

**LEGAL AND INSTITUTIONAL FRAMEWORKS FOR COMBATING TERRORISM IN NIGERIA: A PRAGMATIC ANALYSIS\***

**Abstract**

*Terrorism, unarguably characterized by unpredictable and unprecedented threats and violence, is not a modern phenomenon. However, there is no globally accepted, single cum encompassing definition of terrorism, albeit recognized as a crime in international law and legal statutes in all United Nations member States, including the chosen focal states in this article: Nigeria, Kenya and the United Kingdom. Terrorism has regrettably remained a recurring challenge to international legal order, peace and stability. International community's response, through the United Nations' system has led to the establishment of a regime of terrorism-related universal treaties, conventions and of course a series of Security Council resolutions relating to terrorism, many of whom were adopted under the authority of Chapter vii of the United Nations Charter, amongst others. These instruments undeniably do not create an integrated system and are full of major gaps/lacunae. This article examined the legal framework for the fight against terrorism in Nigeria, with special focus on the challenges, prospects and lessons. It found that there are insufficient laws on the fight against terrorism in Nigeria and the institutions have not been effective in this regard. It also made a comparative analysis of the counter terrorism legal framework of Nigeria, Kenya and the United Kingdom respectively. It observed that Kenya has witnessed many terrorist attacks in recent years, an indication that the country is still grappling with how best to respond to terrorism. The United Kingdom on the other hand has effective laws and technology to detect imminent terrorist attacks and respond to them accordingly. Thus, the essence of the comparison is to divulge the shortfalls, if any, in the Nigeria legal framework and the extent to which the Kenya and United Kingdom best practices could be adopted in containing terrorism.*

**Keywords:** Terrorism, Law and Institution, Nigeria, Pragmatic Analysis

**1. Introduction**

Terrorism, no doubt, is not a modern phenomenon, as it has existed for at least 2,000 years,<sup>1</sup> but it assumed the dimension of a serious security challenge to the international community after it had erroneously concluded as it were, that a breather had come its way with the end of World War II in 1945 and cold war in the late 1980.<sup>2</sup> The menace of terrorism has in contemporary times remained widespread and problematic to the global community as it has increasingly impacted negatively on nations' foreign policies.<sup>3</sup> Although terrorism is a crime and a particularly serious form of human rights violation,<sup>4</sup> it is the biggest threat to global peace and stability in contemporary times. It is a threat to humanity and as will be shown in this article, runs contrary to the basic principles and purposes of the United Nations<sup>5</sup> as set out in its Charter.<sup>6</sup> Terrorism is a monumental global problem that required collective urgent attention. The war on terrorism, generally gained legitimacy and justification in the international community, as confronting this peculiar act of criminality, has become one of the most important basics of national governments foreign policies.<sup>7</sup>

In contemporary times, terrorist networks have evolved, moving away from a dependency on State sponsorship.<sup>8</sup> It can hardly be gainsaid that many of the most dangerous groups<sup>9</sup> and individuals now operate as non-State actors. It is worthy of note, that no country is immune within its borders from the evil effects of international terrorism and in an increasingly interconnected world, its tentacles are spreading fast like 'wild fire' ready to devour any object close to it.<sup>10</sup> Nigeria has witnessed many terrorist attacks in its Northern part, beginning with the Islamic State of West Africa<sup>11</sup>, *Boko Haram* and *Ansarul Muslimina Fi Biladis Sudan* (Vanguard for the Protection of Muslims in Black Africa).<sup>12</sup> The targets of these terrorists organizations are public places, places of worship, markets, shopping malls, hotels, bars, football viewing

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<sup>1</sup>Abimbola, J.O. & Anor, 'Domestic Terrorism and Boko Haram Insurgency in Nigeria, Issues and Trends: A Historical Discourse', *Journal of Arts and Contemporary Society*, Volume 4, September, 2012, 2.

