

# An Assessment of the Nigerian Terrorism Prevention Act and its Impact on National Security

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## Abstract

Terrorism is the use of violent acts to frighten a target person or persons in a given area as a means of trying to achieve a political goal. Its notoriety is known nationally and internationally. This paper, using doctrinaire approach, x-rays some provisions of the Anti-Terrorism Act 2013, (as amended) concerning issues on human right, jurisdiction, arrest, terrorist funding. This is with a view to finding a better way of ensuring minimal impact of terrorist acts on the nation and checkmating international terrorism.

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## *Index terms—*

## 1 Introduction

he internal affairs or policies guiding the safety of a country, and its citizens are important and sensitive issues to the stability and sustainability of a country's peaceful existence. More often than not, people who have lost faith in the system of governance or method of adjudication for peaceful negotiation with the governing authorities, base on security or imbalance method of allocation of natural resources, resolves to apply brute force, as militia gang or freedom fighters. This act is generally interpreted as 'terrorism'.

Terrorism is tantamount to an armed uprising and, it is a thinly-veiled attempt to overthrow a political order. However justifiable the motives or intentions of a terrorist gang may be, the action or in-actions of the terrorist organization is vitiated by the method(s) it employs in fighting its cause. The intention of terrorism reflects the common saying that: "the road to hell is paved with good intentions".

The concept of national security is an issue in any discussion of terrorism. The concept denotes protection and preservation of the nation-state from imminent, threatened or actual attack on any of its physical structures such as boundaries, properties, economy and the environment.

Security, on the other hand is the state of being free from danger or threat. Thus, national security relates to those activities which are directly concerned with national safety, as distinguished from the general welfare 1

1 Cole v Young 351 US 536 Us 1956 Being a keynote address to the closing plenary of an International Summit on Democracy, Terrorism and security delivered on 10 th March 2015, Madrid, Spain.

. Generally, terrorist activities constitute a serious threat to peace or stability of the state and, it hinders the entrenchment of a strong or virile state. The word terrorism comes from French word 'terrorisme' which in English means, great fear. It appeared as a vocabulary in English dictionary in 1798 and in it, it means, a systematic use of terror as a policy.

The maintenance of international peace and security is a categorical imperative of the contemporary world. In fact, nowadays, the non-use or threat of use of force is a norm of jus cogens. That is to say, a peremptory norm of general international law from which no derogation is permitted and it can only be modified by a norm of similar character. When this is coupled with the rule of pacta sunt servanda, which entails the requirement of faithfully observing treaty obligations, it is self-evident that the international community had no choice but to put in place a series of treaties aimed at containing the ogre of terrorism.

According to Kofi Annan the former Secretary General of United Nations:

"Terrorism is a direct attack on the core values, the United Nation stands for namely; human rights and the rule of law, the protection of civilians; mutual respect between people of different faiths and cultures; and peaceful resolution of conflicts' II.

Terrorism "An anxiety-inspiring method of repeated violent action, employed by semi -clandestine individual, group or state actors, for idiosyncratic criminal or political reasons whereby in contrast to assassination-the direct target of violence are not the main target" 4 .

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In a way, terrorism is a senseless act of wanton destruction of lives and properties without any justifiable reason 4 "Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages with the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing an act" .Since the twin bombing of 11 th September 2011, measures to monitor terrorism have been enhanced by nation states, with more watch on financial transactions, supervision of border patrol and monitoring of suspected terrorists.

Section 14(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999(as amended in in 2011) provides that "The security and welfare of the people shall be the primary purpose or responsibility of government". This underlines the constant amendment of the Anti-Terrorism Act by the legislature to provide a durable legal framework, which will guide the nation against terrorism.

Terrorist as an act is usually intended to elicit behavior, which ordinarily might not be in agreement with the will of the victims, but, targeted towards a certain political end(s), entails the illegal use of force or threat of the same. To all intent and purposes, terrorism manifest fear or feeds on fear, which usually results in the incapacitation of the victim, and in the eyes of the victim, the terrorist adorn the garb of impunity and invincibility.

The United Nations in Resolution 1373, which was adopted after September 11, 2001 attack, refers to terrorism as; 5 "...criminalize the willful provision or collection by any means, directly, of funds by their nationals or in their territories with the intention that the funds should be used or in the knowledge that they be used, in order to carry out terrorist acts and ensure . That resolution though, with local variation, serves as template and model for restoring international peace and security. that the financing planning, preparation of terrorists acts?.are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflect the seriousness of such terrorist acts".

