

THE TERRORISM (PREVENTION) (AMENDMENT) ACT, 2013: AN ANALYSIS

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Abstract

This article critically evaluates The Terrorism (Prevention) (Amendment) Act, 2013 in order to distill its contents and place it side by side with other laws already promulgated in Nigeria so as to fathom its functionality. This work also considers the human rights values and compliance of the Act and its compliance with other international legal instruments and Conventions relative to Terrorism. It also highlights some of the provisions of the Act that simply repeat the provisions of the Criminal Code Act and Penal Code Act. The work regrettably concludes that the Act vests so much power on the Police and other enforcement agencies and warns on possible abuse.

Keywords: Terrorism, Violence, Niger Delta, Boko Haram, Weapons, Fear, Act.

Introduction

Nigeria today is bedeviled by a scourge of motley conflicts that are multifarious in content and character. These multiplicity and multifaceted conflicts are threatening the soul, unity and existence of the country. The citizens of Nigeria are overawed by the bravado and effrontery displayed by the perpetrators of these armed violence and conflicts. In the prosecution of their enterprise, these armed bearers do not spare anyone or group that cross their path. Their targets include a whole tribal community as witnessed in Jos, Plateau State and Kaduna; multinational companies' establishments and personnel as seen in the Niger-Delta; attack on government establishments (both Federal State and Local Government) as seen in the North East and Central of Nigeria. These include the attack on security agencies, school building, children and teachers, markets, garden parks, hotels, banks and attacks on churches and Mosques based on religion. In the wake of these leave countless deaths and destruction of private and public properties. Between 2013 and 2016, there have been a recorded two hundred thousand (200,000) deaths of men, women and children. The victims include both civilians and the military as well.

It is believed and rightly too, that the ferocity and audacity exhibited by these arm bearing individuals in carrying out these dastardly mayhem without let and hindrances can be attributable to the fact that there exist no effective legal frameworks and regulations towards punishment of these deviant behaviour. However the Criminal Code Act² and Penal Code Act³ provide for several offences which prohibit these types or nature of offences even

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² Volume 4 C38 Laws of the Federation of Nigeria 2004

³ (Northern States) Federal Provision Act, Vol. 13 CAP P3 LFN 2004

though these crimes are not particularly designated “terrorism”. For instance, kidnapping,⁴ murder,⁵ Attempt to destroy property by explosive,⁶ Arson,⁷ destroying or damaging an inhabited house or vessel with explosives,⁸ sending letters threatening to burn or destroy property, disturbing religious worship⁹ and attempt at extortion by threats.¹⁰ These offences enumerated above are also contained in the new legislation enacted for the efficient and effective prosecution of the conflicts that have dared and confronted the country in a massive manner.

These conflicts, in the nature and form they are designed and executed qualify within the meaning and definition ascribed to the word “terrorism”. The Nigerian government in order to positively and robustly respond to the challenges posed by terrorism and also to comply with its international obligations towards its mandate contained in different counter-terrorism instruments which the country has ratified, the National Assembly, in exercise of its powers conferred to it by the constitution¹¹ enacted into law an anti-terrorism legislation in 2011 cited as “Terrorism (Prevention) Act”¹² which was later amended in 2013 as “Terrorism (Prevention) (Amendment) Act 2013”. The threat posed to national peace, cohesion and stability by terrorism and insurgency is such that this Counter-Terrorism Act is needful in order to decisively tackle the menace and arrest the growing incidence. Also, in order to maintain international peace and security, the international comity of nations have adopted various international anti-terrorism instruments which member nations are obliged to ratify and domesticate in their countries.

This paper shall do an appraisal of the Terrorism (Prevention) (Amendment) Act 2013 for the purposes of discovering in actuality if the enactment satisfies the international benchmark in counter-terrorism or whether the Act is purely autochthonous in response to the country’s relative experience and challenges. In our analysis, this work will also consider the adequacy or otherwise of the content of the Act and whether maximum merit will be achieved in the fight against terrorism with the present template contained in the Act.

What is Terrorism?

