

The Nigerian State and Terrorism: Exhuming the Legal Lacunae

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Abstract: The article argues that the fight against terrorism – as in the case of the Boko Haram syndicate – has been conducted through the instrumentality of military might, leaving out other vital components (non-military approaches) needed to overcome the fight against acts of terrorisms, as countries in global North have done. Given the realities on ground associated with terrorism and the Nigeria State, this essay, drawing data from secondary sources, explores amidst other lacuna, extant legal frameworks. The study revealed that even though the Nigeria State had ratified most international treaties set up to combat terrorism both at the international and State levels, such adopted legal instruments are yet to be domesticated, and when some are domesticated, there are issues of unenforceability due to a myriad of national issues such as the absence of strong institutions. Consequently, terrorism have unabatedly threatened Nigeria's development quest, most especially in the North-eastern region. The article avers that strengthening national security through the domestication of effective legal frameworks in conjunction to military aggression remains a *conditio-sine-qua-non* in curbing the enduring Boko Haram group that has unleashed acts of terror on Nigeria.

Keywords: Boko Haram, Terrorism, National Security, National Development and Legal frame work.

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I. INTRODUCTION

Since 2009, the Nigeria State have perpetually struggled with the fight against terror across the Northeast region of the country, perpetrated by the group known as *Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad*¹ (People committed to the propagation of the Prophet's Teaching and Jihad.), popularly referred to as Boko Haram. Needless to state, it is an obvious reality that terrorism, or insurgency, has impacted greatly on targeted States by various terror groups without limit. Often more than not, the act of terror as carried out by various terrorist groups recognized neither status, language, race nor religion. In fact, it effects transcend borders.² Pointedly, a critical examination of the Nigerian scenario has revealed that there exists a plethora of security lacuna in the country, most especially in the fight against organized crimes, such as act of terror.

In the international arena, Nigeria's image has suffered immensely owing to Boko Haram and other related crimes, which have exposed the vulnerability of the national security of the Nigerian State. This vulnerability of the national security of the Nigeria State economically, politically, socially and technologically now attracts activities of emerging terrorist organisations and similar groups.³ Furthermore, media reports on the successes of Boko Haram attacks without corresponding reports on the gains made by government in its counter-terrorist efforts have seriously weakened Nigeria's national security with negative consequences on Nigeria's image abroad. In 2011, Boko Haram initiated a campaign of suicide bombing, a phenomenon witnessed for the first time in Nigeria's history. The Nigerian State responded to these security threats by declaring a counterterrorism war on the group. Nevertheless, this war was not taken seriously by the Nigerian State, while the activities of the terrorists increased geometrically.

With the escalation of the activities of Boko Haram between 2012 and 2014 in northern Nigeria, the Nigerian State responded with the declaration of a state of emergency in the three North Eastern States of Borno, Yobe and Adamawa and followed up with extensions.⁴ In spite of this development, the violent activities

¹Adetoro Rasheed, "Boko Haram Insurgency in Nigeria as a symptom of Poverty and Political Alienation," *IOSR Journal of Humanities and Social Sciences (JHSS)*, Volume 3, Issue 5 Nov- Dec 2012), 21-26.

²Oluseyi Oluwalambe Apampa and Yinka Olomjobi, 'Curbing Terrorism in Nigeria: An Examination of the Terrorism (Prevention) Act, 2013 as Amended' (2014) 1(4) Babcock University Socio-Legal Journal, 79, 79.

³Today we have The Islamic State in West Africa (ISWA) and Ansaru terrorising the Nigerian State alongside Boko Haram

⁴John Ameh 'Military Chiefs Convince Reps Over Emergency Rule Extension' *The Punch* (Lagos, 2 June 2014) 24.

of the terrorists continued unabated.⁵ The outcome of these activities created unprecedented humanitarian crises for the Nigerian State with colossal effects on national security. Other outcomes of the weakened national security included the withdrawal of foreign nationals, the closure of embassies, withdrawal of investments by foreign investors, reduction in tourism, and the rating of Nigeria as being unsecured and a potential terrorist threat. The ultimate outcomes of these acts by Boko Haram are painful to the Nigerian State and their activities have been associated with the increased rate of violent activities of terrorist groups identified with Islamic fundamentalism across the globe.⁶ The inter-connectivity among these Islamist groups has seen them carry out successful violent attacks with more sophistication in terms of coordination, tactics and weaponry. With this interconnectivity amongst Boko Haram, ISIS, Al-Qaeda, AQIM and others, the Nigerian State is now faced with intense national security challenges, together with those of national development.

Countries struggling to cope with widespread acts of terrorism have, apart from the challenges of national security, fared poorly in reaching the Millennium Development Goals, which have shaped the development agenda over the past years. Terrorism leads to repeated outbreaks of unrest, breakdown of law and order, and aggravates security and compromises sustained economic growth. It has affected much development progress made by countries in recent times. By exploiting development challenges such as inequality, lack of education, poverty, marginalisation and poor governance, terrorism further exacerbates these challenges, creating a vicious cycle of decline, which affects the marginalized groups or regions of the world.⁷ Western education, which is one of the indices of rapid national development of any country in the world, is considered by Boko Haram to be in conflict with core Islamic values. Considering the West and its allies together with their western education as a threat to the spread of their ideologies, Boko Haram have destroyed several schools in the North East and targeted young people, in particular girls, who are involved in the pursuit of western education as the path to a better life for themselves, their families and societies. Thus, the dastardly act of kidnapping of girls by Boko Haram in Chibok in Bornu State, in April 2014 and that of Dapchi in Yobe State in February 2018 are examples of the threat of terrorism, not only to national security but also to national development in Nigeria.

