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## Challenges of Implementation of Anti-Terrorism Legislation in Nigeria

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### Abstract

*There is yet a dearth or scarcity of judicial authorities on the study in Nigeria, as our courts have not been sufficiently engaged to proffer views and opinions on it. Terrorism has been seen as the intentional use of violence and fear against a given population mostly civilians. In the recent years, Nigeria has had unrest due to terrorist attacks by the Boko Haram, Fulani Herdsmen, Bandits, Unknown Gunmen and the likes. Despite the existence of Anti-terrorism Legislation in Nigeria, there seem to be not much done in the arrest and prosecution of the terrorists. The general purpose of this study is to examine the challenges of implementation of Anti-Terrorism Legislation in Nigeria. In the course of this research work, the major finding of this work is the conflicting role of the National Security Adviser and the Attorney General of the Federation. The 2013 Act stated that the office of the National Security Adviser shall be the coordinating body for all security and enforcement agencies under this Act while it further stated that the AG of the Federation shall be the authority for the effective implementation and administration of this Act. The role of the National Security Adviser and Attorney General of the Federation under this Act is overlapping and is capable of frustrating the working of this Act especially where the occupants of*

*these offices want to show the superiority of the offices they occupy. Therefore, recommendation was made for the amendment of Section 1A(1) and (2) of Terrorism (Prevention) Act, 2013 which is on the powers of the National Security Adviser and that of Attorney General of the Federation to clearly delineate their roles and functions in order to strengthen the fight against terrorism. Also, recommendation was made for ten years imprisonment for any person that pays ransom for a kidnapped victim to be released.*

**Keywords:** terrorism, legislation, national security adviser, attorney general of the federation

## **1. Introduction**

This topic is significant in view of the security challenges that have taken over the center stage in the management of security of lives and property in Nigeria recently. Globally, the issue of security, peace and development is at the center stage of local, national and international discourse. States, especially developing ones are constantly in search of security.<sup>1</sup> On Tuesday 11<sup>th</sup> September, 2001, four commercial planes were hijacked by terrorists. One hijacked passenger Jet leaving Boston, Massachusetts crashed into the north tower of the World Trade Centre at 8:45am setting the tower on fire. Eighteen minutes later, a second hijacked airline, United Airlines Flight 173 from Boston, crashed into the south tower of the World Trade Centre and exploded: Both airlines caused massive structural damage to the towers. Later that morning both the north and south towers collapsed, plummeting into the streets below. At 9:43am, a third hijacked airliner (American Airlines Flight 93) crashed in

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<sup>1</sup> A.O. Ojeniyi, *Terrorism in Nigeria and Group Activities*, 2<sup>nd</sup> Edition,(Lagos: Maxt Publishing Ltd, 2003) p.45.

Somerset county, Pennsylvania, south east of Pittsburgh.<sup>2</sup> The crashing of these hijacked airliners into buildings and on land was the worst terrorists attack in the history of the United States. This led to the loss of nearly 3000 innocent lives and damaged property running into billions of dollars.

The terrorist attacks not only served as a chilling reminder of the dangers inherent in international terrorism but also sent shock waves all around the world. The attacks were unequivocally condemned by States and by international organizations. On 12<sup>th</sup> September 2001, the United Nations General Assembly passed a resolution condemning the heinous acts which had resulted in loss of lives and collateral destruction.<sup>3</sup> While showing solidarity with the people of the United States, the United Nations called for international cooperation to bring to justice the perpetrators, organizers and sponsors of the crimes committed on 11<sup>th</sup> September 2001. On September 12<sup>th</sup> 2001, the United Nations Security Council also condemned the terrorist acts expressing them as a threat to international peace and security.<sup>4</sup>

The Council called upon all States to work together urgently to bring to justice the perpetrators of the crime, organizers and sponsors of the terrorist attacks. Further, Resolution 1373 was

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<sup>2</sup> Information taken from CNN. 11<sup>th</sup> September 2001: chronology of terrors <http://edition.cnn.com/2001/us/09/11/chronology.attack>. Retrieved on 12/08/2018 at 11:40am.

<sup>3</sup> GARes.56/1(12<sup>th</sup> September, 2001) [www.un.org/documents/ga/dQcs/56/agresolution.htm](http://www.un.org/documents/ga/dQcs/56/agresolution.htm) Retrieved on 12/08/2018 at 11:50am.

