

AN APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR COMBATING
TERRORISM IN NIGERIA*

Abstract

Terrorism has been a threat to both the people and government of Nigeria. The loss of human and material resources is so monumental and a huge set back to the country. The primary aim of this paper is to appraise the laws and institutional mechanism put in place in combating terrorism. The objective of this paper is to critically evaluate the legal and institutional frameworks put in place to counter terrorism in Nigeria. The methodology adopted in this research is the doctrinal research methodology, this enabled the researcher examine the mechanism put in place to tackle terrorism and find a means of filling the gap identified. The major findings of this research includes terrorism prevention Act 2011 and Terrorism Prevention (Amendment) Act 2013, s 27 of the Act states that a suspect may be detained for 90 days subject to renewal, while s 28 deals with access to detain person pending the conclusion of investigation while s 29 relates to the privacy of the citizens. These provisions run counter to the spirit of the Constitution of Federal Republic of Nigeria 1999 (as amended). It is in the light of the forgoing that this recommendation is made that amendment of the above mentioned provisions to conform with constitution as it relates to Fundamental Human Rights.

Keywords: Terrorism, Insurgency, Internally displaced persons, Armed conflicts

1. Introduction

The term ‘terrorism’ was first recorded in 1795 in France relating to the reign of terror by the government, it then followed in Ireland when in 1866 ‘terrorist’ refer to anti-government actions or activities, and in 1883 it was used in similar fashion in Russia.¹ Originally the term ‘terrorism’ refers to acts committed by government. The concept of terrorism kept evolving until it got to the state we are now, where the term refers to incidence of wanton destructions of lives and properties of people and government indiscriminately. It could be for political or religious reason or demand from the government to execute a certain request they are making. Indeed, terrorism must be seen from the concept of the modern Nation State where the demise of a leader does not extinguish the state thus the group design strategy to include civilian target to create apprehension and anxiety in other to undermine the government. Africa has its fair share of the terrorist groups for instance in Somalia Al Shabab came into existence, Mali had the Al Qaeda in Islamic Maghreb, while Jama’atul Sunnah lid’ dawatiwal jihad, and here-in-after called Boko- Haram established it base in Nigeria. There were several militias in Nigeria which predate Boko haram among which are: the Odu’a People Congress, Egbesu Boys Africa, Sojan bante, Movement for the Survival of Sovereign State of Biafra, Bakassi Boy² among others. The modus operandi of Boko haram became so complicated that it made them stand out among their fellow insurgent groups.

On the 11th day of September 2001, four commercial jets were hijacked by a cell of terrorists. One of the jets hijacked left Boston Massachusetts and crashed in to the North tower of the World Trade Center (WTC). In the morning of the attack, some eighteen minutes later, a second plane also from Boston owned by United Airlines was used to strike the South tower of the World Trade Center. The twin tower of the WTC collapsed following massive damage of their structure as a result of the crash from the planes of the terrorist. At 09:43hrs Pennsylvania local time, a third hijacked plane belonging to American airline flight 93 also crashed in Somerset County, Pennsylvania South-East of Pittsburg.³ The act of crashing the plane into the buildings and the resultant effect was the worst act of terrorism in the history of the U.S.A. In addition to the destruction of properties worth billions of dollars some three thousand lives were lost. The act of the terrorists on September 11th sent a wave of shock of the dangers of international terrorism around the globe. The terrorist attack was condemned unequivocally by the International Community and Organizations.

The United Nations General Assembly on the 12th of September passed a resolution condemning the act which resulted to the destruction of properties and loss of lives,⁴ the United Nation while expressing solidarity with the people and government of the U.S.A, called for international cooperation to bring justice to the perpetrator, sponsors or organizers of the crime of September 11th 2001. Similarly, the Security Council on the 12th of

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¹ A S Gashinbaki and A U Namaibindiga, ‘I Am Innocent of Terrorism says religion’ (first published Sarumedia publishers, 2015) 8.

² D Abah and A Hembe, ‘Ethnic Militia and Security in contemporary Nigeria’: an appraisal of Ombatse in Nasarawa State (2015) POLAC Intl Journal of Humanities And Security Studies p5.

³ cnn.com-chronology of terror-September 12,2001 <http://edition.cnn.com/2001/US/09/11/chronology.attack> accessed 23/03/2018.

⁴ A/ Res 56/1 (12 Sept 2001) www.un.org/ accessed 23/03/2018

September condemned the terror acts calling them 'a threat to international peace and security'.⁵ The UNSC further required Nation States to adopt and implement legal instruments on terrorism, to prevent and suppress the financing and freezing of funds on international matters.