The difference in shades of opinion as to the extent of terrorism and when an act of terrorism should be construed as self-determination does not appear to exist in Africa. This is because; the African Union, have a united stand on the definition of terrorism. This is contained in the Africa Union Convention on the Prevention and Combating of Terrorism, 1999 referred to in paragraph (a)(i) to (iii)".

The question to be asked from these definitions is how does one come to the conclusion that a committed act amounts to terrorism? The question is necessary because; terrorism easily falls prey to change that suits the interest of a particular state at a particular time. For instance, the Taliban and Osama Bin Laden ALQueda, were once called freedom fighters (Mujahideen) and backed by the CIA, when they were resisting the Soviet occupation of Afganistan. Now, they are on top of international terrorist watch list as a terrorist group. The United Nations view Palestinians' agitators as freedom fighters, struggling against the unlawful occupation of their land by Israel though, the resistance has the backing of the United Nation, as a legitimate resistance movement, Israel regards them as terrorist. Similarly, the Hizbollah group in Lebanon is regarded as terrorist by Israel, though most of the Arab countries regard it as a legitimate resistance group, fighting Israel occupation of southern Lebanon.

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Global Journal of Human Social Science -Not with standing the above definition, member states still struggle with the question of the scope of the exception to the definition of terrorism. According to some, there is a need to distinguish between acts of terrorism and the right of people to self-determination. Even, the controversy associated with the extent or the scope of terrorism and when it can be regarded an act of self-determination has not been resolved, the same enjoin member states to: Year 2018 III.

The Anti -Terrorist Act

The Anti-Terrorism Act 2011 7 i. Commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; defined a 'Terrorist' to mean, any natural person who:

ii. Participates as an accomplice in terrorist acts; iii. Organizes or directs others to commit terrorist acts; or iv. Contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution 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.

There is no doubt that acts of terrorism are criminal acts directed against a state or intended to create a state of apprehension, anxiety or terror in the minds of particular persons or group of persons, (general public) in order to arm-twist, intimidate, subdue, or control the government in authority for approval of a particular agitation 8

The Anti-Terrorism Act sought amongst other things to prohibit all forms of terrorism, all forms of financial transactions aimed at aiding terrorism, provide federal jurisdiction to prosecute acts of terrorism carried out within Nigeria, prohibit conspiracies in Nigeria to . Terrorist acts include but is not limited to act which constitutes an offence according to the following agreements:

United Nation General orist Bombings, (1977). Furthermore, terrorist acts also include any other acts intended to cause bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization, do or to abstain from doing any act. commit terrorism abroad and provide for appropriate penalties for offenders.

## IV. Check-Mating Terrorism Against the Interest of International Human Right Law

Every society is inherently conflictual and the maintenance of peace and security or internal order, is dependent on the existence of rules prescribing what can be done or not. Thus, just as the existence of law is a sine qua non for the survival of a community, state or country, and to a large extent the survival and well-being of the international community at large. The guiding principle in this regard is the latin maxim *UbisocietasIbi jus* meaning a society of individuals requires the law for its smooth running. Nations of the world with different political and economic backgrounds have formed a true community that requires standard rules for its orderly developments.

Thus, at the international sphere, a crime committed against a member state is a crime against all, most especially, where, it touches on a set of rules recognized by civilized nations as governing their conduct towards each other citizens and terrorism is one contemporary area in which individuals are subjects of international law. This is because terrorist activities are carried out by individuals and group. Another area with such bilateral agreement includes human trafficking, illicit drugs trade, financial crimes, etc.

The United Nations Charter contains the purposes of the organization and it provides that the organization shall:

1. Maintain international peace and security and to that end; to take effective collective measures for the prevention and removal of threats to peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means and conformity with the principles of justice and international law, adjustment or settlement of international dispute or situations which might lead to breach of the peace; 2. To develop friendly relations amongst nations based on respect for the principle of equal rights and selfdetermination of people, and to take other appropriate measures to strengthen universal peace. 3. To achieve international cooperation in solving international problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and 4. To be a center for harmonizing the actions of nation as in the attainment of these common ends.

This more or less depicts the responses of the UN to international terrorism. A deduction from the above objectives show clearly that terrorism runs contrary to the basic purposes of the United Nations.

