

ANTI-TERRORISM LAW AND THE PROTECTION OF HUMAN RIGHTS IN NIGERIA: A NEEDLESS CONUNDRUM?

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Abstract

Terrorism has impacted not only on the economy of Nigeria but also on her human capacity development. The menace has resulted in the death of over 15,000 people and rendered more than 500,000 people homeless. Although the Nigerian government has formulated some policies and laws aimed at ameliorating the situation, the continuous attacks on innocent Nigerians regardless of their religious affiliations is an indication that these policies have not yielded the required results.

The Nigerian government has enacted laws to fight the scourge of terrorism in Nigeria. In 2011, the Terrorism (Prevention) Act was passed into law. Also, in 2013, this law was amended by the Terrorism (Prevention) (Amendment) Act. These laws have been subject of strident criticisms. This article focuses on the impact of the Anti-Terrorism statutes on the protection and promotion of human rights in Nigeria. Arguably, these laws will have negative impacts on human rights protection and promotion in Nigeria, for example right to life and right to privacy amongst others enshrined in the Constitution 1999(as amended).

Keywords: Terrorism, Boko Haram, Human Rights, Nigeria, Right to Life

1 Introduction

The scourge of terrorism in Nigeria has continued unabated despite the vast amount of resources (human and material) channelled to ameliorate the menace. Since the return of Nigeria to democracy in 1999, there has been an increase in insecurity particularly the threat of terrorism. The method of ‘carrot and stick’ whereby the government use a combination of force and dialogue have been adjudged to have failed with extensive human rights abuses reported by several local and international organisations. In a March 2015 report by Amnesty international presented at the 28th session of the United Nations Human Rights Council, evidence of human rights abuses such as extrajudicial killings, torture, unlawful detention and arbitrary arrests were documented against the Nigerian security forces.³ These allegations make it imperative to critically assess anti-terrorism laws and human rights protection in Nigeria.

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³ Amnesty International , ‘Nigeria: Boko Haram and Nigerian military committing crimes under international law in north east Nigeria’ (2015), <https://www.amnesty.org/download/Documents/AFR4410332015_ENGLISH.pdf> assessed 5 August 2015

This article will be divided into eight sections. The first section will be the introduction. The second part will focus on a conceptual analysis of the scourge of terrorism in Nigeria. The third section focuses on the evolution of Boko Haram in Nigeria. Fourthly, this paper briefly highlights the ideology and goals of the Boko haram sect. The fifth section dwells on the human rights protection in Nigeria and various strands of human rights will also be in focus in this section. The sixth section serves as the background to anti-terrorism legislation in Nigeria and emphasizing the intricacies that led to the development of specific anti-terrorism laws in the country. The seventh section focuses on the extant anti-terrorism law and its potential impacts on protection and promotion of human rights in the country. The eighth section will be the conclusion. This paper will contend that notwithstanding the onslaught of terrorist acts in the country, human rights protection should not be jettisoned. Also, human protection can work in tandem with anti-terrorism laws in reducing the scourge of terrorism in Nigeria.

2 Terrorism in Nigeria: Conceptual Analysis

Terrorism is a highly debated concept with varied and often subjective definitions. Several scholars in the fields of politics, law, sociology, philosophy and anthropology have attempted on several occasions to agree on a common definition of terrorism but despite their attempts, the concept remains not just debated but highly controversial. Walter Laqueur explored over one hundred definitions of terrorism and concludes that the only universally accepted phrases in the definition of terrorism are 'violence and the threat of violence'.⁴ Despite the several definitions of terrorism, a common ideology that links all terrorists is the perception that terrorism can be utilised as a tool for change.⁵ This perception that terrorists believe violence can be used to effect social change has also been strongly contested. While some scholars like Garrison explain that the uniformity of the writings by several terror/militant leaders like Maximilien Robespierre, Johann Most and Osama bin Laden reveal that such groups advocate violence as an agent of social change⁶, the extent to which violence or threats of violence have actually achieved the desired change is another subject of debate.