Furthermore, states were enjoined to assist one another in respect of criminal investigation and proceedings relating to terror acts.⁶ Furthermore, states were encouraged to exchange information regarding terrorists movement, including trafficking in arms and sensitive materials, use of communication and technologies by terrorist, the threat of being in possession of weapons of mass destruction. In compliance with Security Council Resolution calling for a total fight to annihilate terrorist group in the world, the then government of President of Nigeria His Excellency Olusegun Obasanjo established the Economic and Financial Crimes Commission (EFCC) in 2003. Prior to 2003 Nigeria experienced different kinds of insurgency leading to destruction of lives and properties. The types of terror acts known to the EFCC Act was absent at the takeoff of the Commission, although a group under the name Nigeria Taliban attacked some public buildings and Police Stations in Geidam and Kanamma Yobe State in 2003, they operated in Bama and Gwoza, Borno State in the same manner 2004.⁷ They were subdued by a joint team of the Military and the Police. They went under only to resurface in 2009 to unleash what is known as Terrorism under the EFCC Act.⁸ Attacks from the terrorist group continued to ravage the land leading to loss of some territory. The terrorist group established their caliphate. The epic center of the insurgency was Maiduguri Borno State.

The Nigeria Police Force Headquarters, Louis Edet house Abuja was bombed by Boko Haram on the 16th day of June 2011. That was the first suicide bombing to be recorded in the history of Nigeria. Subsequently, the floodgate was open in Nigeria. The next bombing by Boko Haram happened on the 26th of August 2011 at the United Nations building in Abuja, this attack left 21 dead and 13 injured.⁹ Furthermore, the Boko Haram group continued to attack even when the government pronounced technical defeat of the group.¹⁰ The Boko Haram group devised a means of carrying out their nefarious activities such as suicide bombing using mostly women and children at different times and places in the North Eastern Region of Nigeria.

2. Clarification of Concepts

Terrorism

The concept of terrorism is one of the most difficult concepts to deal with when it comes to definition. There is no agreeable definition for the term 'Terrorism'. It's 'this controversy that informed Abdul Rashid Morten title 'Contested Concept, Conflicting Perspective and Shattering Consequences' in his examination of the intense debate on the definition and phenomenon of terrorism.¹¹ Morten's examination of relevant materials relating to the concept in 2010, he came to the conclusion that 'there is no widely agreed definition of terrorism and there seems no possibility of an agreed upon definition emerging in the near future. He asserted that this is because the definition of terrorism is colored by political ideology, location and perspective.¹²

In the same vein, Thomas Bradley argues that definition dilemma on the concept of terrorism continue given that its existing definitions have fallen into two categories of academic and political'¹³ he went on to cite the definition provided by Alex P. Schmid in 1988 which to date still has strong influence on the study of the concept of terrorism. Accordingly, he gave a perfect example of the 'Academic' definition of terrorism. According to Schmidt terrorism can be defined as 'An anxiety-inspiring method of repeated violent action, employed by (semi) Clandestine individual group or state action, for idiosyncratic, criminal or political reasons where by the contrast to assassination the direct targets of violence are not the main targets'.¹⁴ This definition however failed to take cognizance of state sponsored terrorism. What it did was to consider non state actors action only. The popular political definition 'in government circle was that offered by the U.S Department of

⁵ S/Res/1368 adopted by SC at its 4370th meeting U.N.O.D.C publishing and Lib sec. U.N office, Vienna Feb. 2012; 2.

⁶ SC Res.7158 (4385) <https://www.un.org/press/en/2001/sc7158.doc.htm> meeting on 28th Sept. The SC unanimously adopted wide ranging anti-terrorism resolution, Res 1373 (2001) created a committee to monitor the implementation.

⁷ Iro A and Oarthe O 'The Boko Haram Uprising: How should Nigeria Respond?'(2012) Third World Quarterly 853-869.

⁸ S.46 Economic and Financial Crimes Commission Act (2004).

⁹ <http://mobile.nytimes.com/2011/08/29/world/africa/29nigeria.html> accessed on 23/03/18.

¹⁰ Nigeria Boko Haram Militants 'Technically Defeated' Buhari - BBC News available at <<http://www.bbc.com/news/amp/world-africa-35173618> accessed 23/03/18.

¹¹ A. R. Moten, *Understanding Terrorism Contested Concept, Conflicting Perspectives and Shattering Consequences; Intellectual Discourse*, 18.1, (2010) P 31- 63.

¹² *Ibid*

¹³ T.J Bradley *Defining International Terrorism: A Pragmatic Approach to Terrorism and Political Violence 10.1* (1998) P90-107.