<sup>2</sup>*Ibid.*

<sup>3</sup>Ojukwu, C. C. 'Terrorism Foreign Policy and Human Rights Concerns in Nigeria', *Journal of sustainable Development in Africa*, Volume 13, No. 4, 2011, 372.

<sup>4</sup>Jolyon Ford, *Africa Counter- Terrorism Legal Frameworks: A Decade after 2001*, Institute for Security Studies, Pretoria, South Africa, 2011, 87 [www.issafrica.org](http://www.issafrica.org) Accessed 2/2/2024.

<sup>5</sup>Hereinafter called UN

<sup>6</sup>Okoronye, I., *Terrorism in International Law – A Critical Analysis*, a PhD Thesis in the Faculty of Law, School of Post – Graduate Studies, Abia State University, Uturu 2010, 1.

<sup>7</sup>See F.N. 3,

<sup>8</sup>See Global Governance Monitor: Terrorism, Published by Council on Foreign Relations, updated June 19, 2013, 1. [www.cfr.org](http://www.cfr.org). Accessed 6/11/2023.

<sup>9</sup>At the forefront of this trend is Al-Qaeda and Islamic State in Iraq and Syria (ISIS).

<sup>10</sup>Isyaku, Ayuba, 'Terrorism: A New Challenge to Nigeria's Stability in the 21st Century', *International Affairs and Global Strategy*, Vol. 12, 2013, 16, [www.iite.org](http://www.iite.org). Accessed 4/7/2018.

<sup>11</sup>Hereinafter called ISWA

<sup>12</sup>United Kingdom Government, 'Nigeria', 2019, <https://www.gov.uk/foreign-travel-advice/nigeria/terrorism>. Accessed 10/01/2019.

centers, *et cetera*.<sup>13</sup> On the 14<sup>th</sup> day of April 2014, for instance, Boko Haram kidnapped 329 girls (*Chibok* girls) in North-eastern Nigeria. As recent as 2018, 2019 and 2020, terrorist groups successfully carried out many suicide bombings, killed hundreds of people and abducted hundreds of people including women and children.<sup>14</sup> In fact, on the 18<sup>th</sup> day of November 2018 for instance, ISWA successfully conducted an attack on a military base in Metele and killed a number of soldiers.<sup>15</sup> This goes to show that terrorism is an issue that should be taken seriously in Nigeria and the world at large.

As hinted earlier in this article, terrorism in Nigeria can be largely traced to the activities of *Boko Haram* in the Northern part of Nigeria in 2002.<sup>16</sup> However, it took Nigeria eleven years after September 11 and nine years after the commencement of the activities of *Boko Haram* to enact the Terrorism (Prevention) Act, 2011 which is the first legislation and the main legal framework aimed at addressing the menace of terrorism in the Country. Also worthy of note, is the extent to which the international community and regional co-operation have contributed in addressing the issue of *Boko Haram* terrorist activities in Nigeria<sup>17</sup>, amongst others. The need for international and regional assistance is necessary as it has been established that terrorist groups in Nigeria have links with their counterpart in other countries. All these go to show that the legal framework on terrorism in Nigeria has not been effective in checkmating the activities of terrorist groups in Nigeria and thus, the need for this article to make recommendations on the way out. To address these issues, the article seeks to answer the following questions: Does Nigeria have a legal framework on terrorism? If yes, to what extent has the Nigeria legal framework on terrorism been effective in addressing the activities of terrorist groups in Nigeria? To what extent has international instruments assisted Nigeria in its fight against terrorism? Are there lessons to drawn from the positions in United Kingdom and Kenya in addressing the menace of terrorism in Nigeria?

In addition, due to the increase in the tempo in the activities of terrorist groups in Nigeria despite the existence of the laws on terrorism, it becomes imperative to examine what is obtainable in this article's chosen focal states: Kenya and the UK. While Kenya is still struggling in its fight against terrorism, the UK has effective laws, institutions and technology that enable them to monitor the movement and activities of terrorist groups even on the internet. As such, in the UK, radicalized persons are monitored closely and are apprehended before they carry out any suicide bombing or other terrorist acts. To this extent, there is the need for legal transplant of some aspects of the UK and Kenya laws to Nigeria, to the extent local circumstances will permit. Meanwhile, this article will in its exegesis of terrorist activities and groups, concentrate on the militant Islamist terrorist group, *Boko Haram*, as its focal terrorist group, *albeit* references may, as the need presents itself, to other terrorist groups.