The development of any country is a function of education together with many other considerations. Without education, no country can be developed. There can therefore be no education when terrorists invade schools, massively kidnap schoolchildren and use them as slaves. Thus, when schools are closed down for fear of attack on students by terrorists, national development collapses. Other development actors such as parents, teachers, organisations, government and other members of the public are affected. Terrorism also disrupts the day-to-day works of organisations, including United Nations development agencies, which are trying to help member States deal with poverty, social inequalities, exclusion and illiteracy. This is more so when members of these organisations, particularly those concerned with educational advancement, are targets of terrorist kidnappings and assassinations. This was the case with the kidnap and execution of the International Red Cross Agency staff, Hauwa Liman, by a faction of Boko Haram sometime in November 2018.⁸

Boko Haram and their acts of terror has made the Nigeria State not only unsafe in terms of advancement in education, but also unsafe to invest in. Some nations have also withdrawn their presence in the country making government to lose revenue at an alarming rate. Agriculture, one of the areas of revenue generation, which sustains Nigeria's economy, has been object of sabotage by Boko Haram as they continue to carry out attacks and sack many villages in the North where agriculture flourishes. These activities have seriously affected the production capacity of farmers in Nigeria, which results in serious drop in revenue. These constituted remarkable acts of economic sabotage relating to Boko Haram in Nigeria. The killing, abduction, kidnapping and harassment of foreign workers, particularly members of Non-Governmental Organisations (NGOs), local contractors, amplification of violence based on rumours by Boko Haram increased the difficulties for law-abiding citizens and conglomerates to engage in lawful businesses in Nigeria. With increasing acts of terrorists' violence, domestic and foreign investors have also been discouraged from investing in Nigeria, which resulted in the loss of revenues to the nation in the last two decades.⁹

Economic diplomacy, which is the foreign policy objective of Nigeria, is aimed at wooing investors from other countries to invest in Nigeria. This had been the pivot of the transformation agenda of the previous administration and the change agenda of the current administration. However, terror acts by Boko Haram group in Nigeria has frustrated this goal because instability and violence have, for some time now, accentuated a balance of trade deficits especially in Northern Nigeria. As most acts of terrorism have often times been

⁵Al Chukwuma Okoli and Philip Iortyer, 'Terrorism and Humanitarian Crisis in Nigeria: Insights from Boko Haram Insurgency' (2014)14 (1) *Global Journal of Human-Social Science*, 39, 44.

⁶Yinka Olomajobi, 'Militant Islam in Northern Nigeria: The Misguided Ideology of Boko Haram' (2014) 1(4) *Babcock University Socio-Legal Journal*, 89.

⁷Mohammad Irshad, 'Terrorism in Pakistan: Causes & Remedies' (2011) 6 (3) *The Dialogue*, 224, 229.

⁸O Fabiyi and A.Adepegba, 'Boko Haram kills another aid worker, FG, BBOG express shock' <<http://punchng.com/b-haram-kills-anot...>> accessed 9 December 2018.

⁹Belloand others (n7) 20.

politicized and facts distorted by government officials for personal gains, most countries do not look at Nigeria as a serious-minded nation to establish an economic agreement with. The result is that bilateral and multilateral relations of these countries with Nigeria have continued to wane amidst recurrent terrorist attacks. Similarly, it was the upsurge of terrorists' incidents in Nigeria in recent times that made foreign countries, particularly the US, to issue travel advice to their citizens against travelling to Nigeria.¹⁰

In relation to the tourism industry, Nigeria has without doubt lost some of its foreign exchange earnings due to a high drop in the patronage of its activities. International organizations such as the United Nations International Children's Emergency Fund (UNICEF) have withdrawn support from troubled spots in the country thereby making it difficult for the locals to access essential health and educational programmes, which were, in no small measure, beneficial to the people of the north east of Nigeria.¹¹

The nefarious activities carried out by the Boko Haram group has tremendously affected national development as many victims have suffered losses of various dimensions to their goods, homes, businesses, farms and investments. Many victims of terrorism have been internally displaced. According to UNHCR Regional update, as at January 2017 (confirmed by NEMA), 1.7 million people had been displaced by the insurgency in Nigeria.¹² The internally displaced persons (IDPs) find themselves in camps where they struggle yet again with hunger, starvation and disease. The Nigerian State has responded to address the plights of these victims by ensuring that NEMA in collaboration with the UN agencies, NGOs and international donor agencies, cater for the needs of the victims. The North East Development Commission has also been established to, among other things; address the issue of rebuilding the North East to resettle the victims of terrorism in Nigeria. In spite of these, the plight of these victims in various camps across the North East is not improving. They lack basic amenities of life and thereby remain vulnerable to further terrorist attacks and massacre as it happened at the IDP Camp in Maiduguri, Borno State sometime in November 2018.¹³ In addition, there have been incidents of human rights violations of the IDPs across the camps in Nigeria, associated with camp officials. Similarly, government officials in charge of the management of the IDPs across the North East have been associated with corruption. Yet, not much is done to properly address the plight of these victims and government officials involved in the rights violation and corruption still walk freely on the streets, without being brought to book. As many continue to remain in IDP camps without returning to their legitimate businesses, or as many will return to their communities only to be attacked again, the development of the Nigerian State will continue to be seriously adversely affected as many are still being hosted in the IDP camps by the Nigerian State.¹⁴

This work is divided into five sections; the first section being the Introduction, which deals with examination of national security and development in Nigeria. Section two concerns itself with the Legal Regimes on terrorism in Nigeria. This section gives an analytical examination of the legal and institutional setups on terrorism and identifies the top gaps, which make it difficult for terrorism to be effectively wiped out in Nigeria. Section 3 is the recommendation section. It discusses the solutions to the problems as identified in the work. Section 4 is the conclusion.

National Security: Some Conceptual Analyses

Conceptually, national security entails the prevalence of national and international conditions favourable for the protection of a nation state and its citizens against existing and potential threats.¹⁵ Whereas, in a more traditional sense, it is the acquisition, deployment and applicability of military force to achieve national goals.¹⁶ However, in the contemporary political and scholarly discourse, it cuts across many disciplines covering military protection, surveillance, protection of national values and human rights. Ogbonnaya and Kizito, citing Romm, maintain that a nation is said to be secured when it does not have to sacrifice its legitimate interests to avoid war, and is able, if challenged, to maintain them by war.¹⁷ Therefore, national security could be seen as the absence of threats to acquired values and the absence of fear that such values will be attacked. It is the ability of a nation to preserve its internal values from either internal and external threats or aggression. In a more general term, the concern of national security has been associated with the protection of States and their citizens from

¹⁰Olaide Ismail Aro, 'Boko Haram Insurgency in Nigeria: Its Implication and Way Forwards Toward Avoidance of Future Insurgency' [2013] (3) (11) International Journal of Scientific and Research Publications, 1, 3.