The concept of terrorism has defied all universally acceptable definition. Different definitions are given by different persons and groups in accordance with the school of thought they are pupil to. As a result of this, between 1936 and 1981, there have existed about 109 various definitions of the concept of terrorism.¹³ The United States Department of Defence defines terrorism as:

⁴ Section 364 C.C and Section 271 P.C.

⁵ Sections 306 and 316 CC. and Section 220 P.C

⁶ Section 452 C.C and Section 337 P.C

⁷ Section 443 C.C and Section 336 P.C.

⁸ Section 451 (1) C.C and Section 337 P.C

⁹ Section 206 C.C and Section 212 P.C.

¹⁰ Section 407 C.C and Section 293 and 294 P.C.

¹¹ Section 4 (2) and 11

¹² No. 10, 2011

¹³ Okoronye, I, *Terrorism in International Law*, (Okigwe, Whytem Publisher Nigeria 2013) at 7

The calculated use of unlawful violence or threat of Unlawful violence to inculcate fear, intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.¹⁴

Also, terrorism can be defined as:

... A method of combat in which random or symbolic victims serve as an instrumental target of violence. These instrumental victims share group or class characteristics that form the basis for their selection for victimization.

Through the previous use of violence or the credible threat of violence other members of the group or class are put in a state of chronic fear. This group of people whose sense of security purposefully undermined is the target of terror. The purpose of this indirect method of combat is either to immobilize the target of terror in order to produce disorientation and compliance or mobilize secondary targets of demands (eg. a government) or targets of attention (eg. public opinion) to change their attitude or behaviour favouring the short and long term interest of the users of this method of combat.¹⁵

For Juliet,

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 from or opposition to the pursuit of political goals by the legitimate government authorities of the state whom they regard as unresponsive to the needs of certain groups of people.¹⁶

So, terrorism is a deliberate and systematic murder, maiming and killing of innocent people in a communal setting with the purpose of instilling fear for a required end. The targets of terrorism are not limited to human beings but also target some government forces and vital infrastructure. In the Nigeria's experience, the oil and gas pipelines breakages, the abduction of expatriate and indigenous oil workers, attack on military installation, Police Stations and Barracks, the attack of places of worship and international agencies' building and offices can conveniently be cogently tagged 'terrorism'. These vicious acts encapsulated above are perpetrated by Jama'atu Ahlis Sunnah Lidda' awati Wal-Jihad which in Arabic means 'People Committed to the Propagation of the Prophet's Teaching and Jihad', which is better known by its Hausa name as '*Boko Haram*,'¹⁷ Niger-Delta Militants (Movement for the

¹⁴ U.S. Department of Defence, <http://www.terrorism-research.com>, accessed 20th June, 2014

¹⁵ Alex P.S. *Political Terrorism: A Research Guide, Theories, Data Bases and Literature* (New Brunswick, New Jersey, Transaction Boxes, 1983) at 45

¹⁶ See Juliet, L (edited) "*Terrorism: A challenge to the State*", Oxford, Martin Robertson, 1981, P.5 cited in Okoronye, I. *Terrorism in International Law, supra*, at 8

¹⁷ Boko Haram was a local radical Salafist group which transformed into a Salafijihadist terrorist organization after 2009. "Boko Haram" means "Western Education or civilization is forbidden or sinful".

Emancipation of Niger Delta (MEND), Niger-Delta peoples Volunteer Forces of Niger, (NDPVFN), Niger-Delta Avengers, Maitatsine Religious Group in the North, Zango Kataf communal and religious group and much more. These generated the urgent action to legislate a cognate enactment to counter these rising monstrous orgy of blood-letting in the country.

Nigeria is largely a respected member of the United Nations, African Union and Economic Community of West African States (ECOWAS). In that light it has ratified nine out of the sixteen United Nations and African Union International treaties on counter terrorism. Those it has ratified include:

- (a). Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1970.
- (b). Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971.
- (c). Convention for the Suppression of Unlawful Seizure of Aircraft, 1970.
- (d). Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.
- (e). Convention on the Prevention and Combating of Terrorism, 1999.
- (f). Convention against Transnational Organized Crime, 2001.
- (g). AU Convention on the Prevention and Combating of Terrorism, 1999.
- (h). Declaration on Terrorism of 2001.
- (i). The Plan of Action for the Prevention and Combating of Terrorism by the Intergovernmental High Level Meeting of 2002.