## 2. Examination of Some Pertinent Concepts

**Crime:** A crime is an active or inactive act in violation of a penal law.<sup>18</sup> The concept of crime has existed since the dawn of history.<sup>19</sup> It is said to be a product of the society.<sup>20</sup> Considering this statement, the American Law Institute Model Penal Code formulated what might be taken as the proper objectives of the substantive law of crime in a modern legal system.<sup>21</sup> The Nigerian Criminal jurisdiction, basically regulated by the criminal and penal codes, defines crime as an act or omission, which renders the doer of the act or the maker of the omission liable to punishment under any law.<sup>22</sup> Crime simply put is whatever that is prohibited by law as contained in the provision of a statute, with punishment prescribed for violation of the law and enforced by the machinery of the State through persons authorized by the State.<sup>23</sup> The point needs to be emphasized that, for a man to be convicted of a crime, the prosecution must prove that a certain event or state of affairs which are conceived as offences by the law, has been committed as a result of his conduct and the said conduct was accompanied by a proscribed state of mind.<sup>24</sup> In the case of the crime of terrorism, the violent act must have an impact on persons and properties. This means that death or bodily injuries are obviously manifested, thus the offence of terrorism is complete at both domestic and international level.

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<sup>13</sup>United Kingdom Government, 'Nigeria', 2019, <https://www.gov.uk/foreign-travel-advice/nigeria/terrorism>, Accessed 10/01/2019.

<sup>14</sup>United Kingdom Foreign Government, 'Foreign Travel Advice: Nigeria', 2020, <https://www.gov.uk/foreign-travel-advice/nigeria/terrorism>. Accessed 19/03/2020.

<sup>15</sup>United Kingdom Foreign Government, 'Foreign Travel Advice: Nigeria', 2020, <https://www.gov.uk/foreign-travel-advice/nigeria/terrorism>. Accessed 19/03/2020.

<sup>16</sup>AnietieInyang and Michael Hanson, 'The Nigerian State and Terrorism: Exhuming the Legal Lacunae', *IOSR Journal of Humanities and Social Science*, Vol.24, Iss.9, 2019, 26-36, 26.

<sup>17</sup>*Ibid*.

<sup>18</sup>Ocheme, P., *The Nigerian Criminal Law*, 3rd ed., Makurdi, Liberty Publication Ltd, 2006, 1.

<sup>19</sup>Chuckol, K.S. *The Laws of Crime in Nigeria*, Zaria, Ahmadu Bello University Press, 1988, 1.

<sup>20</sup>*Ibid*.

<sup>21</sup>Smith J.C and Brain H. *Criminal Law*, 4<sup>th</sup> ed., London, Butterworth, 1979, 3.

<sup>22</sup>Chukwumaeze, U.U., *International Criminal Law*, Owerri, Imo State University, 2018, 2.

<sup>23</sup>Wigwe, C, *supra*, 2.

<sup>24</sup>Anyanwu, C.U, *An Outline of Nigeria Criminal Law*, Enugu, Ikemefuna Publication, 2009, 3.