¹¹'UNICEF Resumes Aids to North Eastern Nigeria after Convoy Attack' <<http://www.capitalfm.co.ke/news/page/171/%>> accessed 27 July 2016.

¹²'Nigerian Situation: UNHCR Regional Update 01-31 January 2017...<[http://reliefweb.int/report](http://reliefweb.int/report/Nigeria-situ...)>Nigeria-situ...>accessed 31 December 2017.

¹³Abulkareem Haruna, 'Eight confirmed Killed as Boko Haram attacks Borno IDP camp' <https://www.premiumtimesng.com/news>> accessed 10 December 2018.

¹⁴Abdulraman Adamu and Zuwaira Haruna Rasheed, Effects of Insecurity on the Internally Displaced persons (IDPs) in Northern Nigeria: Prognosis and Diagnosis, 'Global Journal of Human Science: F Political Science' (2016) 16 (1)3.

¹⁵Uffiem Maurice Ogbonnaya and Uyi Kizito Ehigiamusoe, 'Niger Delta Militancy and Boko Haram Insurgency: National Security in Nigeria' (2013) 4 (3) Global Security Studies, 1, 3.

¹⁶Ibid.

¹⁷Ibid.

threats and dangers and the ability to preserve core values of the State.¹⁸ In Nigeria's context, national security is concerned with protecting the lives and property of Nigerians, preserving her sovereignty, territoriality and its economy, and enhancing socio-cultural and political harmony.¹⁹ It is a measure put in by government to ensure the survival and safety of the nation state, including but not limited to, the exercise of diplomatic and military power in both peace and war times.²⁰ It involves all measures taken by a nation to safeguard, protect and promote her vital national interests and values from real or potential threats.²¹ It is a condition whereby a nation is free from internal or external fear or threat to its peace, stability and progress.

Before now, it was assumed, within the national security calculus, that only a strong military of a nation could effectively deter attacks and threats of force.²² In recent times, non-military variables are incorporated into national security calculus. Thus, the concept of national security now encompasses economic security, food security, social security, environmental security, the quality of life security and technological security. National security of any nation, as a matter of necessity, goes beyond mere amassment of military/police armaments, personnel and equipment to include the satisfaction of human needs. Security is indeed variously classified - political security, the freedom from domination; economic and social security, the freedom from poverty and want; cultural security, the freedom from ethnic and religious domination; and environmental security, the freedom from environmental destruction, degradation, and resource scarcity.²³ Mohammed Bello, citing McNamara, has maintained that any society that seeks to achieve adequate military security against the background of acute food shortage, population explosion, low level of production and per capita income, low technological development, inadequate and inefficient public services and chronic unemployment, has a false sense of security.²⁴ This is so because with enduring terrorism, there can be no development and without development, there can be no security.²⁵

National security challenges, which arise from acts of terrorism, cut across borders and the impact is felt at all levels of endeavours. As such where national security fails, the spiral effects manifest themselves in many ways, which include but not limited to political corruption, where people occupy political positions by buying their way in monetary terms or through the goodwill of political godfathers who act in impunity. There is also economic greed, where people in positions of authority use the positions to unlawfully amass wealth, without limitations or checks; illiteracy and ignorance, where people cannot go to school because there are no schools or where there are schools but no secured environment for school activities to continue without being shut down. Others are ethnic and religious insensitivity and conflicts, where people are killed in terms of ethnic or religious affiliations without serious mechanism of prevention; disregard of rules and regulations, where there is breakdown of law and order and the State is unable to contend the situation; lack of commitment to democracy, where the processes of election are not free and fair and the use of arms by individuals for elections cannot be checked by government; lack of efforts to eradicate or reduce hunger, poverty, overpopulation, excessive inflation, refugees, diseases which is evidence of food insecurity. All these constitute the perilous effects of terrorism on the national security of any victim nation.

In Nigeria, between 2009 and 2014 in particular, national security was greatly weakened by the activities of Boko Haram. There was increased spate of bombings and armed attacks, killings, arsons, prison breaks and kidnappings carried out unabated by Boko Haram, which resulted in serious refugee crisis in Nigeria. This period witnessed the influx of foreigners across the country's porous borders to join in fighting as mercenaries against the Nigerian State. Some of these mercenaries were from international terrorist organisations and meant to serve as weapon instructors as well as fighters. Some retired/dismissed military and para-military officers in Nigeria, who had served the country with rich experience in weapon handling and tactics, and who had been frustrated in their struggle to survive, were also used in the training of militias and terrorists. This partly accounted for the sophistication and destruction of lives and property by the group in Nigeria. The unimaginable population of unemployed youth, a consequent of serious corruption in the country, makes the youth easy prey for recruitment into the group with promises of better future. They all fought for this better future, and in the process, weakened national security the more, leaving the Nigerian State incapable of protecting lives and property of many.

¹⁸ L. H. Yong, 'Impact of National Security on Socio-Economic Development of Singapore' <<http://www.singstat.gov.sg/stats/themes/economy/hist/gdp2.html>> accessed 10 January 2017.

¹⁹ Ogbonnaya and Ehigiamusoe (n2) 6.

²⁰ Mohammad Bello and others, 'International Terrorism and Its Implications for National Security in Nigeria' (2015) 2(10) *International Journal of Humanities Social Sciences and Education*, 77, 78.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.* 81.