For the purpose of this article, the definition of terrorism according to the United States Federal Bureau of Investigation (FBI) is adopted. The FBI defines terrorism as 'the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of political, or social objective'.⁷ Although the use of violence or threat of violence is the primary tool of

⁴ Walter Laqueur, 'No End to War: Terrorism in the Twenty-First Century' (New York: Continuum 2003)

⁵ Arthur Garrison, 'Defining terrorism, philosophy of the bomb propaganda by dead and change through fear and violence' 17 (3) Criminal Justice Studies 259-279.

⁶ Garrison *ibid*

⁷ The United States Federal Bureau of Investigation (FBI), 'Terrorism 2002-2005' (2005), <<https://www.fbi.gov/stats-services/publications/terrorism-2002-2005>> assessed 10 August 2015. Under section 19(f) of the Nigerian Terrorism (Prevention) Amendment Act 2013, a terrorist is defined "as any natural person who commits any of the following acts: - (i) commission or attempting to commit, terrorist acts intentionally by any means, either directly or indirectly, (ii) participation as an accomplice in terrorist acts, or (iii) organizing terrorist acts or directing others to commit such acts, (iv) contributing to the commission of terrorist acts with a group of persons acting with a common purpose where the contribution

terrorist groups to actualise their goals, the extent to which the group's aims and objectives are achieved using these means is difficult to ascertain. For any group to attain its stated goals and objectives, dialogue or effective communications are vital. However, since most terrorist organisations engage in unlawful activities, it is difficult to achieve dialogue without reference to the laws of the States which in most cases classify terrorism as a crime against the State.

Another contention in the study of terrorism is the root causes of the menace. Several factors such as economic conditions of individual States, system of government, security apparatus prevalent in individual states (including the ability of States to police their borders and repress violence), degree of access to dangerous weapons that could cause significant damage, the use of religion as political tools as well as anti-terrorism laws and issues relating to human rights are some of the main factors fingered to either cause or support terrorism in any given State. In Nigeria for instance, relative poverty and disparity in Northern states⁸, disenfranchisement and inequality⁹, unemployment, marginalisation and radical Islam¹⁰ are argued to be the main causes of terrorism in Nigeria. The northern states especially the North-Eastern parts of the country where terrorist activities are rampant are relatively poorer than the other parts of the country.¹¹ However, the link between poverty and terrorism remains contentious. Laqueur argues that there is no evidence linking terrorism particularly Islamic terrorism to poverty or political torpidity in weak States.¹² The scholar argued that all the eleven hijackers that took part in the 9/11 attack on the United States were all from middle class families and all had western education. Although poverty and the promise of economic stability could be a major recruiting factor, it is vague to argue that these are the principal causes of terrorism in Nigeria. One other question that readily comes up is that if indeed poverty breeds terrorism, why are other poor regions of Nigeria devoid of terrorist activities? While many of the foot soldiers could be described as poor and opportunistic in nature, the leaders and sponsors of these activities are generally economically vibrant and often well connected with local and/or international entities.

There are two distinctive issues about terrorism in Nigeria. First, it is in form of radical Islam and second, it is experienced during democratic dispensations. It is important to state that there is a link between the two issues. The first instance of terrorism in Nigeria occurred in December 1980 when a group known as the Maitatsine movement took up arms against the Nigerian police force in Kano state. This can be linked to the return of democracy to Nigeria on 1 October 1979. The return of the country to civilian rule inspired the writing of

is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act”.