¹⁴ Schmidt A and Longman J.J, *Political Terrorism. New Brunswick, N.J Transaction Books* 1998, P 28.

State in 1983. As noted by Bradley and this definition is still being used today. ‘Terrorism means premeditated, politically motivated violence perpetrated against non-combatant targets by sub national groups or clandestine agents usually intended to influence an audience’¹⁵

Similarly, the British government has defined ‘terrorism as the use, or threat, of action violent, damaging or disrupting and is intended to influence the government or intimidate the public and is for the purpose of advancing a political, religious or ideological cause.’¹⁶ From the definitions by the U.S. State Department and Britain it is evidently clear that they are biased and did not take into consideration the state ‘apparent impurity against its citizens’ and suggested that only non-state actors are capable of committing terrorism’.¹⁷ This concept allows the U.S and its’ allies and indeed any government to call anybody or group that opposes them or their policies terrorists.¹⁸ It is pertinent to state further that the political definition allows the state maximum amount of discretion in interpreting event of political significance.¹⁹

Terrorism Financing

There are a number of conventions emanating from the U.N aimed at combating terrorism and some of these Conventions predate the incidence of September 2001. The International Convention for the Suppression of Financing of Terrorism was adopted through resolution 54/109 of Dec 1999 of the Gen Ass of the U.N, provides in Art 2 that:

i. any person commits an offence within the meaning of this convention if that person by any means, directly or indirectly unlawfully and willingly provides or collects funds with the intention that they should be used or in the knowledge that they are to be used; in full or part, in order to carry out:

a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex or

b) Any other act intended to cause death or serious bodily injury to civilians, or any other person not taking any active part in the hostilities in a situation of armed conflict, with the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing an act.

For an act to constitute an offence set forth in Para 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in Para 8(a) or (b).²⁰ The Breton Wood Institutions define ‘terrorist financing’ to mean ‘the financial support, in any form, of terrorism or those who encourage, plan or engage in it’.²¹ It is observed that like the problem with the definition of terrorism so it is with terrorist financing as not all nations that adopted the convention agreed on the definition of terrorism because they are influenced by different political and religious considerations which bears on the National policy and thinking of the country. The Financial Action Task Force (FATF) is recognized as the pace setter in combating terrorist financing failed to define terrorist financing, however it does not specifically define the term financing of terrorism in its special recommendation.²² It only mentioned it. (ix special recommendations) which was evolved after the September 11th attack on the U.S. FATF calls on the member states of the U.N to adopt and ratify the International Convention for the Suppression of the Financing of Terrorism.

3. Legal Framework for Combating Terrorism in Nigeria

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The 1999 Constitution of the Federal Republic of Nigeria (as amended) guarantees members of society some rights such as right to life, right to dignity of the human person, freedom of movement, conscience and association as envisioned in Part IV of the 1999 Constitution of the Federal Republic of Nigeria.²³ It is in the light of this that many world constitutions now recognize the right to life and human dignity and have made available process and procedures for their attainment.

Economic and Finance Crimes Commission (Establishment) Act 2004

Section 15 of the EFCC Act, 2004 states that:

¹⁵ *Ibid*

¹⁶ Moten (n 12)

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ Bradley (n 14) 92.

²⁰ International Convention for the Suppression of the Financing of Terrorism (1999) <https://treaties.un.org/1999>

²¹ IMF and World Bank (2003).

²² Special Recommendation (ix special recommendations of FATF 2004).

²³ The United States Declaration of Independence, 1776 and the Declaration of the Rights of Man and Citizen of 1789, have similarly adopted it.

- (1) Any person who willfully provides or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used for any act of terrorism commits an offence under this act and is liable on conviction to imprisonment for life.
- (2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this act and is liable on conviction to imprisonment for life.
- (3) Any person who makes funds, financial assets, or economic resources or financial or other related services available for use of any person to commit or attempt to commit, facilitates or participated in the commission of a terrorist act is liable to imprisonment for life.

Section 15 of the EFCC Act, is the only section dealing with terrorism, and the section is dealing with provision of funds for the commission of the terror act. The problems of definition continue with the EFCC Act like many counter terrorism laws around the globe existing without defining what terrorism is? What constitute terrorism? How to conduct investigation in respect of terrorist acts? It equally did not provide the agency that is saddled with the responsibility of investigation and prosecution of the suspects in the event of an attack. The Act did not comment on the seizure of terrorist funds and property, mutual assistance, an extradition among others. The section of the EFCC Act was not comprehensive enough in dealing with terrorism. It has just a section dealing with it. The reason for having a section on terrorism was to fulfill the request put forward by United Nation Security Council to fight terrorism seen as a threat against international peace and security after the terrorist attack in the US. When the Act came in to force, Nigeria was not having security challenges that constitute terrorism. However, few years into the existence of Commission, security challenges degenerated to a point the country had no option than to promulgate another Act specifically to tackle terrorism which it call Terrorism (Prevention) Act, 2011.