Since the 9/11 attack on the United States (US), international terrorism has been identified as a serious foreign and domestic security threat to nation States, hence making it necessary for terrorism to be handled using diplomacy, international cooperation, constructive engagement to economic sanctions, covert action, physical security enhancement and the use of military force.²⁶ The activities of Boko Haram pose serious threats of various kinds to national security in Nigeria. These groups have proliferated in recent years without control and created far-reaching implications today and in the future on national security. As national security is weakened, Boko Haram terrorist group in Nigeria have enjoyed increased growth of cross-national and international links with different terrorist organizations in the world in respect of military training, funding, technology transfer or political advice and supply of weapons. The country becomes more threatened in the light of the availability of weapons of mass destruction (WMD) in possession of some States associated with the sponsorship of terrorism. Although the use of WMD has not been identified with Boko Haram in Nigeria, the impact of acts of terrorism occasioned on Nigeria by the use of other weapons has seriously impacted on national security. This development constitutes a serious threat to Western interests in Nigeria.²⁷

Legal Regimes for Combating Terrorism in Nigeria

Treaties form the fundamental part of international legal instruments in combating terrorism, which are usually in form of conventions and protocols. These include: the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft;²⁸ the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970;²⁹ the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971;³⁰ the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;³¹ the 1979 International Convention against the Taking of Hostages;³² the 1980 Convention on the Physical Protection of Nuclear Material;³³ the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;³⁴ the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;³⁵ the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 1988;³⁶ the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection;³⁷ the 1997 International Convention for the Suppression of Terrorist Bombings;³⁸ the 1999 International Convention for the Suppression of the Financing of Terrorism;³⁹ the 2005 Amendments to the Convention on the Physical Protection of Nuclear Material;⁴⁰ the 2005 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf;⁴¹ the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism;⁴² and the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation. These treaties are the international normative framework for combating terrorism. They contain series of legally binding standards on nation states geared toward achieving the prevention and control of terrorism. They deal on particular acts of terrorism and place obligations or responsibilities on state parties to comply with their

²⁶ Ibid 82.

²⁷ Ibid.

²⁸ 20 U.S.T. 941, 704 U.N.T.S. 219. This convention was signed in Tokyo on 14 September 1963 and entered into force on 4 December 1969. It was ratified by the Nigerian State on 7 April 1970.

²⁹ This convention was signed in Tokyo on 14 September 1963 and entered into force on 4 December 1969. It was ratified by the Nigerian State on 7 April 1970.

³⁰ 24 U.S.T. 565, 974 U.N.T.S. 177. This convention was signed at Montreal on 23 September 1971 and entered into force on 26 January 1973. It came into force on 26 January 1973.

³¹ 28 U.S.T. 1975, 1035 U.N.T.S. 167. This convention was adopted on 14 December 1973 and entered into force on 20 February 1977.

³² T.I.A.S. No. 11081, 1316 U.N.T.S. 205. This convention was adopted by resolution 34/1461 of the United Nations General Assembly on 17 December 1979. It entered into force on 3 June 1983.

³³ 1456 U.N.T.S. 101. This convention was signed on 3 March 1980 in Vienna, Austria. It came into force on 8 February 1987 and was amended in 2005 by the 2005 Amendments to the Convention on the Physical Protection of Nuclear Material.

³⁴ 1589 U.N.T.S. 474. This convention was signed at Montreal on 24 February 1988 and entered into force on 6 August 1989. It was ratified by the Nigerian State on 25 March, 2003.

³⁵ 1678 U.N.T.S. 222. This convention was adopted in Rome on March 1988. It came into force on 1 March 1992 after it had been ratified by 15 States. The Nigerian State ratified the convention on 24 February, 2004.

³⁶ 1678 U.N.T.S. 374. This treaty was adopted on 10 March 1988 and it came into force on 1 March 1992.

³⁷ 2122 U.N.T.S. 374. This convention was signed at Montreal on 1 March 1991 and entered into force on 21 June 1998. This convention was ratified by the Nigerian State on 10 May, 2002.³⁷

³⁸ 2149 U.N.T.S. 256. This convention was adopted by resolution RES/52/164 of the General Assembly of the United Nations on 15 December 1997 and entered into force on 23 May, 2001. It was accepted by the Nigerian State on 24th September 2013.

³⁹ 2178 U.N.T.S. 197. This convention was adopted by the UN Resolution 54/109 of 9 December, 1999. The Nigerian State signed it on 1st June, 2000. It entered into force on 10 April 2002 and was ratified by the Nigerian State on 16 June, 2003.

⁴⁰ INFCIRC/274/Ref.1/Mode.1, 2016. State parties adopted this amendment to the convention on 8 July, 2005. The amendment entered into force on 8 May 2016 in accordance with article 20.2 of the convention.

⁴¹ The protocol came into force on 28 July 2010, and as at February 2016, it had been ratified by 36 States.

⁴² 2445 U.N.T.S. 137. This convention was adopted on 13 April 2005 by the United Nations General Assembly Resolution A/RES/59/290. It came into force on 25 October 2012 and was ratified by the Nigerian State on 25 September 2015.

provisions. The principal obligation is to incorporate the crimes defined in them into the domestic criminal laws of state parties, and to make them punishable by sentences that reflect the gravity of the offence.⁴³

In compliance with the demands of these instruments, member States across the world have enacted domestic legislations criminalizing terrorism in their jurisdictions. Some States have adopted the international conventions on specific acts of terrorism as agreed and made them part of their domestic laws. Others have referred to these conventions in their domestic legislations thereby making them part of their laws. In Nigeria, the compliance with these treaties on terrorism resulted in the enactment of the Economic and Financial Crimes Commission (Establishment, etc.) Act, (EFCC Act) 2002 as amended, now EFCC (Establishment) Act 2004, Terrorism Prevention Act, 2011 as amended in 2013 (TPA 2011 as amended) and Money Laundering Act 2012.⁴⁴ The Economic and Financial Crimes Commission (Establishment) Act, 2004⁴⁵ was the first Act enacted, in part, to address acts of terrorism in Nigeria. Section 46 of the Act defines terrorism while section 15 creates some offences relating to terrorism, particularly with regards to actual commission of the offence of terrorism; attempt to commit terrorism, facilitating the commission of terrorism and the financing of terrorism. Thus, the Act specifically criminalises terrorism and the financing of terrorism.⁴⁶ The Act makes a person convicted of terrorism to be liable to imprisonment for life.⁴⁷