⁸ Daniel Agbibo, 'Peace at Daggers Drawn? Boko Haram and the State of Emergency in Nigeria' (2013) 37(1) *Studies in Conflict and Terrorism* 41-67

⁹ Chris Kwaja, "Nigeria's Pernicious Drivers of Ethno-Religious Conflicts," *Africa Security Brief*, (2011) African Centre for Strategic Studies. Available at http://africacenter.org/wp-content/uploads/2011/06/AfricaBriefFinal_14.pdf <assessed 10 August 2015>

¹⁰ Paul Rogers, 'Nigeria: The Generic Context of Boko Haram Violence' (2012) Oxford Research Group. Available at http://mercury.ethz.ch/serviceengine/Files/ISN/143259/ipublicationdocument_singledocument/e9c9e098-b4f7-46ba-94ea-6fffd4d30798/en/12-04.pdf <assessed 10 August 2015>

¹¹ Agbibo (n 6)

¹² Laqueur(n 2)

a new constitution for the country. The new constitution however was not accepted by some Islamic fundamentalist groups. One of the main clauses in the constitution that angered the Islamic groups is the freedom of religion including the freedom of any citizen to change from one religion to another. Extremists Islamic groups such as the Izala Movement (Izalatul Bidiawa Ikamatul Sunna) and the Muslim Students Society rejected the Constitution and openly advocated the establishment of an Islamic State in the country. This led to a confrontation between the groups and the Nigerian police force resulting in the death of over 5000 people.¹³ Two years later, another uprising took place in Maiduguri (Borno state) which was similar to the 1980 uprising. The followers of the Maitatsine movement regrouped in the state and planned attacks against security forces. An attempt by the police to question the new leaders of the group was vehemently resisted by the followers and the result was another bloody confrontation which resulted in the deaths of hundreds of the group members as well as several members of the security forces.¹⁴ Analysts at the time feared that unless adequate measures are put in place in the country, such groups would still resurface in the future.¹⁵

The next section focuses on the Boko Haram phenomenon in Nigeria.

3 Boko Haram

There have been several conflicting theories regarding the formation and original founders of Boko Haram. While the American Foreign Policy Council argued that the group was formed in 2002¹⁶ in North-Eastern Nigeria, other scholars argue that the group has been in existence for much longer but under different appellations and leadership structures. The group is believed to have been formed in 1995 in Maiduguri by a liberal Islamic scholar called LawalAbubakar and operated under the name 'Shabaab'¹⁷. The group retained the name from 1995-2002 when Mohammed Yusuf took over the reins of leadership of the organisation. After the change of leadership, the name of the group was changed several times and answered different names such as Muhajirun, Yusufiyyah, Nigerian Taliban, Jama'atu Ahlissunnahlidda'awatiwal Jihad and finally Boko Haram.¹⁸ While Abubakar was a university scholar and a liberal Muslim, Yusuf was a secondary school dropout and radical Islamic scholar. Yusuf not only preached against non-Muslims commonly referred to as 'Infidels' he also preached against other Islamic scholars who in his views are 'too liberal' in nature and do not follow the tenets of Islam. Apart from disagreeing with the views of other liberal Muslims, Yusuf also advocated for the replacement of modern State structures with a

¹³ Nathaniel Danjibo, "Islamic Fundamentalism and Sectarian Violence: The "Maitatsine" and "Boko Haram" Crises in Northern Nigeria". Peace and Conflict Studies Programme, Institute of African Studies, University of Ibadan, 2010. Available at http://www.ifranigeria.org/IMG/pdf/N-_D-_DANJIBO_-_Islamic_Fundamentalism_and_Sectarian_Violence_The_Maitatsine_and_Boko_Haram_Crises_in_Northern_Nigeria.pdf (assessed 10 August 2015)

¹⁴ Raymond Hickey, 'The 1982 Maitatsine Uprisings in Nigeria: A Note' (1984) *African Affairs*, 83(331) pp 251-256

¹⁵ Hickey (n 12)

¹⁶ American foreign policy council, "*Boko Haram: World Almanac of Islamism*,"(2014) Available at <http://almanac.afpc.org/boko-haram> <assessed on 12 May 2014>

¹⁷ Abdulmajeed Bello, "Boko Haram: The Greatest Security Threat to the Sovereignty of Nigeria," (2013) 2(2) *International Journal of Management and Social Sciences Research (IJMSSR)* 66-72