One of the provisions of these treaties mandates state parties to endeavor to domesticate the treaties into their municipal laws especially countries that operate dualism in their constitutional law. In ardent compliance to these provisions and to key-in into global security participatory positioning, and most importantly, to confront and curtail the near breaking-point incidence of terrorism in the homeland, the Nigerian State felt it imperative to promulgate the Terrorism (Prevention) (amendment) Act, 2013.

Analysis of The Terrorism (Prevention) (Amendment) Act, 2013

The Terrorism (Prevention) (Amendment) Act 2013 is a revised version of the principal instrument which is the 'Terrorism (Prevention) Act, 2011.' The principal Act contains forty-one sections which provide for measures for the prevention, prohibition and combating acts of terrorism. The Act also provides for the penalties for any act of terrorism financing. The Act is divided into Eight Parts with a schedule thereto. The Act contains provisions for the effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of Financing of Terrorism. Part I provides for the definitional section, part II contains provisions relative to terrorist funding and property. Part III deals with Mutual Assistance and Extradition matters while part IV is on information sharing and Extradition and Mutual Assistance on Criminal Matters. Part V provides for investigation of cases including issuance of warrant, detention and custody of records. Part VI is on prosecution of offences, Jurisdiction of court and penalties while Part VIII contains

Miscellaneous Powers of the National Security Adviser, Inspector General of Police, Minister of Internal Affairs and the Attorney General and Minister of Justice including the schedule.

On the other hand, the Terrorism (Prevention) (Amendment) Act, 2013 contains twenty (20) sections which include: amendments,¹⁸ substitutions,¹⁹ deletions²⁰ and finally citation of the Act.²¹ Under the definition section, both the principal and amended Act did not proffer a clear, precise and unambiguous definition of terrorism. They rather draw up an enlarged and elaborate scope and content of what constitute acts of terrorism. *Section 1 (2) 2011* which is now *section 1 (3) of Terrorism (Prevention) (Amendment) Act 2013*²², defines an ‘act of terrorism’ to be:

... an act which is deliberately done with malice aforethought and which:

- (a). May seriously harm or damage a country or an international organization.
- (b). Is intended or can reasonably be regarded as having been intended to-
 - (i) Unduly compel a government or international organization to perform or abstain from performing any act;
 - (ii) Seriously intimidate a population;
 - (iii) Seriously destabilize or destroy the fundamental political constitutional economic or social structures of a country or an internal organization; or
 - (iv) Otherwise influence such government or international organization by intimidation or coercion; and
- (c). Involves or causes, as the case may be -
 - (i) an attack upon a person’s life which may cause serious bodily harm or death;
 - (ii) Kidnapping of a person
 - (iii) Destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the Continental Shelf, a public place or private property, likely to endanger human life or result in major economic loss;
 - (iv) The seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purpose in paragraph (b) (iv) of this subsection;
 - (v) The manufacture, possession, acquisition, transport, supply or use of weapon, explosives or of nuclear, biological or chemical weapons without lawful authority;
 - (vi) The release of dangerous substance or causing of fire, explosion or floods, the effect of which is to endanger human life;

¹⁸ Sections 1, 2, 6, 8, 9, 11, 15, 18 and 19 of TPAA

¹⁹ Section 3, 4, 7, 12, 13, and 16

²⁰ Sections 5, 10, 14 and 17

²¹ Section 20

²² Also known as “TPAA”

- (vii) Interference with or disruption of the supply of water, power or any other fundamental natural resources, the effect of which is to endanger human life;
- (d). An act or omission in or outside Nigeria which constitutes an offence within the scope of a counter terrorism Protocols and Conventions duly ratified by Nigeria.