The Money Laundering (Prohibition) (Amendment) Act, 2012 (MLA) amends the Money Laundering (Prohibition) Act No. 11, 2011. The Act prohibits the offence of money laundering, prescribes punishment for the commission of money laundering and lists acts that constitute money laundering.⁴⁸ The Act particularly obliges financial institutions to take due diligence in every transaction, where there are links and where there are suspicions of money laundering or terrorist financing, regardless of any exemptions.⁴⁹ The Act provides for 7 to 14 years of imprisonment as the punishment for crimes related to terrorism under the Act.⁵⁰

The principal legal instrument on terrorism in Nigeria is the Terrorism Prevention Act 2011 as amended in 2013. This is the principal legal instrument on terrorism in Nigeria.⁵¹ The 2013 Act amends the Terrorism (Prevention) Act No. 10 of 2011, makes provision for extra-territorial application of the Act and strengthens terrorist financing offences and other matters related to them. The Act prohibits all acts of terrorism and financing terrorism and places a maximum punishment of death sentence on convicted terrorists.⁵² The Act also defines what acts of terrorism means and enumerates the acts, which constitute terrorism in its Section 1 (3). The Act also places certain powers on the office of the National Security Adviser and others on the Attorney General of the Federation about combating terrorism.⁵³ There is also in this Act, a provision for designation of organisations as terrorists' organisations, which is similar to the provision in the Anti-Terrorism and Effective Death Penalty Act (AEDP), 1996 of the US.⁵⁴ This provision empowers the Attorney General, the National Security Adviser or the Inspector General of Police, on the approval of the President to make an application to the court, *ex parte* and in chamber, for a group to be proscribed as a terrorist organisation. However, there are identifiable existing top gaps in this Act as well as other legal regimes on terrorism in Nigeria that make it difficult to effectively wipe out Boko Haram and their activities in Nigeria. Some of the top gaps shall be now be identified and examined.

Unenforceability of Treaties on Terrorism in Nigeria

One of the top gaps in the legal setups on terrorism in Nigeria is the unenforceability of treaties in Nigeria until domestication. All international legal regimes, which include treaties on terrorism (conventions, protocols, resolutions) are binding and in force within states, which are not only parties to them, but have ratified and domesticated them thereby making them parts of their domestic legislations, or otherwise as provided for in their various domestic legislations. Nigeria is a signatory to, and has ratified or acceded to, all these instruments on terrorism.⁵⁵ However, there is a lacuna in the international treaty network against terrorism

⁴³ Article 4 of the 1999 International Convention for the Suppression of Financing of Terrorism amongst others.

⁴⁴ The EFCCA Cap E1 LFN 2004 s 15 and 46; the TPA 2011 as amended and MLA 2012 Cap M18 LFN 2004. Some other existing laws in Nigeria, which had made certain particular acts of terrorism criminal, include the Criminal Code Act (CCA), Cap C 38 LFN, 2004 ; Penal Code Act (PCA) Cap P 3 LFN 2004 ;Explosives Act, Cap E 17 LFN 2004; Firearms Act, Cap F 28 LFN 2004 ; Immigrations Act, Cap I 1 LFN 2004 ; Public Orders Acts, Public Orders Act, Cap P 42 LFN 2004; and the Nigerian Security and Civil Defence Corps Act 2007 (NSCDCA), Cap. N 146 LFN 2004, s 3.

⁴⁵ Cap E 1 LFN 2004.

⁴⁶ Ibid s 15.

⁴⁷ S. 15(3).

⁴⁸ MLA 2012 Cap M18 LFN 2004. s. 15.

⁴⁹ Ibid 3

⁵⁰ MLA s.15(3).

⁵¹ TPA 2011 as amended.

⁵² Ibid s. 1

⁵³ Ibid s. 1A.

⁵⁴ TPA s 2. Cf. AEDP Act No. 104-132, 110 Stat. 1214.

⁵⁵ Ayoade M. Adedayo, 'Constitutional Democracy and Acts of Terrorism: The Nigerian Perspective' (2013)3 University of Ibadan Journal of Public and International Law, 1, 10.

from the Nigerian perspective.⁵⁶ This lacuna exists because, where Nigeria is a signatory to any treaty and it is ratified, such treaty remains not binding and/ or in force until it is domesticated. The application of such treaty is governed by section 12(1), CFRN 1999 as amended. This section provides that no treaty between Nigeria and any other country shall have force of law except to the extent, which the National Assembly has enacted any such treaty into law. Therefore, the domestication of international normative framework on terrorism in Nigeria requires an implementing statute to transform the treaty into municipal law either by way of legislative incorporation or by way of automatic incorporation.⁵⁷ This may however be through its substantive provisions; by reference to the treaty in question; or re-enactment of the treaty's provisions.⁵⁸ The domestication of any international treaty by the Nigerian State is an international obligation, which Nigeria is under duty to perform based on *opactasunt servanda* principle as provided for under Article 26 of the Vienna Convention on the law of treaties, 1969.⁵⁹ As such, where the Nigerian state fails to domesticate any of these treaties, such treaty remains not applicable or enforceable.

History has shown that the Nigerian State has been very slow to domesticate treaties. As such, these treaties, not yet domesticated, remain inoperative in Nigeria in spite of the gains to be achieved from their application in combating terrorism. For instance, the Convention on Offences and Certain other Acts committed on Board Aircraft, 1963, was ratified on 7th April, 1970; the Protocol for the Suppression of Unlawful Acts of Violence at Airport Serving International Civil Aviation, Supplementary to the Convention for the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1988 was ratified on 25th March 2003; the Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991 was ratified on 10th May, 2002; and the International Convention for the Suppression of the Financing of Terrorism 1999 was ratified on 16th June 2003. None of these treaties was domesticated as at the time of ratification and were therefore not in force in Nigeria until sometime in 2011 and 2013 when they were domesticated by virtue of re-enactment and reference.⁶⁰ It is the unenforceability of these treaties in Nigeria until they are domesticated that operates as a serious shortcoming of these treaties on terrorism, which consequently frustrates the war on terror in Nigeria as we cannot take the benefits of these treaties before domestication to improve on our national security architecture and, by extension, national development.