¹⁸ Freedom Onuoha, 'The Islamist challenge: Nigeria's Boko Haram crisis explained' (2010) 19(2) *African Security Review* 54 -67

traditional State based on the principles of Islam.¹⁹ The sermons (and campaign) of Yusuf centred on the abolition of western culture including western education. He argued that all the 'evils' in the country can be attributed to the adoption of western culture such as democracy, western education, government structures, police and military forces amongst others. He further argued that the only way to 'purify' the land is to embark on a total demolition of all the western values and culture entrenched in the country and adopt Sharia law as the only acceptable law in Nigeria.²⁰ Although Abubakar is often described as a liberal Islamic scholar, this cannot be ascertained as the group was formed during military governance and any rebellion would have been brutally suppressed.

4 Ideology and goals of Boko Haram

The implementation of Sharia law as the only (official) law of Nigeria is one of the major agitations of the leaders of Boko Haram. Although this was championed by Yusuf before he was arrested and executed by the Nigeria security forces²¹, he was not the first Islamic scholar to demand the implementation of Sharia in Nigeria. During the Maitatsine movement in the early 1980s, another Islamic scholar, Sheik Abubakar Mahmoud Gumi not only advocated the implementation of Sharia but also declared that it is an abomination for Muslims to be ruled by Christian in Nigeria despite the country being roughly evenly distributed between Christians and Muslims. He stated further that if by chance a Christian emerges as the president of Nigeria, Muslims must rise up to fight for Islam and divide the country according to religious lines (Christians to remain in the South and Muslims in the North).²² This kind of teaching informed the doctrine of Mohammed Yusuf and his successor Abubakar Shekau.

Another major campaign of Boko Haram is against western education. The name Boko Haram in Hausa language means 'western education is a sin'. Since the group began its attacks, western styled primary, secondary and universities have been singled out for violent attacks. Hundreds of schools in the affected region have been destroyed by the sect which resulted in the killings of several students and teachers of these schools. The most brazen of the attacks was at a federal government college in Yobe state (North East Nigeria) in February 2014 where 40 students were either shot or burnt to death²³ while sleeping in their hostels. The group gained international prominence when it abducted 276 teenage girls in Chibok two months after the Yobe killings.²⁴ The statement released by Boko Haram according to Human Rights Watch sums up the ideology and goal of the organisation:

We want to reiterate that we are warriors who are carrying out Jihad (religious war) in Nigeria and our struggle is based on the traditions of the

¹⁹ Danjibo (n 11)

²⁰ Danjibo (n 11)

²¹ BBC News, 'Nigeria Sect head dies in custody' (31 July 2009). Available at <http://news.bbc.co.uk/1/hi/8177451.stm><assessed 11 August 2015>

²² Jude Aguwa, "Religious Conflict in Nigeria: Impact on Nation Building," (1997) 22(3-4) *Dialectical Anthropology* 338

²³ Sky news, 'Sleeping students killed by Boko Haram' (25 February 2014). Available at <http://news.sky.com/story/1217121/sleeping-students-killed-by-boko-haram><assessed 11 August 2015>

²⁴ BBC News, 'Nigeria abductions: Timeline of events' (12 May 2014). Available at <http://www.bbc.co.uk/news/world-africa-27342757><assessed 11 August 2015>

holy prophet. We will never accept any system of government apart from the one stipulated by Islam because that is the only way that the Muslims can be liberated. We do not believe in any system of government, be it traditional or orthodox except the Islamic system and that is why we will keep on fighting against democracy, capitalism, socialism and whatever. We will not allow the Nigerian Constitution to replace the laws that have been enshrined in the Holy Qur'an, we will not allow adulterated conventional education (Boko) to replace Islamic teachings. We will not respect the Nigerian government because it is illegal. We will continue to fight its military and the police because they are not protecting Islam. We do not believe in the Nigerian judicial system and we will fight anyone who assists the government in perpetrating illegalities.²⁵

The next section focuses on the human rights regime in Nigeria

5 Human Rights Protection in Nigeria

Nigeria is a constitutional democracy which promotes different species of human rights. Also, the country has acceded or ratified a plethora of international treaties/conventions accentuating the protection and promotion of human rights.