<sup>4</sup> S/RES/1368 Adopted by the Security Council at its 4370<sup>th</sup> meeting. UNODC: Universal Legal Framework against Terrorism, Publishing and Library Section, United Nations office, Vienna, February, 2012, pg. 2.

adopted on 28 September 2001. Under the Resolution, the Security Council required States to adopt and implement the existing international legal instruments on terrorism, and to prevent and suppress the financing and the freezing of funds and financial matters.

It also required that States allow one another assistance for criminal investigations and proceedings relating to the financing or support of terrorist acts.<sup>5</sup> According to the resolution, States are also to prevent the movement of terrorists or their groups by effective border control. The Security Council also determined that States shall intensify and accelerate the exchange of information regarding terrorist actions or movements like traffic in arms and sensitive materials, forged or falsified documents, use of communications and technologies by terrorist groups: and the threat posed by the possession of weapons of mass destruction.

The former President of Nigeria Goodluck Jonathan said that the international community could assist Nigeria through the use of foreign aid earmarked to create economic opportunities in the country's northern regions.<sup>6</sup> Moreover, for countries to give aid they would have to be sure that the money is being used in its intended manner. With the current state of corruption in Nigeria, that is anything but certain. Transparency International ranks Nigeria 134th on its Corruption Perceptions Index alongside Bangladesh, Togo, Zimbabwe, and Azerbaijan not exactly paragons of good governance.<sup>7</sup> The challenges

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<sup>5</sup> Security Council SC/7158 (4385<sup>th</sup> Meeting) 28 September 2001. Security Council unanimously adopts wide-ranging Anti-Terrorism Resolution calls for suppressing Financing, Improving International Co-operation. Resolution 1373 (2001) Also created the Committee to Monitor Implementation.

<sup>6</sup> V. Chima "North East Crisis more of Islamist Extremism" *New Telegraph Newspaper* April 15<sup>th</sup>, 2013, p.4.

<sup>7</sup> Transparency International: Matters arising. Retrieved from

facing Nigeria are serious, and the solutions are scarce. A local, domestic terrorist group has now grown into something larger and much more dangerous. The Boko Haram sect could bond with extremist movements like al-Qaida in the Islamic Maghreb. President Muhammadu Buhari said, the Boko Haram sect, has metamorphosed into a new terror network in the form of killer herdsmen in Nigeria.<sup>8</sup> The expansion of al-Qaida from the Maghreb into sub-Saharan Africa is a scary thought; one that concerns not only Nigeria, but all other countries that could be a target of al-Qaida, Given the origins of the group, the solution will not come from government security forces. If the leadership of Boko Haram is eliminated, another group will simply step up to take its place. Nigeria must look within itself to fix its social, economic, and political problems. Boko Haram is a symptom of alienation in Nigeria's north, something the U.S. and other countries can do little to address. Extremism is bred in inequality and insufficient economic opportunity, and the government of Nigeria must deal with these problems to achieve peace and security within their country.

The need to feed livestock of herdsmen necessitates their migration from their communities due to inadequate pastures to other communities and this has led to the trespass of these pastoralists to the farmlands of local agriculturalists and destruction of their crops thereby leading to conflict and killer herdsmen menace. The Nigerian nation has persistently been in a fierce vortex and seemingly boiling cauldron of terrorism.

Nigerian Parliament while passing Anti-Terrorism Bill avoided the difficulty associated with the acceptance of a general

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<http://thewillingnigeria.com/opinions/3467>.

<sup>8</sup> F. Onuoha The Changing Faces of Terrorism *Punch Newspaper*, November 6<sup>th</sup>, 2017, p. 12.

consensus on the concept of terrorism and went further to define a terrorist as “anyone who causes an attack upon a person’s life which may cause serious bodily harm or death; kidnapping of a person; destruction of government or public facility transport system, an infrastructural facility including an information system, a fixed platform located on the continental shelf, public plaza or private property likely to endanger human life or result in major economic loss”. The bill also covers possession of or use of explosives as well as research into the development of explosives including biological and chemical without lawful authority. It stipulates a minimum of ten years imprisonment for anyone found in the training of potential terrorists, passing or withholding terrorist information, aiding or harboring terrorist and funding terrorist activities. The bill also stipulates a maximum of 20 years imprisonment or death penalty, in case of loss of life in any terrorist act.<sup>9</sup> Generally, the involvement of attacks on civilian population, police, military and other security agencies coupled with massive destruction of government facilities and civil properties like the oil installations, police stations, prisons, churches, mosques, and shops and so on. There could be no stability in the society where social injustice, corruption and exploitation permeate the society.