In 2007, Nigeria made the news headlines when a 23 years old Nigeria Farouk Abdul Mutallab attempted to blow up a Detroit-bound Delta airline with what experts call Pentaerythritol tetra nitrate (PETN) ?? . The aftermath of this infamous act was the listing of Nigeria on the United States Terrorist Watch List as one of her special (security) interest 10 a) does attempts or threatens any act of terrorism.

. Indeed, the bombing United Nations office in Abuja by Boko Haram on Friday, 26 August 2011, which killed at least twenty one and wounded sixty was a direct attack on the international community. The bombing of markets and embassies, hijackings, kidnappings, mass killings, etc are acts of aggression, which not only constitute to peace and security, but also violates basic human rights and fundamental freedom.

Since 2002, when Ustaz Mohammed Yusuf, the sect leader of an armed group officially known as Jama'atu Ahlis SunaLidda' awatiwaIjinad, which means in English, "people committed to the propagation of Prophet's Teaching and Jihad started is its war campaign in Nigeria, the criminal of the group has unabated. Apart from Boko Haram, there are other terrorist groups such as Fulani herdsmen and armed ethnic militias who have been unleashing terrors on Nigerians in alter disregard to the provisions of the Terrorism Prevention Amendment Act, 2013.

The framers of the 1999 Constitution gave legal backing to the second stanza of our Country's National Anthem, which states "To build a Nation where peace and Justice shall reign" by enshrining Sec. 14(2)(b) of the Constitution. That section states that "security and welfare of the people is the primary purpose of government'.

It is in the bid to attain the desired peace and security, for the nation that the office of the National Security Adviser is charged with the responsibility in Sec. 1A. (1) of the Terrorism Prevention (Amendment Act,2013), charged the office of the National Security Adviser, to act as coordinating body for all security and enforcement agencies on the war against terrorism.

The Terrorism Prevention (Amendment Act 2013) stipulates in Section 2(a)-(h) that:

"A person or body corporate who knowingly in or outside Nigeria directly or indirectly willingly: b) commit an act preparatory to or in furtherance of an act of terrorism.

9 A whitish explosive that resembles sugar or salt and requires to be hammered or ignited for it to go off. ??0 Other countries on the list include Algeria, Saudi Arabia, Somalia, Yemen, Syria, Libya, Pakistan, Lebanon, Cuba, Sudan, Afghanistan.

c) omit to do anything that is reasonably necessary to prevent an act of terrorism. d) assists or facilitate the activities of persons engaged in an act of terrorism or is an accessory to any offence under this Act, e) participate 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 death sentence”.

It is worthy to note that the Terrorism Prevention Act 2013 goes a step further to provide for extraterritorial application of the Act and terrorist financing offences. The amended Act substituted various sections of the principal Act and it takes care of the previous unforeseen situations. This means that the 2013 Amended Act is viral and pro-active.

## 5 V. Human Rights issues and Terrorism Prevention Act 2011

The enactment of the Principal Terrorism Act in 2011(as amended in 2013), generated concerns from human rights circles because some aspects of the Act were seen as constituting serious threats to some of the fundamental rights guaranteed in chapter 4 of the Constitution of the Federal Republic of Nigeria 1999. For instance, the Act gave broad and sweeping powers to security and intelligence officers, without any judicial oversight. For example, section 25 (a-e) of the Act, empowers the National Security Adviser or Inspector General of Police to enter and search any place, persons, or vehicle “without warrant,” if the officer has reason to suspect that an offence is being committed. The officer may also search, detain, and arrest any person if he has a reasonable suspicion that the person has committed or is about to commit an offence under the Act.

Section 26, of the Act empowers the Attorney-General of the Federation, the National Security Adviser or the Inspector General of Police “for the purposes of the prevention or detection of offences or the prosecution of offenders give such direction as appear necessary to any communication service providers in intelligence gathering”

11 . Section 28(1) also allowed the detention of a terrorism suspect for 24 hours by security officers without access to any other person except the suspect’s medical doctor and the detaining agency’s lawyer.

The wide powers conferred on the government to proscribe organizations were also of a concern to human rights activists, as such powers were considered as capable of being abused, particularly in declaring opponents as terrorists.