**International Crime:** International crime is defined as a crime against international law.<sup>25</sup> A crime against international law is said to have occurred when three conditions are satisfied.<sup>26</sup> Such conditions include a violation of a criminal norm derived out of an international treaty and other international customary laws which is binding on individuals.<sup>27</sup> An international crime may be associated with an internationally wrongful act which results from the breach by a state, of an international obligation so essential for the protection of fundamental interests of international community as a whole and constitute an international crime.<sup>28</sup>

**Terrorism:** Definition of terrorism has continued to remain an uphill task. This is so because various legal systems and government agencies, employ different definitions to the terminology of terrorism.<sup>29</sup> Conceptualization of terrorism is either too broad to be analytically useful, too narrow to be analytically meaningful or too complex to be applied systematically.<sup>30</sup> These difficulties arise from the fact that terrorism is politically and emotionally charged.<sup>31</sup> This difficulty unfortunately led to the non-inclusion of terrorism as a crime against humanity during the negotiation of the treaty establishing the International Criminal Court in Rome.<sup>32</sup> This is notwithstanding the fact that terrorism is a scourge that takes innocent lives, threatens values of humanity, human rights and freedoms and development and world progress.<sup>33</sup> Against that backdrop, the maintenance of International peace and security became a categorical imperative of the contemporary world, hence the international community had no choice but to put in place a series of treaties aimed at confronting the scourge of terrorism.<sup>34</sup> The United Kingdom Terrorist Act, for instance, defines terrorism as an act designed seriously to interfere with or seriously to disrupt an electronic system.<sup>35</sup> Meanwhile, the extant legislation on terrorism in Nigeria, the Terrorism (Prevention) (Amendment) Act 2013, has no direct and clear definition of terrorism but defines act of terrorism. In any event, after a careful perusal of these legislations, the basic characteristics of terrorism can safely be said to include, indiscriminate use of violence against non-combatants for the purpose of gaining publicity for a group's cause or individual, a design to have far-reaching psychological impact beyond the immediate victim or target, an organization with an identifiable chain of command among others.

### **3. Theoretical Foundation**

It is important to provide a theoretical understanding of the fight against terrorism in order to place the various assumptions and related factors in proper perspectives. Terrorism or terrorist acts are monumental acts of indiscriminate violence.<sup>36</sup> International and domestic terrorism have grown in profile in recent decades for a combination of reasons.<sup>37</sup> This simply conveys a superficial meaning of acts devoid of reasoning, hence the natural law theory dealing with the rational nature of human being gives a person the capacity to know and distinguish right from wrong and consequently desist from wrong actions, such as embarking on acts of terrorism. In recent times, states have given a great consideration to a more methodical approach in combating terrorism; hence it becomes necessary to provide a theoretical understanding,<sup>38</sup> challenges and prospects of combating terrorism in Nigeria in comparison with the herein chosen focal states: Kenya and United Kingdom. The concept of natural law seeks to explain law as a phenomenon of social necessity based on the moral perception of persons, that is, moral principles that derive from man's rational nature. The common denominator of all natural law theories is that there exist some objectively ascertainable set of principles of nature, according to which all things including man's behaviour must comply with. This theory comes with it, a requirement that its principles are universal, unchangeable and absolute.<sup>39</sup>

However, a demarcating line should be drawn between two aspects of natural thought, namely natural law of method and natural law of content. These were manifestations of the then fashionable assertion of natural rights and were followed intentionally by schemes for ensuring perpetual peace.<sup>40</sup> Meanwhile, for very many years, terrorist networks and organizations have developed to the level of shifting from individual sponsorship to state sponsorship. Dangerous groups and individuals now organize themselves and operate as non state actors taking advantages of porous borders and

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<sup>25</sup>Uslegal, 'International Crime Law and Legal Definition' <https://uslegal.com> Accessed 15/1/2020.

<sup>26</sup>Ibid.

<sup>27</sup>Ibid.

<sup>28</sup>Ibid.

<sup>29</sup>Alobo, J.E., *Terrorism, Kidnapping and Cybercrime in Nigeria*, Abuja, Diamond real Resources Consult, 2013, 18.

<sup>30</sup>Ibid.

<sup>31</sup>Ibid.

<sup>32</sup>Alobo, J.E *op.cit.*, 19.

<sup>33</sup>Abolurin, A. *Terrorism: Nigeria and Global Dimension*, Ibadan, Golden Gems, 2011,8.