African Countries including Nigeria were therefore brought under intense pressure through diplomatic and Security necessity, to enact or amend their existing criminal laws to punish acts of terrorism. This was made pertinent by the establishment of a counter terrorism committee by the United Nations Security Council. Meanwhile, the National Assembly of Nigeria in February

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<sup>9</sup> K. Akinlola, “Senate Passes Anti-Terrorism Bill”, *The New Telegraph Newspaper* February 18<sup>th</sup>, 2011. p. 9.

2011 passed the Terrorism Prevention Act, which the then President of Nigeria, Good Luck Ebele Jonathan Signed into law. This therefore made Nigeria to join other League of Nations determined to fight terrorism. The counter terrorism committee was established by the Security Council Resolution 1373 and was adopted unanimously on 28<sup>th</sup> September, 2001 to monitor the implementation of Resolution 1373 by member States.<sup>10</sup> According to the former Leader of the African Union terrorism violates international law including the charter of the United Nations, the principles and values enunciated in the constitutive act and the protocol relating to the establishment of the Peace and Security Council (PSC).<sup>11</sup>

However, with rapid increase in bombing and terrorist acts in the country, there was a dire need for a comprehensible legal framework guarding against terrorism in Nigeria. This brought about the sponsoring of the Anti-terrorism bill in the National Assembly. The then committee chairman, Senator Nuhu Aliyu explained that the fight against terrorism has become a global fight and Nigeria as a member of international community seeks to play an important role in combating same. The bill was signed into law by the then President of Federal Republic of Nigeria Good Luck Ebele Jonathan in June 2011. However, Terrorism Prevention Act 2013 was enacted to cure the defect of 2011 Act. Notwithstanding the existence of Anti-terrorism legislation enacted in Nigeria, we are still experiencing challenges as regards its implementation.

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<sup>10</sup> I. T. Sampson, *Global Terrorism: Contending Perspectives on the Necessity for Comprehensive Legislation* (Chicago: Gills Publishing Ltd, 2002) P.10.

<sup>11</sup> A. Konare, A Report on Preventing and Combating Terrorism in Africa, available at [www.httpAfricaUnion.org](http://www.httpAfricaUnion.org).

## **2. Problems of Implementation of Anti-Terrorism Measures in Nigeria**

### **2.1 Inhibitions to Counter Terrorism Measures in Nigeria**

There are certain factors that militate against counter terrorism measures and they include:

1) **Porosity of the borders:** This is an impediment to counter terrorism measures in Nigeria. While Nigeria's border problem is related to colonial history, its porosity has been exacerbated by the failure of succeeding governments to properly administer these borders. There are instances where many of these weapons come from war-torn countries in and outside

Africa. It is against this backdrop that the former president of Nigeria, Goodluck Jonathan rationalized that his imposition of a state of emergency in Borno, Adamawa and Yobe states was to mop up arms that was smuggled into Nigeria from the Libyan uprising when he stated the following:

We must comb the whole place to seize all these weapons and so on. A lot of free weapons come in because of the Libya crisis. We must seize them. They are illegal weapons and must be seized and you cannot do that without declaring a state of emergency to enable the military enter any house, whether it is a residential building, it is a church, a mosque, a shrine, anywhere, hotel, anything that we suspect. We will be able to

enter and seize these  
weapons.<sup>12</sup>

From the above narrative one can postulate with some West Africans that 'when the war ends, the guns remain. After conflict, small arms are recycled for use in new conflicts and crime at home, or sold to other West African countries for use in new conflicts or to prolong ongoing ones.