Human rights are rights accruing to human beings *simpliciter*. Thus, Professor Ake defined the concept of human rights as:

The idea of human rights is quite simple. It is that human beings have certain rights simply by virtue of being human. These rights are a necessary condition for the good life. Because of their singular importance, individuals are entitled to, indeed, required to claim them and society is enjoined to allow them. Otherwise, the quality of life is seriously compromised.²⁶

Human rights includes both international human rights and domestic constitutional rights.²⁷ Furthermore, the evolution of both international and domestic human rights is traced to the enlightenment age when the notion of civil and political rights became localised in the United States Bill of Rights and the French Revolution of the Rights of Man.²⁸ Arguably, the

²⁵ Human Rights Watch, "Spiralling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria" (2012) pp. 30. Available at <http://www.hrw.org/sites/default/files/reports/nigeria1012webwcover.pdf> (assessed 16 June 2014)

²⁶ Claude Ake, 'The African Context of Human Rights' (1987) 34 (1/2) *Africa Today* 5-12 at 5. Furthermore, see Eghosa Ekhator and Kenneth Ajibo 'Legal and Theoretical Assessment of the Right to Food in Nigeria' in Rhuks Ako & Damilola Olawuyi (eds.) *Sustainable Farming, Agriculture and the Law in Nigeria* (Afe Babalola University Press 2015) 122-139 at 122 define human rights as "...in a strict sense is used to epitomise the right holder being entitled to something with a correlative duty in another. It could indicate immunity from having a legal status altered or a privilege to do something or a power to create a legal relationship".

²⁷ Uchenna Jerome Orji, 'Right to a Clean Environment: Some Reflections' (2012) 42 (4-5) *Environmental Policy and Law* 285-293 at 285.

²⁸ Orji *ibid*. Also see Amy Sinden 'Climate Change and Human Rights' (2007) 27 (2) *Journal of Land Resources and Environmental Law* 255 -271 at 260-261. Orji *ibid* at 291 defines the 'age of enlightenment' as "a term used to describe the trends in thoughts and letters in Europe and the American Colonies during

world wars of the 20th century accentuated the need for international protection and promotion of human rights.²⁹ Thus, in 1948 the Universal Declaration on Human Rights (UDHR) was adopted by the United Nations (UN). In 1966, the UDHR was expanded to include the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁰ The ICCPR has been designated by human rights dignitaries to be first generation rights³¹; and the ICESCR have been termed second generation rights. The first generation rights are the fundamental human rights including the right to life, right to liberty, right to fair trial among others. The second generation rights include; the right to education, housing, social security, safe and healthy work environment amongst others. A third generation have also been identified which relates exclusively to group rights such as the right to self-determination amongst others.³²

Human rights under the extant Constitution of Nigeria 1999 (as amended) is divided into two categories; socio-economic rights and civil and political rights.³³ The economic, cultural and social (socio-economic) rights which are provided for in Chapter II of the Constitution which deals with Fundamental Objectives and Directive Principles of State Policy are not enforceable against the State by Nigerian citizens by virtue of section 6(6)(c) of the Constitution. This is undermining section 13 of the Constitution which posits that it shall be the duty of the State and its organs to observe and apply the provisions of Chapter II. On the other hand, civil and political rights are enforceable against the State and citizens under the Nigerian Constitution and they are contained in Chapter IV of the Constitution. Civil and political rights in the Constitution include right to privacy, right to fair hearing and right to dignity amongst others. Civil and political rights are termed 'fundamental (human) rights'.

In *Ransome-Kuti v Attorney General of the Federation*, the Supreme Court defined a fundamental human right thus:

A right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a

the 18th century prior to the French Revolution (1789-1799). The phrase was frequently employed by writers of the period who were convinced that the world emerging from centuries of darkness and ignorance into a new age enlightened by reason, science and a respect for humanity. This period is also referred to as the Age of Reason."