Also, *section 1 (2)* TPAA 2013 criminalizes the following as an offence under the Act:

“A person or body corporate who knowingly in or outside Nigeria directly or indirectly willingly-”

- (a). does, attempts or threatens any act of terrorism,
- (b). commits an act preparatory to or in furtherance of an act of terrorism,
- (c). omits to do anything that is reasonably necessary to prevent an act of terrorism,
- (d). assists or facilitates the activities of person engaged in an act of terrorism or is an accessory to any offence under this Act,
- (e). participates as an accomplice in or contributes to the commission of any act of terrorism or offences under the Act,
- (f). assists, facilitates, organizes or directs the activities of persons or organizations engaged in any act of terrorism,
- (g). is an accessory to any act of terrorism, or
- (h). incites promises or induces any other person by any means whatsoever to commit any act of terrorism or any of the offences commits an offence under this Act and is liable on conviction to maximum of death sentences.

This Act in order to comprehensively tackle the menace of terrorism in Nigeria overstated and overstuffed the definition of what constitutes acts of terror. *Section 1 (3)* TPAA comprises very many things that made the entire subsection very clumsy and highly inelegant. For instance, what is the basis for the provision in *Section 1 (3) (c) (i)*. This provides that acts of terror include ‘an attack upon a person’s life which may cause serious bodily harm...’

It is the writer’s view that the above provision trivializes the concept of act of terrorism. An attack on a single individual’s life is already taken care of by both the Criminal Code²³ and the Penal Code and has no business coming into the Act. Again, the provisions of *Section 1 (2) (a)* and *(c)* of the Act leave much to be desired as the punishment to these crimes is

²³ See *section 355* of the C. C.

gravely heavy in comparison with the different provisions of both the Criminal Code and Penal Code. It provides thus:

1 (2) A person or body corporate who knowingly in or outside Nigeria directly or indirectly willingly

(a) does, attempts or threatens any act of terrorism,

(c) omits to do anything that is ... to prevent an act of terrorism commits an offence under this Act and is liable on conviction to maximum of death sentence

We think that death sentence as a punishment for attempt, threat and omission to do anything to prevent an act of terrorism is sheer overkill. This is so because in our criminal jurisprudence, an attempt, threat and omission to do an act, do not carry the same sentence or punishment as the actual commission of the said crime or offence. Chapter Fifty three of the Criminal Code Act provides for ‘Attempt, Incitement and Preparations to commit offences: Neglect to Prevent Commission of Felony.’²⁴ Under the Penal Code Act, the offence of attempt attracts a benign sentence different from the act of commission.²⁵ Attempt has been defined as:

“an overt act that is done with the intent to commit a crime but that falls short of completing the crime”²⁶

It is injurious an audacious provision for an Act to punish attempt, threat and neglect to prevent commission on the same terms as the prime and complete commission of the crime with no less a sentence than death. This paper believes that it is a wrong provision to punish by death men who shed human blood with someone who planned but did not succeed in killing anyone, especially having regard to the provisions in our criminal laws.²⁷ Moreso, a careful reading of *Article 3* of the OAU Convention on the Prevention and Combating of Terrorism²⁸ under which mandate the National Assembly enacted this Act is largely briskly and unassuming. The definition given by this Convention is positive and straight to the point. It is our submission that the National Assembly takes another look at this section of the Act under review.

Section 1A (5) grants wide abusable powers to the law enforcement agencies in relation to seizing, freezing and sealing up of suspected terrorist’s property in and outside Nigeria. It provides that the law enforcement agencies shall have powers to seize, freeze or maintain custody over terrorist property or fund. They can also seal up premises upon reasonable suspicion of such premises and adopt measures to identify, trace, freeze, and seize terrorist property.²⁹ These are serious attack on fundamental rights provision³⁰ of the 1999

²⁴ See *sections 508-515 C.C., Nwokedi & Anor v. COP (1977) NSCC 127 SC*. On neglect to prevent commission see *Obumselu v. COP (1958) NSCC,106. S.C.*

²⁵ See *sections 95, 229 and 230 P. C.*

²⁶ Garner, B. A, *Black’s Law Dictionary*, (USA, West Publishing Company, 2004) at 137.