Terrorism (Prevention) (Amendment) Act 2013

The Terrorism (Prevention) Act, 2011 discloses a number of defects that warranted the National Assembly in 2013 to amend some provisions of the Act to make it workable. The preamble of the 2013 Terrorism (Prevention) (Amendment) Act was to provide for an extra territorial application of the Act and strengthening of terrorist financing offences and for other related matters.²⁴ At the beginning of the amended Act, a new subsection (1) has been included to the existing section 1 which states that all ‘acts of terrorism and terrorist financing is hereby prohibited’. Also inserted is a new subsection (2) this gives an elaborate definition and a number of offences that can be punished under the section. It went on to provide for death penalty as a maximum punishment for offenders.²⁵ In the amended Act the Office of the National Security Adviser (ONSA) will coordinate the agencies saddled with the fight against terrorism.²⁶ The 2013 amendment provided for clear roles for the Attorney General of the Federation, National Security Advisor and the law enforcement agencies carrying out Counter Terrorism.²⁷ In the amended Act of 2013, new sets of S.3-25 were provided as replacement for 3 - 8 in the 2011 Act. These new section cater for some offences that were not taking cognizance of in the 2011 Act. The new section takes care of offences such as offences against internationally protected persons,²⁸ terrorist meeting,²⁹ soliciting and giving support to terrorist groups for the commission of terrorist act.³⁰ It also provide for the obstruction terrorism investigation and the hindering arrest of terrorist.³¹ The Act further provides for provision of training materials or instructions,³² the concealing of information about terrorism³³ provision of device to a terrorist group and recruitment of persons to be members of terrorist group³⁴ or to participate in terrorist acts.³⁵ There were not in the principal Act of 2011. The offence of incentive, promotion or solicitation of the property for the commission of terrorist act,³⁶ the provision of facilities in support of terrorist³⁷ act even though were covered under the 2011 Act, it was not as detailed as it is in the amendment or 2013. The amendment also caters for financing terrorism³⁸ just like the principal Act, however, some form of duplication is manifesting here, it would have been better for the S.13 to be merged with section 5 dealing with soliciting and

²⁴ Terrorism (Prevention) (Amendment) Act, 2013.

²⁵ *Ibid* s 1(2)

²⁶ *Ibid* s 1A (I)

²⁷ *Ibid* s 1A (I) – (b)

²⁸ TPA, 2013 s 3

²⁹ *Ibid* s 4

³⁰ *Ibid* s 5

³¹ *Ibid* s 6

³² *Ibid* s 7

³³ *Ibid* s 8

³⁴ *Ibid* s 9

³⁵ *Ibid* s 10

³⁶ *Ibid* s 11

³⁷ *Ibid* s 12

³⁸ *Ibid* s 13

giving support to terrorist group. In S.5 dealing with terrorist property, hostage taking and membership of terrorist group or proscribed organization were dealt with in the principal Act of 2011 and 2013 amendment.³⁹ The 2013 Act insert are new provisions on conspiracy,⁴⁰ aiding and abetting in the commission of terrorism,⁴¹ escape, or aiding and abetting escape⁴² furthermore, new sections were inserted into the 2013 amendment Act that were not in the 2011 principal Act. The new sections are attempt to commit an offence under this Act,⁴³ preparation to commit terrorist acts,⁴⁴ unlawful assumption of character of officer of any law enforcement security⁴⁵ and any tampering with evidence and witness,⁴⁶ obstruction at any officer of the law enforcement or security agency.⁴⁷ These innovations were due to the exigency of time. In our humble opinion this section seems to perform the same function with the section meant to prevent terrorist investigation in S.6 of the Act. Another section added is offences by an entity, the management will be held liable for any neglect, the director, manager, secretary of the entity or any person purported to act in that capacity, the officer shall be liable to life imprisonment.⁴⁸

Police Act 2020

On the 17th of September, 2020 the President of the Federal Republic of Nigeria, Muhammadu Buhari, signed the Nigerian Police Bill into Law. The Police Act, 2020 is indeed a welcome development because for almost eight decades, the legal regime of police administration in Nigeria was regulated by the Police Act of 1943 and the clamor for a new Act remained persistent. The new Act provides for a more effective and organized Police Force which will be transparent and accountable in all its operations. It also reflects the mandate to enhance professionalism in the Police Force via adequate training opportunities for police officers and other employees in the force. The ultimate aim of the new Act is to create cooperation and partnership between the Police Force and communities, so as to ensure peace, safety of lives and properties.