<sup>34</sup>Omidoyin, Taiye Joshua, Appraisal of the Legal Framework for Prevention of Terrorism in Nigeria: An Evaluation of the Nigerian Terrorism Prevention Act, 2011 [2016] Ekiti State University, AdoEkiti, *Law Journal* (Vol. 7), 425.

<sup>35</sup>Ibid, 113.

<sup>36</sup>Shuwa, B. 'The Crime of Terrorism-A Global Perspective and Analysis of the Current Nigeria Situation,' (2013) *Nigeria Bar Journal* (Vol. 8, No. 1) 120.

<sup>37</sup>Ibid.

<sup>38</sup>Shehu, A. Y. *Economic and Financial Crimes in Nigeria: Policy Issue and Options*, Lagos, National Open University, 2006, 6.

<sup>39</sup>Nnabue Uba, S.F. *Understanding Jurisprudence and Legal Theory*, Provided Ed. Owerri, Bon Publication, 2016, 58.

<sup>40</sup>Ibid.

interconnected mode of system finances and communication.<sup>41</sup> On the other hand, the positivist movement which eclipsed the beginning of the nineteenth century represented a reaction against the prior methods of reasoning which characterized the preceding age of reasoning.<sup>42</sup> It is in the modern legal theory that positivism acquired major significance and come to symbolize the dominant trends in contemporary legal thinking.<sup>43</sup>

Prevailing theories of natural law shared the features of turning away from the realities of actual law in order to discover in nature or reason the principles of universality.<sup>44</sup> Actual laws were explained or condemned according to these canons.<sup>45</sup> Unverified hypothesis of this sort failed to satisfy the intelligence of age nurtured in the critical spirit of new scientific learning.<sup>46</sup> Securitization of natural law postulates a hard damaging foundation or else the product of extrapolation<sup>47</sup> hence, the positivist law theory clearly separates the question whether or not a rule is a legal rule from the question whether or not it is a just rule and seeks to define law, not by reference to its content but according to the formal criteria which differentiate legal rules from other rules, such as those of morals, etiquette and so on.<sup>48</sup> The separation, in principle of the law as it is and the law as it ought to be is the most fundamental philosophical assumption of legal positivism.<sup>49</sup> It represented a radical departure, both from the scholastic hierarchy of value and which positive law is only an emanation of a higher natural law and from the fusion of the philosophy of law.<sup>50</sup>

Therefore, terrorism is a crime not because of the rationality in man that informs him that the act of terrorism breeds violence and destruction of lives and properties, but because it has been codified in the statute book as crime. By this very act of codification, positivist law theory clearly showcases/highlights the features and elements of the offence of terrorism with certainty, to enable mankind confine his actions within the ambit of civility. Failing which the legal instrumentality of the State, comprising command and sanction, shall take its course to ensure that the offence of terrorism is not only minimized but eradicated.

#### **4. Legal Framework for Combating Terrorism in Nigeria**

As Nigeria was mourning the death of a couple her citizens that were killed, following the unfortunate incident that took place at the World Trade Centre on September 11 2001, the terror was brought to her domain.<sup>51</sup> It became very clear that insecurity has become the order of the day when *Boko Haram*'s carnage became seemingly uncontrollable.<sup>52</sup> Following the crackdown of the *Boko Haram* group in 2009,<sup>53</sup> it expanded its attacks beyond the original targets and the composition of its members now include, not only Islamic militants but criminal elements, with some disgruntled politicians at the background.<sup>54</sup> Since then, the situation is no longer limited, in terms of prevalence, to any particular part of Nigeria, despite the existence of plethora of legal instruments fashioned towards combating terrorism in Nigeria and around the globe. This is indicative of the complexity of terrorism. In Nigeria, the National Assembly, worried about the growing spate of terrorism in Nigeria, especially the *Boko Haram* insurgency, enacted an Act known as the Terrorism Act, 2011. This was later Amended and referred to as the Terrorism (Prevention) (Amendment) Act 2013.