²⁹ Eghosa Ekhaton and Linim Anyiwe 'The Case for and against 'Universal' versus 'Regional' Protection of Human Rights: An Appraisal' in Omonuwa, O.A. and Omoruyi, I.O. (eds.) *On Judicial Integrity: Legal Essays and Materials in Honour of His Lordship, The Honourable Justice S.O. Uwaiwo* (Mindex Press 2014)

³⁰ Smith, R.K.M. *Textbook on International Human Rights* (Oxford: Oxford University Press, OUP 2012)

³¹ The categorisation of human rights into three generations was initially developed by Karel Vasak in 1977, see Karel Vasak, "Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights", *UNESCO Courier* 30:11, Paris: UNESCO November 1977

³² Ibid. Also see Ekhaton and Anyiwe (n 27). However, some scholars aver that there is a fourth generation of human rights, see Paul Andrew Gwaza, 'Strengthening Human Rights Framework in a Multi-Religious and Multi-Ethnic Society such as Nigeria' (2015) Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2567259

³³ Nigeria constitutions have always provided for the promotion of human rights and even in the pre-colonial period, semblance of human rights protection were localised in the ways and customs of the people. Generally, see Jacob Abiodun Dada, 'Human Rights Protection in Nigeria: The Past, the Present and Goals for Role Actors for the Future' (2013) 14 *Journal of Law and Globalization* 1-13

civilised existence and what has been done by our Constitution, since independence... is to have these rights enshrined in the Constitution so that the rights could be ‘immutable’ to the extent of the non-immutability of the Constitution itself.³⁴

Thus, fundamental human rights as guaranteed or provided in the constitution promotes important concepts of human dignity, equality and inviolability in civilised societies.³⁵

This paper contends that the extant anti-terrorism laws go against the tenor of some fundamental human rights as enshrined in the constitution. This paper focuses on the impact on the anti-terrorism laws on fundamental human rights and not on socio-economic rights.

6 Background to Anti-Terrorism Laws in Nigeria

The first part of this section briefly highlights the legal regime prior to the enactment of specific anti-terrorism laws in Nigeria.

As highlighted in earlier sections of this paper, Nigeria has witnessed many religious crises in the past and even in the present time. Notwithstanding that these violent acts could be considered to be terrorist activities, it was after the 9/11 (September 11, 2001) attacks in the USA, that the government made strenuous efforts to enact specific anti-terrorism laws in Nigeria.³⁶ However, some Nigerian statutes³⁷ such as the Criminal Code Act, the Penal Code Act, the Economic and Financial Crimes Commission (Establishment) Act 2004, the Public Order Act³⁸, the Explosives Act³⁹, the Firearms Act⁴⁰ and the Extradition Act⁴¹ among other laws provide some semblance of a legal framework criminalising certain activities arising from terrorists acts.

In 2006, a bill entitled the ‘Prevention of Terrorism Act (PTA)’ was proposed by the National Assembly⁴² but it was defeated in the Senate in September 2006.⁴³ Also in 2007, another attempt was made to develop an anti-terrorism law in Nigeria, but this was the

³⁴ [1985] 5NWLR (Pt. 10) 211 at 229-230. Also cited in Ugochukwu Ezech ‘Tackling Terrorism – A Human Rights Perspective on the Nigerian Terrorism [Prevention] Act 2011’ (2012) 1 *Young African Research Journal* 54-99 at 62-63.

³⁵ Ezech *ibid*

³⁶ Isaac Terwase Sampson, and Freedom Onuoha ‘Forcing the Horse to Drink or Making it Realise its Thirst? Understanding the Enactment of Anti-Terrorism Legislation (ATL) in Nigeria.’ (2011) 5 (3-4) *Perspectives on Terrorism* 33-49

³⁷ Generally, see Ezech (n 32)

³⁸ Cap. P42 LFN 2004

³⁹ Cap. E18, LFN 2004

⁴⁰ Cap. F28, LFN 2004

⁴¹ Cap. E25, LFN 2004

⁴² By virtue of section 4(2) of Nigerian constitution, the National Assembly has the powers “to make laws for the peace, order and government of the country. Furthermore, section 11 of the constitution states empowers the National Assembly “to make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and services.” Generally, see Dakas CJ Dakas ‘Nigeria’s Anti-Terrorism Laws and Practices: The Imperative of Mainstreaming Human Rights into Counter-Terrorism Administration’. A paper presented at an expert workshop organised by the Nigerian Coalition on International Criminal Court (NCICC) in Abuja, Nigeria on May 14, 2013 at 2.