Absence of Strict (and Effective) Anti-Terrorism Policy

Government policies are controlled, shaped and strengthened by laws. Where there is a gap in the law, the policy of government is left unguarded and therefore likely to fail to achieve its set objectives. In the international legal regimes on terrorism, there are solemn affirmation and reaffirmation of unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whoever committed.⁶¹ There are also demands that terrorism be punished as a crime. For instance, in UN Resolution 1373 of September 28, 2001, all member States of the UN and all peace-loving nations of the world are enjoined to enact new legislations or amend existing ones to criminalise all manifestations or acts of terrorism and prescribe appropriate punishment.⁶² Therefore, these treaties demand that persons alleged to have committed acts of terrorism or attempted to have committed them be punished in accordance with the law. The offender is demanded to either be prosecuted by the state in custody of the offender or to be extradited to the country interested in the prosecution of the offender, after due application has been made. There is absolutely no alternative to the prosecution of the offenders on terrorism by any of the treaties. In addition, within the domestic legislations on terrorism in Nigeria, which were enacted in compliance with the international legal regimes on terrorism, there is no alternative to prosecution and punishment of terrorists. Thus, the grant of amnesty to terrorists as constantly used by the Nigerian State, for instance, is not known to these treaties as well as the domestic legislations on terrorism in Nigeria. The constitutional provisions, which empower the President and the Governors to grant pardon to persons involved in the commission of offences, do not however, clearly excluded terrorists from enjoying the benefit of the exercise of these powers.⁶³ Thus, there is no established anti-terrorism policy supported by any existing law prohibiting the grant of amnesty to terrorists. Therefore, we have amnesty granted to terrorists, which enables them to come out from detention and regroup, reorganise and continue in the perpetration of the terror war. Sometimes instead of counter operations to rescue abducted

⁵⁶ United Nations Office on Drugs and Crime Working Document, A Review of the Legal Regime against Terrorism in West and Central Africa: Angola, Benin etc. (New York: United Nations, 2009) at 2-3, and 138.

⁵⁷ Joy Ngozi Ezeilo, *Women, Law and Human Rights- Global and National Perspectives* (Acena Publishers 2011)157.

⁵⁸ Akindele Babatunde Oyeboode, *Of Norms, Values and Attitudes: The Cogency of International Law*. University of Lagos, Inaugural Lecture Series 2011, at 40-41.

⁵⁹ United Nations, Vienna Convention on the law of Treaties, 23 May 1963, United Nations Treaties Series, vol. 1155, p. 331.

⁶⁰ TPA s 40.

⁶¹ Christian Akani, '2011 Terrorism Act in Nigeria: Prospects and Problems' (2013) 2 (8) International Journal of Arts and Humanities, 218, 219.

⁶² UN Security Council Resolution 1373 of 2001; S/RES/1373/ (2001); Article 2 (a) of the AU Convention on the Prevention and Combating of terrorism 1999, which had earlier made this provision.

⁶³ Constitution of the Federal Republic of Nigeria 1999 as amended, ss. 175 and 212.

persons from the terrorists, the Nigerian State engages in negotiations with the terrorists resulting in prisoners' swaps and payments of ransoms to the terrorists, which the terrorists plunged back into their acts of terrorism. This gap is what has been influencing the Nigerian State to deal with terrorism on one hand with the use of the security forces in a counterterrorism war, and on the other hand grant of amnesty to the terrorists. This contributes to create the complexities that make terrorism difficult to be effectively wipe out in Nigeria with great impacts on national security and development.

In addition, the choice to negotiate with terrorists and to grant them amnesty is a manifestation of the fear factor in the face of absence of a strict anti-terrorism policy. In their trepidation, the Nigerian State gives the terrorists higher bargaining power against the developmental considerations of Nigeria. Thus education, which is one of the indices of development, is affected because of the fear factor that culminates into grant of amnesty. Schools are usually closed down sometimes for weeks or more because of the security threats from Boko Haram.⁶⁴ Closing down of schools for fear of Boko Haram attack is a wrong manner of responding to act of terror. It gives out the State and sends a strong signal of weakness to the world. This automatically affects development advancement in the education sector as well as other sectors.

Conflict in the Laws and Authority

In the EFCCA, s. 15 and 46 prohibit terrorism and define terrorism respectively. Accordingly, these two sections in the EFCCA were inadequate to be used in combating terrorism in Nigeria, hence the enactment of the TPA. The definition of terrorism in this Act is too restrictive, the acts constituting terrorism within this Act are also not clearly specified, and they are equally linked to the violation of the Criminal Code Act (CCA) or Penal Code Act (PCA).⁶⁵ This link makes it difficult for one to establish that an act constitutes terrorism without showing that such an act is equally prohibited under the CCA or the PCA. In addition, the EFCCA provides for life imprisonment as the punishment for the offence of terrorism. This is at variance with death sentence that is provided for in the principal legislation, the TPA. Similarly, the MLA prohibits the offence of terrorism and terrorist financing but fails to enumerate those acts, which constitute terrorism or terrorist financing. The punishment for the offence relating to terrorism under this Act is imprisonment between 7 to 14 years. Moreover, this is different from what is obtainable in the TPA and the EFCCA. Therefore, within Nigeria, we have three different legislations prohibiting acts of terrorism or acts relating to or connecting with terrorism, with different punishments provided in them and without a clear-cut established link amongst them and the TPA, which is the principal legislation. Thus, these variations provide a leeway from which a terrorist may be given a soft landing, particularly where the terrorist is charged under the laws with lesser punishments amidst compromise, complicity and corruption on the part of the prosecution. These circumstances also contribute to weaken the fight against terrorism in Nigeria.