**Terrorism (Prevention) Act 2011:** The rising waves of terrorism which compounded the insecurity challenges in Nigeria had escalated, both in scope and shape, by 2010 and the early months of 2011.<sup>55</sup> This led to the enactment in May 2011, the Terrorism (Prevention) Act, 2011. It is worthy of note that this precursor legislation, is still the existing law on terrorism in Nigeria, having been so described as the 'Principal Act', in the preambles of the Terrorism (Prevention) (Amendment) Act, 2013, that was enacted, to amend the Terrorism (Prevention) Act, 2011, by providing for extra-territorial application of the Act and strengthening of terrorist financing offences; and for related offences.<sup>56</sup> A remarkable exception to the definition of acts of terrorism, by section 1(2), of the Terrorism (Prevention) Act, 2011, is that an act of violence which leads to a disruption of peace, but is committed to the pursuance of a protest, demonstration, or stoppage

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<sup>41</sup>Osuji, E.O. 'Contemporary Challenges to the War against Terrorism: The African Experience' (2012/2013) *Nigeria Journal of Legal Studies* (Vol. XI) 135.

<sup>42</sup>Friedman, W. *Legal Theory, 5th Edition*, India, Universal Law Publishing Co. Ltd, 2011, 129.

<sup>43</sup>Op.cit., 255.

<sup>44</sup>Osuji, E.O. *Challenges to Recovery of Stolen Public Assets in Nigeria*, A Ph.D Thesis Presented Faculty of Law of Imo State University Owerri, for the Award of Law of Philosophy, October 2018, 13.

<sup>45</sup>Ibid.

<sup>46</sup>Ibid.

<sup>47</sup>Ibid.

<sup>48</sup>Fitzgerald, M.A, *Salmond on Jurisprudence, 12th Ed.* New Delhi, Universal Law Publishing Co, PVT Ltd. 2010, 3.

<sup>49</sup>Friedman, W. *op.cit.*, 257.

<sup>50</sup>Ibid.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid.

<sup>53</sup>Aligba, A. I. An Appraisal of the Nigerian Terrorism (Prevention) (Amendment) Act 2013 and the Boko Haram Insurgence in the Northern Nigerian [2015] *University of Ibadan Law Journal* (Vol. 15) 107

<sup>54</sup>Ibid.

<sup>55</sup>By then, *Boko Haram* (B.H.) Insurgence had Emerged and Continued to Intensify in Sophistication, even till date.

<sup>56</sup>See Terrorism (Prevention) (Amendment) Act, 2013; Oho, F.O, Terrorism in Nigeria: Military, Non-Military and Legal Solutions, Being a Thesis Submitted to the Faculty of Law, School of Post Graduate Studies, Imo State University, Owerri, 2019, 94.

of work is not a terrorist act, within the meaning of the afore-disclosed definition, provided that the act is not intended to result in any harm referred to in subsection (2) (b) (ii) or (v) of the selfsame legislation. However, when a community reading is done of subsection (2) (b) (ii) or (v) and the provision of subsection (2) (b) (i),<sup>57</sup> what ordinarily should have been adjudged an exception, no doubt pales into insignificance. This is because the omnibus provisions, as it were, which criminalizes and treats as terrorist act ‘any act or omission in or outside Nigeria, which constitutes an offence within the scope of a counterterrorism protocols and conventions are duly ratified by Nigeria’.<sup>58</sup> The unnecessary emphasis on international organization, in the definition, tends to suggest that only international organizations are worthy to be given special attention, with regards to acts of terrorism. In addition, a careful perusal of Part II<sup>59</sup>, Part III<sup>60</sup>, Part IV<sup>61</sup>, Part V,<sup>62</sup> Part VII<sup>63</sup> and finally Part VIII<sup>64</sup>, in unmistakable terms, appear to make the issue of terrorism and of course the legislation itself, a purely Federal piece of legislation, as it provides for a process, that commences and ends with the Inspector General of Police, the National Security Adviser and the Attorney General of the Federation. Meanwhile, the issues and provisions dealt with in this short exposition of Terrorism (Prevention) Act, 2011 are by no means exhaustive, but only informed by the need to point out a few shortcomings in the Act. It was these shortcomings as herein harped upon and more, no doubt, that ultimately led to the amendment of the Act *vide* Terrorism (Prevention) (Amendment) Act, 2013.