Section 214(1) of the Constitution establishes the NPF. It abolished the individual state or local government police forces and provides that no other police force shall be established for the Federation or any part thereof. Police affairs are under the jurisdiction of the federal government as it is an item on the Exclusive Legislative list of the Constitution.⁴⁹ The duties of the Police Act are provided for under section 4 of the Police Act,⁵⁰ as follows:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of the law and order, the protection of property and the enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within or without Nigeria as may be requested of them by or under the authority of this or under any Act.

In addition to these duties, the police are charged with the performance of other auxiliary duties, including assisting in regulating traffic on the highway, providing assistance during disasters and acting as escorts in various spheres.⁵¹ The NPF also patrols jointly with the army in strife torn areas. The Nigerian Police Force is principally responsible to maintain law and order. Virtually all other duties mentioned in section 4 of the Police Act above is centered on this particular duty which involves maintaining law and order. This duty demands that the police compel the citizens to obey laid down laws as outlined in the Nigerian Constitution. However, the police are required to balance the freedom of the individual with the need to prevent and detect crime and, the preservation of law and order. In this way, the police give life to human rights, meaning that police make decisions that either affirm or deny human rights of individuals. Police are mandated to protect and serve. They are the centurions at the gate and defenders of the law, legality, freedom, individual liberties and human rights. For example, the NPF has very wide powers in the performance of their duties under the Police Act and the Administration of Criminal Justice Act, 2015. These include the powers of arrest, search, seizure, detention and use of force in certain circumstances. The exercise of these rights affect either the citizen directly or their property. Consequently, the fundamental rights of citizens are more often and more directly affected by police

³⁹ TPA, 2013 ss 14.15 and 16

⁴⁰ *Ibid* s 17

⁴¹ *Ibid* s 18

⁴² *Ibid* s 19

⁴³ *Ibid* s 20

⁴⁴ *Ibid* s 21

⁴⁵ *Ibid* s 22

⁴⁶ *Ibid* s 23

⁴⁷ *Ibid* s 24

⁴⁸ *Ibid* s 25

⁴⁹ CFRN 1999 as amended, Item 45 of the Exclusive Legislative list Part I, Second Schedule.

⁵⁰ Police Act, 2020

⁵¹ V A Mpamugo, 'The Role of the Nigerian Police in Human Rights Protection and Enforcement' (1996) 2 *ABIA STATE L.J.*; 29

activities than by those of any other institution. In all, the Police Act, 2020 has done a remarkable job in changing the face of the legal framework regulating policing in Nigeria. One wonders whether this new Act will be implemented with religious piety.

4. Institutional Framework for Combating Terrorism in Nigeria

The following institutional mechanism will be examined as it relates to the protection of human rights and the prevention of terrorism:

Nigerian Armed Forces/Joint Task Force

The police which are the primary institution responsible for internal security in Nigeria have been overwhelmed by the rising wave of insurgency largely because they lack requisite training and expertise in counter-insurgency operations.⁵² Consequently, government have relied on the military which are widely perceived to be better trained and equipped to take a leading role in law enforcement and counter-insurgency operations. Over the years various task forces including Special Task Forces (STFs), Military Special Operations Forces (MISOFs), Joint Security Task Forces (JSTFs) and Joint Military Task Forces (JMTFs) have been established and mandated to carry out counter-insurgency operations in different parts of the country. Although a typical Joint Task Force (JTF) in Nigeria comprises the Army, Navy, Air Force, Police, State Security Services (SSS) and sometimes immigration and custom officials,⁵³ they are mostly dominated by the Army. The first military task force established for internal security operation in contemporary Nigeria dates back to 1993 when an Internal Security Task Force (ISTF) was deployed in Ogoni land in the Niger Delta to suppress protests by oil producing communities against Shell Petroleum Development Company (SPDC) over environmental injustice.⁵⁴ The operations of the ISTF were characterized by extra-judicial executions and widespread human rights abuses, including the widely condemned arrest and eventual execution of Ken Saro-Wiwa and eight other members of the Movement for the Survival of Ogoni People (MOSOP) in 1995.⁵⁵ The execution of Saro-Wiwa and other eight members of MOSOP (a.k.a. Ogoni Nine) by the then military junta of General Sani Abacha, was widely condemned by members of the international community and human rights organizations, including Amnesty International.⁵⁶ In addition to the ISTF, two JTFs code named 'Operation Salvage' and 'Operation Flush I, II and III' in Bayelsa and Rivers states respectively, were established in 1997.⁵⁷ However, the first major JMTF in the Niger Delta was established in 1999 and code named 'Operation HAKURI II'. Basically, 'Operation HAKURI II' was a punitive military operation that resulted in massive destruction of lives and property after two days of continuous bombardment of Odi community in the Niger Delta.⁵⁸ At the height of the now-abated Niger Delta insurgency, the JTF code named 'Operation Pulo Shield' (formerly 'Operation Restore Hope') was established in around 2004 under the command of a Major General, with the mandate of countering insurgency, illegal oil bunkering, piracy, kidnapping and hostage taking in the creeks and coastal areas of the Niger Delta and other adjoining states.⁵⁹ The activities of 'Operation Pulo Shield' are usually fraught with allegations of arbitrary killings and human rights abuses against the host communities.