⁴³ Sampson & Onuoha (n 34) at 38

subject of intense debates and scrutiny by Nigerians who were divided on the basis of religion and ethnicity amongst other primordial views.⁴⁴ Thus, Sampson and Onuoha have averred:

...differing perceptions and interpretations of lingering militancy in Niger Delta region (South) and Islamic extremism (North) presented the main challenge to Nigeria's endeavour to enact comprehensive terrorism legislation. People from the Niger Delta and some member of the Muslim Community had denounced the draft PTA for what they described as an open-ended definition of terrorism with the potential of subsuming the activities of the Niger-Delta and Islamic militants under its definition. On the other hand, the Niger Delta people steadfastly opposed the PTA, which they interpreted as an attempt to criminalise their struggle for equity in the distribution of oil, resources produced from their region... On the other hand, the manifestation of militant Islamism in northern Nigerian presented another challenge to the criminalization of terrorism. For example, some Islamic clerics had criticized the proposed PTA as targeting Muslims.⁴⁵

Thus, the anti-terrorism bills or proposals were left in abeyance. However, due to the upsurge of terrorist acts by Nigerians (especially Umar Abdulmutllab's attempt to bomb an American airline) and Boko Haram attacks on both Nigerian and western targets in the country, in 2011 the government decided to enact a specific anti-terrorism law entitled the 'Terrorism and (Prevention) Act (TPA) 2011'.⁴⁶

Due to the widespread disenchantment with the TPA 2011 due to its incompatibility with Nigeria's human rights obligations, the law was amended by the Terrorism (Prevention) Amendment) Act 2013.⁴⁷ Arguably, this amendment cures the inherent human right defects in the TPA 2011⁴⁸, however, this paper focuses on the existing human issues/violations still prevailing in the TPA (Amendment) 2013.

7 TPA (Amendment) Act 2013 and Human Rights Promotion in Nigeria

Notwithstanding, the amendment of the TPA 2011 by the TPA (Amendment) 2013, it will still have negative impacts on human rights protection in Nigeria.

The first human right in focus will be the right to liberty as expressly enshrined in section 35 of the constitution. Section 27(1) of the TPA (Amendment) Act 2013 states thus:

⁴⁴ Ibid

⁴⁵ Ibid at 39-40

⁴⁶ Sampson & Onuoha (n 34). Also see Alaba Omolaye-Ajileye 'Legal Framework for the Prevention of Terrorism in Nigeria' A paper presented at the 2015 Law Week Programme of the Nigerian Bar Association, Lokoja Branch, on Thursday, 21st May, 2015.

⁴⁷ Dakas (n 40) at 3. Lawrence Atsegbua & Violet Aigbokhaevbo 'Anti-Terrorism Bill: Implication for Environmentalism in Nigeria' (2010) 1(1) *UNIBEN Journal of Private and Property Law* 28-41, argue that the law will have detrimental impacts on the activities of NGOs and environmentalists operating in the Niger Delta are of Nigeria.

⁴⁸ Dakas (n 40)

“[t]he court may, pursuant to an ex-parte application, grant an order for the detention of a suspect under this Act for a period not exceeding 90 days subject to renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with”

This is contrary to section 35 of the constitution especially subsections 4(a) and (b). Section 35 (4) of the constitution states:

- (a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
- (b) Three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. According to sub-section 5, the expression “reasonable time” means.

Thus, from the aforementioned section of the constitution, it is incontrovertible that section 27(1) of the TPA (Amendment) Act 2013 goes against the tenor of the constitution.