Despite the termination of most conflicts in the sub-region, smuggling and the illicit trade in small arms are reported to be on the increase. Others have found that many of the arms smuggling rings operate out of Cameroon, Equatorial Guinea and Nigeria.<sup>13</sup> The smugglers use speed-boats to connect to the high seas, and then ferry the arms back to shore. Niger Delta region of Nigeria is a classic example; arms of various shades are brought into Niger Delta from various locations. Most of the weapons—such as the Russian AK-47, the German G-3, the Belgian FN-FAL, Czech machine guns and Serbian rocket-propelled grenades (RPGs)—are supplied by illegal dealers and sellers, who are paid through the proceeds of bunkered (stolen) oil. In October 2006 the Rivers State Police Commissioner arrested Chris Ndudi Njoku, a Nigerian businessman who specialized in importing and smuggling prohibited firearms into Nigeria.<sup>14</sup> In his possession were G-3s, AK-47s and Beretta automatic rifles. European dealers are also involved in the trade with their Nigerian counterparts,

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<sup>12</sup>Arms Smuggling in Nigeria Border. Available at [www.iss.co.za/uploads/TERRORISMREPORT.PDF](http://www.iss.co.za/uploads/TERRORISMREPORT.PDF) accessed on May 2<sup>nd</sup>, 2018.

<sup>13</sup> I. Thomas, The Dynamics of Arms Smuggling in Africa available at [www.terrorismanalysts.com/index.php/pot/article/view/152/html](http://www.terrorismanalysts.com/index.php/pot/article/view/152/html) accessed April 3<sup>rd</sup>, 2018.

<sup>14</sup> D. Omoniyi, “Smuggling of Arms in Nigeria ” *Leadership Newspaper* August 17<sup>th</sup>, 2015. p. 8.

but rarely have to face justice. Legal laxity in the region has increased the spate of arms proliferation. The deterioration of many West African states' capacity to enforce the rule of law has blurred the boundaries between legal and illicit markets, enabling a thriving trade in Small Arms and Light Weapons.

2) **Extra Judicial Killing by Security Agencies:** This is a serious challenge of counter terrorism measures in Nigeria. The Nigeria 1999 Constitution stipulates that: Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a Court in respect of a criminal offence of which he has been found Guilty in Nigeria.<sup>15</sup> Also the African Charter on Human and Peoples' Rights stipulates that: Human rights are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.<sup>16</sup> In the same vein, the International Covenant on Civil and Political Rights stipulates that: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.<sup>17</sup> Despite the protection for the right to life provided for by national, regional and international instruments, cases of extra-judicial, summary and arbitrary executions by the Police and other law enforcement agencies are still prevalent in Nigeria. The entrenchment of democratic rule since 1999 has not significantly reduced this practice. The frequent issuance of 'shoot-at-sight' orders by Government authorities during or upon apprehension of breakdown of law and order has worsened the situation. Worthy to observe is the extra judicial killing of Mohammed Yusuf by Nigeria Police in 2009 triggered the Guerrilla

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<sup>15</sup> See Section 33, Constitution of the Federal Republic of Nigeria, 1999.

<sup>16</sup> See Article 4, African Charter on Human and Peoples' Rights.

<sup>17</sup> Article 6(1), International Covenant on Civil and Political Rights

war between Nigeria government and the terrorist. Prolonged years of military dictatorship in Nigeria entrenched a culture of disregard for human life, particularly on the part of security and law enforcement agencies. This attitude has largely remained unchanged, seven years after the advent of democracy. Cases of extra-judicial, summary and arbitrary executions have been persistently recorded across the country. Another good example of case of extra-judicial, summary and arbitrary executions was reported in April 12<sup>th</sup>, 2016; Umar Ibrahim Danjuma a 23 years old student of University of Maiduguri was innocently killed at Damboa Road Maiduguri by Policemen on patrol on the April 8<sup>th</sup>, 2016 on the allegation that they received an anonymous distress call that some terrorist were operating around the area. The Police claimed that upon getting to the area, they found the suspected terrorist in an uncompleted building. He started to run away and the deceased who tried to jump over the fence was shot dead. The body was taken to the Police Station and eventually to the Hospital where he died.

However, the account of the incident by the deceased family, friends and eyewitnesses contradicted by the account of the police.