**Terrorism (Prevention) (Amendment) Act 2013:** The Terrorism (Prevention) (Amendment) Act 2013, used the word ‘intentionally’ in its section 3, on issues related to murder, kidnap<sup>65</sup> and the punishment therein, on conviction, which is stated to be life imprisonment. The use of the word ‘intentionally’ clearly, is indicative of the fact that the offender carried out such act knowing full well that death may occur, hence the punishment of life imprisonment is not commensurate with the willful act, done by the offender. It is suggested that the punishment section be amended to death sentence, so as to instill sufficient deterrent. Another provision of the Act, which is also crucial to the fight against terrorism, is *section 13* dealing with terrorism financing<sup>66</sup>. The above provision of our law has however, eliminated the duty of confidentiality between banks and other financial institutions and their customers in transactions they suspect, relates to terrorism.<sup>67</sup> In all, the Terrorism (Prevention) (Amendment) Act 2013 has been useful in the fight against terrorism in Nigeria but a lot more need to be done for effective countering of terrorism.

**Economic and Financial Crimes Commission Act 2004:** The Establishment Act<sup>68</sup>, long before the formalization of a comprehensive legal framework, centrally addressing the security challenges that were instigated by terrorism<sup>69</sup>, had provided a statutory definition of terrorism in Nigeria, and which has remained the position till date<sup>70</sup>: However, a pragmatic analysis of the definition of terrorism in *section 46* of the EFCC Act, 2004, may lead one to the temptation of reaching to the conclusion that same is vague and excessively broad.<sup>71</sup> Fortunately, the Terrorism Prevention Act, 2011 (as amended) has addressed some of these short-comings.

**Criminal Code and Penal Code:** The foremost statutory definition of terrorism in our jurisdiction<sup>72</sup> ordinarily presents the need to do a quick foray to those provisions in both legislations herein considered<sup>73</sup>, on acts or crimes that are envisaged under the definition of terrorism by the EFCC Act, which time space may not permit. In any event, as argued elsewhere,<sup>74</sup> the TPA 2011 (as amended) encompasses crimes that are prosecutable under Nigeria Criminal law, which if applied, could curb the evil phenomenon called terrorism to a large extent.

**African Union Convention on the Prevention and Combating of Terrorism:** The provisions of the Convention, clearly distinguished between the struggle waged by people in accordance with the principles of international law for

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<sup>57</sup>This provides for an act which is intended or can reasonably be said to have been intended to ‘unduly compel a government or international organisation to perform or abstain from performing any act’.

<sup>58</sup>Section 1(3) (d).

<sup>59</sup>Sections 12-17.

<sup>60</sup>Section 18-22.

<sup>61</sup>Sections 23.

<sup>62</sup>Sections 30-34.

<sup>63</sup>Section 35.

<sup>64</sup>Sections 36-41.

<sup>65</sup>See section 3 (a) *ibid*.

<sup>66</sup>Section 13 *ibid*.

<sup>67</sup>*Ibid*.

<sup>68</sup>Economic and Financial Crimes Commission (Establishment) Act.

<sup>69</sup>Terrorism Prevention Act, 2011 (as amended).

<sup>70</sup>See section 46 of the EFCC (Establishment), Act.

<sup>71</sup>See Alaba Omolaye-Ajileye, Legal Framework for the Prevention of Terrorism in Nigeria, [www.researchgate.net](http://www.researchgate.net) 13. Accessed on 24/7/2024

<sup>72</sup>Section 46 of the Economic and Financial Crimes (Establishment) Act, 2004 or EFCC Act, for short

<sup>73</sup>The Criminal Code Act and Penal Code.