Furthermore, section 28 of the TPA (Amendment) 2013 contravenes section 35(2) of the constitution which states an individual arrested or detained has the right to consult with a legal practitioner or “any other person of his choice.”

Secondly, the TPA (Amendment) Act 2013 provides for its extra-territorial application.⁴⁹ This is against the tenor of section 36(9) of the constitution (prohibits double jeopardy under Nigerian laws) which provides that an individual who has been tried by a court or tribunal and either convicted or acquitted shall be tried again for that offence or criminal offence having the same ingredients.⁵⁰

The TPA (Amendment) Act provides for the death penalty. Section 1(2) of the Act states thus:

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 persons engaged in an act of terrorism or is an accessory to any offence under this Act,

⁴⁹ Dakas (n 40) at 4.

⁵⁰ See *Federal Republic of Nigeria v. Igbinedion & Ors* (2014) LPER-22760 (CA), available online at: <http://www.lawpavilionpersonal.com/ipad/books/22760.pdf> where the court stated that for a plea of double jeopardy to be sustained, “the accused must have been previously acquitted or convicted by a court of competent jurisdiction of the same offence in fact and in law’ at 17

- (e) participates as an accomplice in or contributes to the commission of any act of terrorism or offences under this 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 referred to in this Act, commits an offence under this Act and is liable on conviction to maximum of death sentence.

This provision is too broad and ambiguous and will be subject to abuse by the judiciary. Furthermore, this provision goes against the contemporary view that the death penalty should be abolished.⁵¹

Thirdly, section 28(4) of the Act which states that where an individual arrested under the Act is granted bail within the 90 days' detention period specified, "the person may, on the approval of the Head of the relevant law enforcement agency be placed under a house arrest and shall – (a) be monitored by its officers; (b) have no access to phones or communication gadgets; and (c) speak only to his counsel until the conclusion of the investigation." Dakas has argued that a house arrest without valid court order or in defiance of an existing court is illegal and undermines the authority of the courts in the country.⁵²

8 Conclusion

Nigeria has become a theatre of terrorist acts and attacks. Due to the upsurge in the terrorist attacks, the government has become reactive and developed anti-terrorism laws. Arguably, the enforcement of the TPA (Amendment) Act will lead to human rights violations and some of its provisions contravenes the constitution.

Furthermore, security agencies in Nigeria are 'infamous' for engaging in extra-judicial murders and in human rights violations. For example, Yusuf (leader of Boko Haram) was arrested and (allegedly) executed by the Nigeria security forces. Also the Joint Task Force (JTF), which is the principal device for countering Boko Haram have engaged in numerous human rights violations in its areas of operations.⁵³ Also, Amnesty International has accused Nigerian military personnel engaged in the fight against Boko Haram in North East Nigeria of committing war crimes.⁵⁴ In essence, this paper adopts the view of Professor Oyebo, who averred thus:

...where and when every member of society is assured of his day in court, there would be no room or justification for terrorist acts. However, denial of justice and resort to terrorist acts by the government itself could well

⁵¹ Dakas (n 40).

⁵² Ibid at 6

⁵³ Isaac Terwase Sampson 'Between Boko Haram and the Joint Task Force: Assessing the Dilemma of Counter-Terrorism and Human Rights in Northern Nigeria' (2015) 59 (01) Journal of African Law 25-63.

⁵⁴ Amnesty International 'Stars on their Shoulders. Blood on their Hands: War Crimes Committed by the Nigerian Military' Available online at: <https://www.amnesty.org/en/documents/afr44/1657/2015/en/>

provide much-needed ammunition to forces that do not wish it well and who may now insist on a policy of “fighting fire with fire.”⁵⁵

⁵⁵ Akin Oyeboade ‘Legal Responses to the Boko Haram Challenge: An Assessment of Nigeria’s Terrorism (Prevention) Act 2011. A paper presented at the Oxford Round Table. Holden at Harris Manchester College, the University of Oxford, England, July 22-26, 2012.