Apart from the Niger Delta region, a number of JTFs have been established in parts of northern Nigeria as a result of the increasing incidents of ethnic and sectarian violence in the region. Since 1999 when Nigeria returned to democratic governance, the North-Central part of the country has witnessed ethnic and sectarian violence, mainly involving Christians and Muslim adherents, particularly on the Jos Plateau and in Kaduna state. In response to the breakdown of law and order that resulted from Muslim-Christian strife on the Jos Plateau, a Security Task Force (STF) code named 'Operation Safe Haven' was established sometime in 2010. The STF was commanded by a Major General and its operatives includes personnel from the Army, Navy, Air Force, Mobile Police (MOPOL), Anti-terrorism Squad (ATS) from the Nigerian Police Force (NPF), and other personnel drawn from the SSS and the Nigeria Security and Civil Defence Corps (NSCDC). The STF was mandated to curtail the spate of killings by ethnic militiamen on the Jos Plateau and its environs. In addition, with the emergence of Boko Haram insurgency, a JTF code named 'Operation Restore Order' was established in

⁵² P Francis and Others, 'Securing Development and Peace in the Niger Delta: A Social and Conflict Analysis for Change' (2011) Woodrow Wilson International Centre for Scholars, Washington DC

⁵³ *Ibid*

⁵⁴ R Boele and Others, 'Shell, Nigeria and the Ogoni: A Study in Unsustainable Development: The Story of Shell, Nigeria and the Ogoni People – Environment, Economy, Relationships: Conflict and Prospects for Resolution' (2001) 9 *Sustainable Development*; 74 - 86

⁵⁵ J Forest, *Confronting the Terrorism of Boko Haram in Nigeria* (Florida: JSOU Press 2012)

⁵⁶ Boele and Others (n 114)

⁵⁷ Francis and Others (n 112)

⁵⁸ Human Rights Watch, 'Nigeria-Destruction of Odi and Rape in Choba' (1999) <<http://www.hrw.org/press/1999/dec/nibg1299.htm>> accessed 10 October 2022.

⁵⁹ C Azuatalam, 'JTF Rebrands to Operation Pulo Shield' The Nation Newspaper 20 May, 2012

June 2011, and deployed in Borno and Yobe states. Specifically, the mandate of 'Operation Restore Order' is to 'restore order to the north-eastern part of the country with emphasis on Maiduguri'.⁶⁰ The JTF whose counter-insurgency operations were initially limited to Borno and Yobe states had its mandate extended in September 2011 to include a range of states where Boko Haram insurgents are known to be active, excluding Plateau state which falls within the operational domain of the STF.

Ideally, JTFs operations are intended to protect civilians from violence, and their presence often creates the expectation among host communities that they will be protected from violence and human rights abuses. However, internal security operations of JTFs have become notorious for bombing insurgents in civilian populated areas thereby killing innocent people and destroying human habitations and sources of livelihood.⁶¹ The brutal nature of JTFs operations was aptly demonstrated in the 20 November 1999 bombardment of Odi community in Bayelsa state by operatives of 'Operation HAKURI II'. To recall, after two days of intense bombardment with heavy artillery, aircraft, grenade launchers, mortar bombs and other sophisticated and deadly weapons, about 2,483 persons mainly women and children were killed and numerous buildings destroyed.⁶² The atrocious spectacle of Odi was replayed on 22 and 24 October 2001, when a detachment of the Nigerian Army invaded Zaki Biam and neighbouring communities in North-Central Nigeria, in a reprisal attack that resulted in the extra-judicial executions of many unarmed civilians and the destruction of numerous property.⁶³ The killings in Odi and Zaki Biam are clearly arbitrary and thus a violation of the human rights of the inhabitants of those communities, because those who were killed were neither insurgents nor organised armed groups. Organised armed groups, according to the 'Interpretive Guidance' of the International Committee of The Red Cross (ICRC), are those that recruit their members mainly from the civilian population and possess the capacity and military organisation to either 'take a direct part in hostilities' or conduct hostilities 'on behalf of a party to the conflict'.⁶⁴ These attacks were generally condemned as a violation of human rights law and international humanitarian law.⁶⁵