Though the Terrorism and Prevention Act, 2013 brought about some changes which address some of the human rights issues, nevertheless, some of the amendments still leave much to be desired. For example, section 27(1), which provides that

The 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 the right to personal liberty guaranteed under section 35 of the Nigeria Constitution. This is especially so if one considers subsections (1) (c), (4) (a) (b) and ( ??). Moreover sub-section (1) (c) permits deprivation of a person’s liberty, in accordance with a procedure permitted by law, “for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence”, sub-section (4) provides that such a person shall be brought before a court of law within a reasonable time, and if he is not tried within a period of: 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 bought 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 “a reasonable time” means?..

## 6 c) In the case of an arrest or detention in any place

where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and (b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable”.

The new section 28(1) of the amended Act, provides that;

“where a person is arrested under reasonable suspicion of having committed any offence under this Act, the relevant law enforcement or security officer may direct that the person arrested be detained in custody for a period not exceeding fortyeight hours”, This potentially contravenes section 35(4) ( ??) of the Constitution which stipulates “in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers”.

The new section 28( ??), which provides that where a person arrested under the Act is granted bail by a court within the 90 days detention period, “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". But house arrest, without a valid court order or, in this case, in defiance of a court order, is illegal and undermines the authority of the courts.

It is important to note that the sweeping powers conferred on the National Security Adviser, the Inspector General of Police and the State Security service under the Principal Act 12 are now curtailed and reposed in the Attorney General of the Federation who is now designated as the authority for the effective implementation and administration of the Act. In this regard, the Attorney General has the responsibility of strengthening and enhancing the existing legal framework in order to ensure conformity of Nigeria's counter-terrorism laws and policies with international standards and United Nations Conventions on Terrorism. The Attorney General is also charged with the responsibility of maintaining international cooperation required for preventing and combating international acts of terrorism. It is the further responsibility of the Attorney-General to ensure the effective prosecution of terrorism matters ??3 The Attorney General of the Federation reserves the power to delegate his power to any agency charge with responsibility of terrorist investigation to institute criminal proceedings 14 12 See, The Terrorism Act 2011 13 See, section 1A(2)(a)(b) and (c) of the amended Act 2013. ??4 Section 30(1) Ibid . A special power is conferred on the Attorney General of the Federation, to initiate a judicial process for the reduction of sentence imposed on a convict where such a convict has before any proceedings, made possible or facilitated the identification of other accused persons and their sponsors or who, after commencement of the proceedings has made possible or facilitated the arrest of such persons. The court has the discretion to reduce the sentence as it may deem fit. However, it is important to note that the powers conferred on the Attorney General are enormous and could lead to incompetency arising from too much work load, and abuse of power.

Currently, the office of the National Security Adviser (ONSA) is now the coordinating body for all security and law enforcement agencies in matters relating to terrorism. The office also has the mandate to ensure the effective formulation and implementation of a comprehensive counter-terrorism strategy for Nigeria, build capacity for the effective discharge of the functions of all relevant security, intelligence, law enforcement and military services under the Act or any other law on terrorism in Nigeria. The National Security Officer is further conferred with the omnibus power "to do such other acts or things that are necessary for the effective performance of the functions of the relevant security and enforcement agencies" 15 VI. Financing of Terrorism . Sadly, the effectiveness of the National Security Officer is not very pronounced as the ability of the terrorists to plan, develop and execute their attacks without detection clearly exposes his inefficiency.

Section 13(1) of Terrorism Prevention Act 2013 provides for funding of terrorism in situations where a person or entity solicits, acquires, provides, collects, receives, possesses or make available funds, property or other services by any means to terrorists or terrorist groups directly or indirectly intending that it be used in full or in part for the purpose of committing or facilitating the commission of a terrorist act Such a person is liable upon conviction to imprisonment for life ??6 It is commendable to say that where an entity is convicted of an offence under the Terrorism and Prevention Act (as amended), such as entity is liable to . There is a distinction between terrorist funding and money laundering. Money laundering is a crime which proceeds have to be disguised in order to conceal the illicit source which in the case of terrorist financing, money would be from either legitimate or illegal sources.