²⁷ See *sections 215, 320, 321, 336, 408, 444, 446, 452, and 453.*

²⁸ This Convention was enacted on the 14th July 1999 came into force on the 6th December, 2002. the instrument contains six parts and twenty three articles with an annex.

²⁹ *Section 1A (5) (d), (e) and (f) of the TPAA 2013*

Constitution of Nigeria and which should not be left on the discretion of the law enforcement agencies alone but should be subject to authorization by a court of law. The power to seize, freeze, seal up premises or maintain custody of terrorist property or funds should only be exercised under an order of court sought and obtained through a judicial process which should be able to access the pieces of evidence relied upon by the law enforcement agencies for the court to exercise its discretion in their favour.

In the same vein, *section 3* seeks to provide protection for ‘internationally protected persons’. This section seeks to punish any person who intentionally murders, kidnaps or commits other attacks on the person or liberty of an internationally protected person, or carries out violent attack on the official premises or transport in a manner likely to endanger his person or liberty or threatens to commit any such attack such person is liable to life imprisonment. Under *section 1 (2)* these act of Terrorism carries death sentence while under *section 3* it carries life imprisonment. There is no rationale for the dichotomy created between what the Act terms ‘internationally protected person’ and others. There should be uniform provision for similar offences. Similar discrepancies are identified in *sections 4 to 25*. These sections prohibit similar actions already criminalized by *section 1 (2)* of the Act. Also, these sections provide different jail terms from that given by *section 1 (2)*.

Section 25 (1) which provides for law enforcement agencies to enter and search any premises without a warrant issued by a court is both punitive and abusable by these agents. Again, an application made to court *ex parte* is expeditiously heard and disposed off. The fact that if an application, by the law enforcement agencies, to the court or judge in chambers for a warrant is delayed that such application can be put in abeyance and search conducted and seizure obtained is a flagrant abuse of the court processes and worthy of condemnation. *Section 27 (2)* is a sheer legalization of torture and other sundry acts against persons accused of acts of terrorism by the law enforcement agencies in their investigations. The provision that any officer of the law enforcement or security agency may use such force for the exercise of powers conferred by *subsection (1)* of the section, is a wide power which will engender using torture to obtain information by security agencies. Again, *section 28* is an infringement of *section 35 (5)* of the 1999 constitution. A person should not be detained more than twenty four hours unless there is no court of competent jurisdiction, then forty eight hours is allowed. It must be stated that the Terrorism (Prevention) (Amended) Act 2013 is a great improvement over the principal Act³¹ in terms of content and human rights issues. The amendment indeed addresses human rights concerns and challenges contained in the old regime.³² However different provisions of the Act still foist considerable sentencing discretion on the courts without any template to guide these courts. This is highly susceptible to abuse. In the same vein, the death sentence provision in the Act is adverse to the contemporary trending of quest for the abolition of death penalty in the legal systems of countries developed.

³⁰ See *sections 43 and 44* of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

³¹ Terrorism (Prevention) Act 2011

³² The phrase “without having access to any person other than his medical Doctor and legal counsel of the detaining agency” under *section 28* of the TPA 2011 has been replaced with the phrase “a medical officer of the relevant law enforcement or security agency or his counsel”

Conclusions

The promulgation of this Act is a watershed towards the comprehensive fight against the dire security challenges that beset Nigeria in recent times. It is also a demonstration to the international community that we are committed to complying with our international obligations to enact municipal legislation to punish and combat terrorism. This move is a strong message to the individuals or corporate entities involved in carry out or sponsoring and supporting terrorism anywhere in Nigeria that the Nigerian government is quite ready to combat and possibly flush out this menace.

Nevertheless, the convoluted drafting of this Act leaves a yawning gap in its operation and enforcement. While the country needs strong laws to tackle terrorist tendencies, it may not allow itself to use indiscriminate measures to undermine the fundamental values they should protect. Any action of this nature would make the Nigeria state to fall into the same trap set by terrorism for democracy and the rule of law. There is the urgent need to take another look at the Act as presently constituted to further review the law to smoothen those creases identified in this piece. Moreso, we advocate for a specialized separate court for the trial and prosecution of terrorism suspects. This will make the exercise speedy and to accord it the desired importance.