In spite of the general condemnation that however followed the Odi and Zaki Biam military bombardments, operatives of the JTFs have continue to use lethal force against civilians even when it is necessary to protect lives. For example, in May 2009 the JTF code named 'Operation Restore Hope' destroyed seven communities suspected of harbouring militant camps in Delta state. Subsequent hostilities between MEND and men of 'Operation Restore Hope' in Gbaramatu kingdom in Delta state claimed more than 500 lives and displaced about 5,000 people.⁶⁶ This particular operation was very atrocious because it was a coordinated land, water and aerial bombardment, involving a combine force of the Army, Air Force and Navy personnel. The bombardment which lasted for two weeks –from 13 to 27 May 2009 caused the violent death of many people, mostly women, children and the aged, and endangered the lives of many others who were forced out of their communities into forests and swamps.⁶⁷

Nigerian Police Force

Nigeria today is confronted with the menace of terrorism and its security agencies are battling an insurgency particularly in the northeast of the country. Terrorism in Nigeria is evolving but unfortunately security arrangements are still largely conventional and predictable and therefore offer a limited challenge to the flexibility, speed and deception that characterize guerrilla style attacks by extremist groups. The Nigeria Police Force (NPF) is one of the security agencies at the forefront of the war against terrorism and insurgency in the country. Since independence, Policing in Nigeria has been governed by various factors such as the political behavioural pattern of the population, the nature of the socio-economic environment where both the government

⁶⁰ H I Mohammed, 'X-raying the Activities of Operation Restore Order in Borno State' (2012) 1 *Nigerian Defence Magazine*; 28.

⁶¹ D A Lawan, 'State of Emergency: JTF Dumped 3,335 Corpses in Borno Hospital – Report' Sunday Trust Newspaper 10 June 2012.

⁶² E Courson, 'Odi Revisited? Oil and State Violence in Odioma, Brass LGA, Bayelsa State' (2006) *Economies of Violence Working paper* 1, p.3.

⁶³ Human Rights Watch (n 118)

⁶⁴ N Melzer, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law' (2009) *International Committee of the Red Cross (ICRC)* <<http://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>> accessed 19 November 2022.

⁶⁵ Human Rights Watch, 2002, 'The Niger Delta: No Democratic Dividend' <<http://www.hrw.org/reports/2002/nigeria3/nigerdelta.pdf>> accessed 10 June 2022.

⁶⁶ Francis and Others (n 112)

⁶⁷ *Ibid*

and the governed operate, and the ability of the former to meet the challenges raised by the latter.⁶⁸ Since 1960, the NPF for example had to carry out their law enforcement within certain political and socio-economic environments, or conditions but unfortunately performed in almost all cases below expectations. In other words, though the NPF force was established to combat crime and ensure security of lives and property of the citizenry, experience over the years had shown that the force has lived below minimum standards. Some of the reasons explaining this failure are known to include corruption, delayed justice, impartiality among others, which have all consequently made people to see the police as an enemy rather than a friend.⁶⁹ The purpose of this writing is to highlight some of the strategies employed by the Nigeria Police in combating Terrorism and insurgency in Nigeria within the context of policing in Nigeria.

Throughout the world, terrorism reinvents itself in new and more dangerous forms. As older groups are defeated or exhausted, more radical and more violent successors often take their place. According to military historians, the scenario of insurgencies over the years have usually followed this pattern: first the building up of cells; subversive operations such as strikes, demonstrations and riots; insurgency, with attacks by bombs and guns on persons and property; as more sympathizers are gained, groups take control of parts of the country; finally outright civil war followed by the collapse of the government, or the governments fall without civil war.⁷⁰ In Nigeria, the divisive force of religious differences in particular have been intensified by ambitious and unscrupulous Nigerian politicians who have appealed to the religious sentiments of their people in order to win their votes at elections, or to score points against an opponent. These politicians have gone further by using these people to ignite acts of social, ethnic and religious violence. Karl Marx spoke of religion as means devised by the privileged to subjugate the less privileged under perpetual hegemony in order to exploit them spiritually, physically, psychologically and sexually.⁷¹ Boko Haram and splinter groups such as JAMBS (presently known as ISWAP)⁷² are believed by analyst to be largely a product of widespread socioeconomic and religious insecurities, and that its ideology resonates among certain communities because of both historical narratives and modern grievances.⁷³ If the police treat suspected terrorist/insurgents using methods and practices outside the law, such as collective punishment or arbitrary detention, this itself undermines the legitimacy of government and can create new grievances, inhibiting the effectiveness of counter-terror or counter-insurgency policies. The National Counter-terrorism Strategy (NACTEST), and the Nigeria's De-Radicalization Programme Guide are key documents that guide Nigeria's efforts to counter-terrorism. The contents of the documents are holistic and robust.