Section 14 of the Act imposes an obligation on financial institution or designated non-financial institution to report suspicious transaction relating to terrorism to the Financial Intelligent Unit (FIU). The Nigerian FIU was established in 2005 by the Economic and Financial Crime Commission (Establishment) Act 2004 (EFCC). It draws its powers from the money Laundering (Prohibition) Act 2004 is the central agency for the collection, analysis and dissemination of information. the forfeiture of any assets, funds, or property used or intended to be used in the commission of the offence and the court may issue an order to wind up the entity or withdraw the license of the entity and its Principal Officers or both ??? . Where the court orders the entity to be wound up, its assets and property shall be transferred to the Federation Account ??8 Section 32 of the Terrorism Prevention Act 2011 vests the jurisdiction to try and punish terrorist offences on the Federal High Court "located in any part of Nigeria, regardless of the location where the offence is committed". And as a corollary of the jurisdiction to try offenders under the Act, the Federal High Court is empowered to impose sentences of varying degrees and fines to individuals found culpable .

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In order to forestall delay in hearing terrorism cases, the Act empowers the Federal High Court to "adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct of matters ). In addition, a convict under the Act may be required to forfeit any asset used to commit the offence or connected with it.

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. One measure prescribed by the Act itself is for the court to refuse to entertain applications for stay of proceedings until judgment is delivered 21 . This is because by the time judgment is delivered, it is doubtful if there would be any proceeding to be stayed. And, in any event, the court would have become functus officio. This point was well made by Kabiri -Whyte, JSC (as he then was) in *Sanusi v. Ayoola* ??2 One of the amendments affected in

respect of the jurisdiction of the Federal High Court is the power of the court to try terrorist offences whether or not the offence was committed in Nigeria and completed outside Nigeria". In *State v. Okah* when the learned Justice opined that a court, on disposing of a cause before it, renders itself functus officio as it ceases to have jurisdiction over such case.

The apprehension about the jurisdiction of the Federal High Court, nevertheless is that, the court is already overloaded, especially, with regard to the long list of items contained in section 251 of the 1999 Constitution and other statutes over which it has power to exercise jurisdiction.

## 9 SS94/2011the

accused, who was resident in South Africa, was tried and convicted for his involvement in the planning and organizing of two car bomb attacks in Nigeria wherein several people were killed and many injured. The South African Court predicated its authority to hear and determine the case upon the fact that "South Africa is a member of the United Nations and therefore committed to executing its obligations in terms of international instruments dealing with terrorism and related activities." Moreover Nigeria is signatory to all the relevant Conventions and Protocols Section 14 of the Act imposes an obligation on financial institution or designated non-financial institution to report suspicious transaction relating to terrorism to the Financial Intelligent Unit (FIU). The Nigerian FIU was established in 2005 by the Economic and Financial Crime Commission (Establishment) Act 2004 (EFCC). It draws its powers from the money Laundering (Prohibition) Act 2004 is the central agency for the collection, analysis and dissemination of information.

It is commendable to say that where an entity is convicted of an offence under the Terrorism and Prevention Act (as amended), such as entity is liable to the forfeiture of any assets, funds, or property used or intended to be used in the commission of the offence and the court may issue an order to wind up the entity or withdraw the license of the entity and its Principal Officers or both ??4 . Where the court orders the entity to be wound up, its assets and property shall be transferred to the Federation Account ??5 Section 32 of the Terrorism Prevention Act 2011 vests the jurisdiction to try and punish terrorist offences on the Federal High Court "located in any part of Nigeria, regardless of the location where the offence is committed". And as a corollary of the jurisdiction to try offenders under the Act, the Federal High Court is empowered to impose sentences of varying degrees and fines to individuals found culpable .

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334 Conventions and Protocols. <sup>1 2 3 4 5</sup>

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<sup>1</sup>The word comes from French 'terrorisme' meaning great fear. It was first recorded in English-Language dictionaries in 1798 and in it, it means a systematic use of terror as a policy.<sup>4</sup> Black Law Dictionary 8<sup>th</sup> edition, page 1512

<sup>2</sup>The UN Security Council 1373(s/res/1373(2001)

<sup>3</sup>See, Paragraph (a)(i) to (111) of the AU Convention

<sup>4</sup>Cap C38 LFN 2004; See, section 2 of the Anti -Terrorism Act, 2013 8 Section 1(2), (a),(b) Ibid

<sup>5</sup>Section 25(11) Ibid 18 See section 25(3) Ibid 19 Section 32(2) Ibid 20 Sec.32(5) Ibid 21 Sec.32(6) Ibid 22 (2000) 1FWLR 208 .

