed>25<sup>th</sup> August,2015](http://www.ng.undp.org>accessed>25th August,2015)
- Okorie H, ‘*Deconstructing the Terrorism (Prevention) (Amendment) Act 2013*’ (2014) ABSUJL 4

- Terrorism and the Application of International Humanitarian Law* (2014) JHSS 35
- Counter-Insurgency, Rule of Law and the fight against Boko Haram in Nigeria* (2015) UUJL 31.
- Okoronye I, *Terrorism in International Law*, (2013) White Publishing Okigwe.
- Olukolade J, '*Amnesty Report Aims to Blackmail Nigeria Military*', *The Leadership* '*Synergies and Responses: Strategic Alliance in Crime Prevention and Criminal Justice*' (2005) *Being Nigerian Country Paper for the 11<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice*.
- Taylor L L, '*Boko Haram Terrorism: Reaching Across International Boundaries to Aid Nigeria in the Humanitarian Crisis*' (2014-2015) 21 *Hein Online*
- Tulip M, '*Chibok Girls Forced to Join Nigeria's Boko Haram*' *BBC News* (London, 29<sup>th</sup> June 2015)
- Uche I, '*Amnesty International's Lopsided Report*' *The Punch*, (17<sup>th</sup> June, 2015) [www.punchng.com/opinion/amnesty-internationals-lopsided-report](http://www.punchng.com/opinion/amnesty-internationals-lopsided-report)>accessed>15/08/15
- Utume D A, '*International Terrorism: What Policy Options for its Control*' (2005) NIIA 31
- UN General Assembly Resolution 54/164, "Human Rights and Terrorism", UN GAOR, (54<sup>th</sup> Session, Agenda Item 116 (b), UN Doc. A/Res/54/164 2000)
- UN Sub-Commission on Human Rights, "Terrorism and Human Rights", ESC Res 37, (54<sup>th</sup> Session, UN Doc. E/CN.4/SUB.2/RES/2002/24,2002)
- Vincent E, '*The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*' (1994) IJR 16