National Human Rights Commission

The National Human Rights Commission was established by the National Human Rights Commission Act, 1995 in line with the resolution of the United Nations which enjoins all member states to establish Human Rights Institutions for the promotion, protection and enforcement of human rights. The commission serves as a mechanism to enhance the enjoyment of human rights. Its establishment aims at creating an enabling environment for extra-judicial recognition, promotion and enforcement of human rights, treaty obligations and providing a forum for public enlightenment and dialogue on human rights issues thereby limiting controversy and confrontation.⁷⁴ To carry out the above functions, the Commission has a Governing Council which consists of 16 members made up of a chairman who shall be a retired Justice of the Supreme Court of Nigeria or the Court of Appeal or a retired Judge of the High Court of a State and an Executive Secretary. The members of the Council are appointed by the President on the recommendation of the Attorney – General of the Federation.

5. Conclusion and Recommendations

The EFCC, the Terrorism Prevention (Amendment Act) provides the basis for the fight against terrorism in Nigeria. Although there existed earlier penal laws which had elements of terrorism even though the Penal Laws called them differently. The limitation of the Law Enforcements Agents who are stake holders in the operations of the law makes it almost impossible for the courts to adjudicate because the offence of Terrorism is a felony

⁶⁸ T Akuul, 'The Role of the Nigerian Police Force in Maintaining Peace and Security in Nigeria' (2011) 3 *Journal of Social Science and Public Policy*; 52

⁶⁹ S E Orobator, 'The Political and Socio-economic Environment of Policing Since 1960' in T T Tamuno and Others, (eds.), *Policing Nigeria: Past, Present and Future* (Lagos: Malthouse Press Limited 1993) 262.

⁷⁰ W Toby, 'Guerilla Warfare, Insurgency and Terrorism' in R Bonds (ed.), *The Encyclopedia of Land Warfare in the 20th Century* (London, Spring Books 2008)

⁷¹ J Raines, *Marx on Religion* (Philadelphia: Temple University Press 2002) 5

⁷² J Zenn, 'Ansaru: A profile of Nigeria's Newest Jihadist Movement' (2013) (11)(1) *Terrorism Monitor*; 1

⁷³R J Ekanem, 'Nigeria's Boko Haram' <http://newsdiaryonline.com/shehuboko_haram.htm> accessed 3 February 2022

⁷⁴ R Braun and K Wonters, 'Terrorism and the Non-Derogability of Non-Refoulement' (2003) (15)(1) *International Journal of Refugee Law*; 321 - 372

and requires diligent prosecution thus the standard of proof is 'prove beyond reasonable doubt'. Furthermore, the challenges faced by the courts amongst which are poor library, untrained personnel in respect of terrorism cases compound the woes of the law enforcers and courts. In the light of the above findings the study concludes that the criminal justice approach will assist not only in consolidating the current military gains but also eliminate the criticism that often follows military action. Sequels to the conclusion, the researcher provide the following recommendations to enhance the fight against terrorism in Nigeria:

1. Nigeria National Assembly should endeavor to amend Ss. 27, 28, and 29 of Terrorism Prevention (Amendment) 2013 Act to conform to the provision of the constitution since the constitution is supreme anything to the contrary should be discarded to the extent of its inconsistency.
2. The sections dealing with some elements of terrorism in the Penal laws of Nigeria. Sections 62-88, 252,349, 365, 315, 319, 330, and 348 Criminal Codes should be repealed by National Assembly so that rogues prosecutors will not capitalize on them to set free some terror suspect.
3. Amendment of sections in the Penal Code Ss. 97A, 220, 271, 332, 336, 337, 338, 339, and 34. The above listed provisions are still active as there is no amendment or laws repealing the provisions, the National Assembly should do the needful by repealing or amending them to meet the realities of the current situation.
4. Strengthening the human and institutional capacities of the Law Enforcement Agencies and Judiciary. This will improve on intelligence gathering, investigation, prosecution and adjudication of terrorism cases. This can be done through provision of necessary equipment and training. The civil society group should assist the government in capacity building of security personnel and that of the judiciary in the best practices.