With regards to conflict of authority in the institutional system, the TPA, which is the principal legislation on terrorism in Nigeria, empowers the Office of the National Security Adviser to be responsible for coordinating all other security and law enforcement agencies. In addition, the Office of the National Security ought to support all relevant security, intelligence, law enforcement agencies and military services and to prevent and combat acts of terrorism in Nigeria and ensures the effective formulation and implementation of a comprehensive counter-terrorism strategy for Nigeria.⁶⁶ However, the Act, in its Section 1A (2) makes the Attorney General of the Federation, the authority for the effective implementation and administration of the Act in order to strengthen and enhance the existing legal framework to ensure conformity of Nigeria's counter-terrorism laws and policies with international standards and the United Nations Conventions on Terrorism. He is also required to maintain international co-operation, as required, for preventing and combating international acts of terrorism and to ensure the effective prosecution of terrorism matters for punishment of culprits. The creation of powers to be exercised by these two offices is without a comprehensive and clear-cut or itemised function attached to them. Notably, there are also, no clear-cut roles of the military and how they are to perform such roles in the Act. This sometimes results in conflict of authorities, concerning superiority of operation directives, disbursement of resources and collaborations with other countries in combating terrorism. All these also add up to frustrate the terror war with continuous impact on national security and development.

Impunity and abuse of Authority

The TPA provides for the proscription of a group of persons or organisation as a terrorist organisation. This could be done by an application made by the National Security Adviser or the Attorney General of the Federation or the Inspector General of Police, on the approval of the President, to the court *ex parte* and in

⁶⁴Damilola. S. Olawuyi 'Terrorism, Armed Conflict and the Nigerian Child: Legal Framework for Child Rights Enforcement in Nigeria'(2015) 13 The Nigerian Juridical Review, 14.

⁶⁵CCA, s 349 and s 365 criminalises acts against marine navigational safety and taking of hostages. Adedayo (n55) 14.

⁶⁶ Ibid s 1A. (1).

Chamber.⁶⁷ Unlike in the US, no reference is made to the National Assembly for approval before such group is proscribed or for validation after proscription. The powers provided here are therefore open to be abused as was done with the proscription of IPOB.⁶⁸ This is so because, in this Act, for a proceeding to be successful in court for the purpose of proscribing a group of persons or any organisation as a terrorist group, such persons or organisation (i) must be shown to have engaged in participating or collaborating in an act of terrorism or, (ii) must be shown to have engaged in promoting, encouraging or exhorting an act of terrorism, or (iii) must be shown to have engaged in setting up or pursuing acts of terrorism.⁶⁹ These are the conditions precedent required to have existed before such persons or organisations can be validly proceeded against for a proscription order to be made. Where these conditions are not present and a group is proceeded against before a court and it is so proscribed, it raises concerns on the rationale of such proscription and the achievement of the advantages of such proscription. Evidently, when an organisation is proscribed, for instance, the rationale is not only to cripple the operation of the organisation in the target state, but also to, amongst others, cripple all supports from within and outside the target state. Nevertheless, where countries outside the target states condemn and reject such proscription, the aim sought to be achieved is partially defeated. The consequent government crackdown on such organisation therefore exposes the target state to both national and international condemnation.⁷⁰ In addition, this surely affects national security and development of the Nigerian State. This is the case with the proscription of the Indigenous People of Biafra (IPOB) recently by the Nigerian State, a group that is considered by many not to have ever been involved in committing acts of terrorism in Nigeria. Thus, the President of the European Union, (EU), Mr. Jean-Claude Juncker, stated thus:

We are aware of the killings of Biafrans. It's time they are granted their wish for referendum... We condemn and reject the unilateral classification of Indigenous People of Biafra (IPOB) as a terrorist organisation. They have neither killed anyone or shot any bullet at anyone, they are only in a struggle for self-determination which they have been involved for long and which they are now victims of attack and murder in the course of military crackdown...⁷¹

Whereas it is debatable that IPOB is not, by its acts, accommodated under the TPA to be deserving of being proscribed as a terrorist group, it may not be true of a group like the Fulani Herdsmen, which have been involved in carrying out series of attack across the Nigerian State. Sadly, this group has not been proscribed by the Nigerian State as a terrorist group, in spite of several violent attacks carried out by them across the country, outcries made by Governors of affected states and the recent listing of the group at the global level as a terrorist organisation.⁷² This raises concerns on impunity and abuse of authority on the part of the executive in the terror war with regard to matters which has serious impact on national security and development in Nigeria.

All these existing top gaps in the legal and institutional setups shown above could be addressed by alterations made in our laws, which would help reshape the national security and development architecture of Nigeria. This shall form part of our recommendations which shall be considered in the next part of this work.

Premises and Recommendations.

Non-enforceability of treaties on terrorism unless it is domesticated denies the Nigerian State from taking the benefits of such treaties in dealing effectively with terrorism. This keeps other countries of the world waiting for Nigeria to seek collaboration to fight the terror war and/or watch to see how far Nigeria can go without such collaborations. The unreasonable delay before domestication of these treaties also makes it difficult for Nigeria to effectively wipe out terrorism, which seriously affects National Security and development. To remedy these situations, s. 12 of the Constitution, dealing with domestication of treaties should be amended. A short time certain within which a given treaty should remain after ratification without domestication should be provided therein. It should also be if after such short time certain without domestication, such treaty becomes enforceable and therefore binding. A similar arrangement is obtainable in some countries of the world where there are legal regimes providing for automatic enforcement of treaties once ratified.⁷³ This will dispense with domestication of treaties on terrorism by enactment when it is unreasonably delayed and sometimes not undertaken at all.

⁶⁷TPA s. 2.

⁶⁸ Ibid s 2. Cf. The procedure in US where the secretary of state is authorised after considering the activities of the group to amount to terrorism and as affecting US citizens or national security, is obliged to proscribe it and to send a notice to both houses of legislature for such proscription to be made valid or invalidated by the houses. The AEDP Act.

⁶⁹ Ibid s. 2(1)(a)(b) and (c).