### **3) The overlapping Roles of the National Security Adviser and the Attorney General**

**of the Federation:** The 2013 Act<sup>18</sup> stated that the office of the National Security Adviser shall be the coordinating body for all security and enforcement agencies under this Act while it further stated that the AG of the Federation shall be the authority for the effective implementation and administration of this Act. The role of the NSA and AGF under this Act is overlapping and is capable of frustrating the workings of this Act especially where the occupants of these offices want to show the superiority of the

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<sup>18</sup> Terrorism Prevention Act, Section 1

offices they occupy. This is a potent danger in the administration of the Act and if not looked into may derail the fight against terrorism.

4) **Indefinite Detention of Terrorism Suspects under the Act:** The 2013 Act<sup>19</sup> by providing for the detention of a suspect for up to 90 days is derogatory of the fundamental human rights of the person. Any law that tends to infringe on the rights of a suspect unduly should not be allowed to stand, after all, fighting terrorism is not at odds with the inalienable rights of the people; rather each should be made to reinforce and complement the other.

5) **Conflicting punishment of the offence of kidnapping in Criminal Code Act and Terrorism Prevention Act:** Even though the Criminal Code Act did not particularly mention terrorism but contains the offence of kidnapping, which is in the Terrorism Prevention Act of 2011 as constituting Act of terrorism. The effect of this is that an accused person could be charged either or all of the legislation, depending under which law the suspect is charged; he may get a lesser punishment for the offence if convicted. This is because, kidnapping under Criminal Code Act carries ten years imprisonment<sup>20</sup> as against 20 years imprisonment provided under Terrorism Prevention Act, 2011 (as amended).<sup>21</sup>

6) **Payment of ransom for kidnapped victims:** Payment of ransom for kidnapped victims pose a serious danger to the implementation of anti-terrorism legislation in Nigeria. This is because kidnapers take advantage of this negative practice by some Nigerians thereby making it a lucrative business. This kidnap kingpins demand as much as hundred million as ransom to release their victims.

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<sup>19</sup> Terrorism Prevention Act, Section 27

<sup>20</sup> Criminal Code, Cap C. 38, LFN, 2010.

<sup>21</sup> Section 1(c)(ii) of Terrorism Prevention Act, 2011 (as amended).

### **3. Recommendations**

1) **Amendment of the Provisions of the Law:** to strengthen the fight against terrorism, the following Sections of terrorism law and Constitution have to be amended.

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

2) **Harmonization of Terrorism Prevention Act to be in tandem with other cognate legislation:** this is necessary because the enactment of Terrorism Prevention Act did not repeal the punishment for the offence of kidnapping in Criminal Code Act, which is ten years imprisonment as against twenty years provided under the Terrorism Prevention Act.

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

4) **Strengthening of Traditional Institution and Its Integration:** there is need to strengthen the traditional system of our country, these traditional institutions instill morals on children and youths. Nigeria by nature is endowed with well-organized traditional institutions headed by Obas, Emirs as well as Igwes, Ezeogos in Igbo land respectively. Some of these traditional institutions are well structured just like pyramid. These institutions should be

properly integrated in our political system particularly to solve problems that touch the society directly.

5) **Redefinition of National Security Goal:** fundamentally; Nigeria needs to redefine its national security goal. The national security aspiration of Nigeria has for a long time centered on expelling external aggression and containing internal upheavals. Therefore; economic deprivation or imbalances; poverty; health concerns; international migration; environment or issues like desertification; gully erosion and other ecological problems should form part of the security agenda. This is critical to the resolution of the herdsmen/farmer's conflict which has led to killer herdsmen menace in Nigeria.

6) **Punishment for payment of ransom for kidnapped victims:** Any person found guilty by a competent court of paying ransom for kidnapped victims should be imprisoned for 10 years imprisonment.

#### **4. Conclusion**

So much have been done internationally, regionally and domestically to ensure that this evil called terrorism that has besieged this generation is curbed, so that people can go about their businesses without fear of being killed or kidnapped. It is of no doubt that, different set of terrorist group have emerged in Nigeria with Boko Haram leading the prawn.

There is no doubt that, effective Police action or Military action, within the precincts of law, can certainly reduce terrorism. We should therefore, not operate under the illusion that military action alone can eradicate terrorism completely. Unless terrorist groups themselves decide to abandon armed struggle, it may be difficult to overcome them by force, having regard to the asymmetric nature of their approach. The enactment of Terrorism

Prevention Act 2011 can be regarded as a right step, this is because Legislation alone cannot end terrorism.

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