⁷⁰ EU Condemn and Caution Nigerian Military, Rejects the Declaration of IPOB As A Terrorist Organisation. <www.igbonews.co.uk/eu-condemn-and-cauti...> accessed 21 December 2017.

⁷¹Jean-Claude Juncker, 'We Are Aware of Biafrans, Its Time They Are Granted Their Wish...' <<https://jayreporters.com.ng/2017/12/08/>> accessed 20 December 2017.

⁷²Rose Troup Buchanan, 'Global Terrorism Index: Nigerian Fulani Militants named as fourth deadliest terror group in World' <<http://www.independent.co.uk/.../Africa>> accessed 27th January, 2018.

⁷³Ezeilo (n56)

Alternatively, this constitutional provision should be amended to make a treaty automatically enforceable in Nigeria once ratified. This would enable the Nigerian State to take the benefit of such treaties and in time for dealing with terrorism.

The Nigerian State has struggled with terrorism for too long and there seems to be no end in sight. Our policy on terrorism is not working. The absence of a strict anti-terrorism policy is making Nigeria blow hot and cold on terrorists. It paves the way for negotiations, payment of ransoms, grant of amnesty, rehabilitations and reintegration of terrorists into the society in spite of condemnations by all known legal norms on terrorism. This is what breeds corruption compromise and sabotage by officials of governments involved in counterterrorism in Nigeria. Accordingly, a strict anti-terrorism policy - never to negotiate with terrorists or yield to their demands - should be established and supported by law. Law should prohibit payment of ransoms, grant of amnesty to terrorists or rewarding terrorism in any form. This would surely address the issues of corruption, compromise and sabotage that make it difficult for terrorism to be effectively wipe out in Nigeria. In this way, terrorist would therefore be denied the materials for carrying out terrorism. Denying terrorists, the required human and material resources to carry out and sustain terrorism would reduce the massive killings in Nigeria and put national security in good shape. Security at our borders, airports and seaports would be strengthened since there would be no option, but to fight and defeat the terrorists.

Increased security presence, on a permanent basis, at all border communities in Nigeria would nip sabotage in the bud, since there would be no more reward for terrorism. This could be done by the establishment of military units and police posts at the border communities in Nigeria. This will help curb gunrunning, human trafficking and trafficking in drugs and other items used by the terrorists to raise funds for terrorism, which continues to fuel the fire of terrorism in Nigeria. In addition, the non-existence of an established and maintained strict anti-terrorism policy, supported by legislative enactment, creates the fear factor that drives the Nigerian State to negotiate with terrorists as has been done till today. This should be eliminated. Education, which is one of the indices of development, should be given due attention. Closing down of schools for fear of Boko Haram attack is a wrong manner of responding to act of terror and should be discouraged. In its state, security network within and around educational institutions and any other institution should be strengthened and kept on high alert and at all times.

The conflicts in the legal setups and the institutional setups on terrorism should be resolved to enable smooth and effective application of terrorism laws in Nigeria. The variations of what constitutes terrorism and in the punishment for terrorism, which exists in all the three extant terrorism laws in Nigeria, should be harmonised. As such, the provisions relating to terrorism in the EFCCA and the MLA should be repealed to allow for the operation of the TPA only, in dealing with terrorism in Nigeria. The function and functioning of the Attorney General as are expected to be different from what are to be undertaken by the office of the National Security Adviser, should be clearly spelt out and itemised in the Act. The office of the National Security Adviser should be restricted to all activities relating to the actual operations of counterterrorism, except matters of prosecution, extraditions for prosecution and those relating to legal proceedings and the courts. He should be entitled to seek clarifications on any matter of law from the Attorney General while establishing collaborations with other countries concerning intelligent gathering, training of security personnel, acquisitions of equipment and other dealings relating to combating terrorism. Importantly, the actual role of the military in the counterterrorism war and how they are to achieve this role should be clearly spelt out in the Act. This would eliminate conflict of authority, which slows down activities leading to improved strategies in counterterrorism in Nigeria. Ultimately affects National security and development.

Concerning section 2 of the TPA, which empowers the President through his agents to make an application, on his approval and to place same before the court in chambers in order to get an organisation or group of persons proscribed as terrorist organisation, it is recommended that this section should be amended. He who wears the shoes knows where it pinches. The Governors of the States, who are deemed to be the chief security officers of the State and whose people are affected, should be given powers to make an application to the National Assembly, for a group to be proscribed, if the group is involved in the commission of acts of violence against innocent civilians or against the States but without any regard to the safety of the civilians, which are accommodated in the TPA as terrorist acts. Upon consideration and conclusion by the National Assembly, within a reasonably stipulated period, that the group has been involved in the perpetration of such violence and that their continuous existence is a threat to the safety of Nigerian citizens and national security, such group can then be recommended by way of resolution for the President to proscribe same as a terrorist organisation. In this way, the people, through their representatives, would be involved in deciding which group should be proscribed or not, since they are the ones affected by the violence. This would also help to check the excesses of the executive, prevent impunity and abuse of authority on the part of the executive. It would also eliminate international condemnation and would help to make it simple to deal with terrorism in Nigeria.

II. CONCLUSION

In the light of the foregoing, therefore, this article has within the context of existing extant literature, espouses the view that beyond military counterterrorism measures, the Nigerian State can further decimate acts of terror as perpetuated by the Boko Haram group through the domestication of several existing legal frameworks as have been set up, as well as adopted by other countries in the fight against terrorism. Like have been articulated in preceding paragraphs, a weekend national security, have come with many dire consequences for the Nigerian State, most especially since 2009, when the Boko Haram group commenced their acts of terror. Some notable rippling effect of their terror acts include but not limited to the decimation the population, crippled development advancement, internally displaced persons, as well as the Nigeria losing billions of dollars on the purchase of arms and ammunitions for the fight against terrorism. Thus, addressing these concerns shown as top gaps in the existing legal and institutional set ups, as recommended in this work, would surely help to effectively wipe out the enduring act of terror in Nigeria.

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