<sup>74</sup>Alaba Omolaye-Ajileye, *supra*, 14.

their liberation and self-determination, from terrorism. The case of tagging the Indigenous People of Biafra as a terrorist organization by a Federal High Court in Abuja<sup>75</sup> appears to give a different meaning from the provision of this convention.

**Protocol to AU Convention on the Prevention and Combating of Terrorism:** The main purpose of the African Union Convention on Combating and Preventing Terrorism, 2004, which is to enhance the effective implementation of the convention and give effect to *article 3 (d)* of the protocol relating to the establishment of the Peace and Security Council of the African Union, on the need to coordinate and harmonize continental efforts in the prevention and combating of terrorism in all its aspects, as well as the implementation of other relevant international instruments.<sup>76</sup>

**International Convention for the Suppression of the Financing of Terrorism:** The International Convention for the Suppression of the Financing of Terrorism which was adopted by the General Assembly of the United Nations in resolution 54/109 of December 1999 was necessitated by the concern given to the international community by terrorism financing. This is so because the hub of terrorism and its seriousness is dependent on the financing that terrorism may obtain, hence a legal framework was put in place to combat same.

**United Nations Convention against Terrorism:** During the first two decades of the United Nations, terrorism received only tangential attention in the General Assembly and Security Council.<sup>77</sup> There was no universal legal framework, but given the role of the United Nations in countering terrorism, the need for putting in place such legal framework came into focus. The term universal legal framework against terrorism is used as a catch-all formula to refer to a set of instruments and resolutions adopted at the global level outlining a series of legal standards for states to utilize in order to prevent and counter terrorism.<sup>78</sup> There are currently 19 universal instruments directly related to the prevention and suppression of terrorism.<sup>79</sup> These instruments which have been adopted over a period of more than 50 years commencing from 1963, contain a sectorial approach to terrorism, as each one deals with specific types and manifestations of terrorism.<sup>80</sup> The sectorial approach reflects the need for the international community to address terrorism and terrorist acts in a pragmatic manner in view of the politically sensitive task of agreeing upon a single, globally binding instrument, hence the 19 legal instruments.<sup>81</sup>

**Convention on Offences and Certain Other Acts Committed on Board Aircraft:** The first among the 19 legal instruments to prevent and suppress terrorism is the convention on offences and certain other acts committed on board aircraft which came into effect in September 1963.<sup>82</sup> However, the convention being the earliest on combating that aspect of terrorism, wherein aircrafts are hijacked and passengers seized has been commended, despite its short comings.

**Convention for the Suppression of Unlawful Seizure of Aircraft:** Another legal instrument put in place by the United Nations against terrorism is the Convention for the Suppression of Unlawful Seizure of Aircraft.<sup>83</sup> The said convention came into force on 14 October 1971 via United Nations Treaty Series, Vol. 869, No. 12325.<sup>84</sup> The convention was basically put in place to eradicate the unlawful acts of seizure, its exercise of control of aircraft in flight, thereby jeopardizing the safety of persons and properties, which undermines the confidence of the people.

**Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation:** The Convention<sup>85</sup> came into force on the 26 January 1973. It provides for what amounts to unlawful and intentional acts, that amounts to an offence on board aircraft, when an aircraft is considered to be in flight, making punishable, offences listed in its article 1 by contracting states, non-applicability of the convention to aircraft owned by military, customs or police and measures to establish jurisdiction over offences committed within territory of states.

**Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents:** The convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents<sup>86</sup> was adopted by the General Assembly of the United Nations in 14 December 1973 and came into force on the 20 February 1977. The said convention covers meaning of internationally protected persons, intention of the commission, measures by state parties to establish jurisdiction over crimes set forth in *article 2*,

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<sup>75</sup>African Corner, 'Nigeria Declares' IPOB' Terrorist Organization' <https://www.theafricanconer.com>. Accessed 8/3/2020.

<sup>76</sup>Article 2 (d) of protocol to OAU (AU) Convention on Prevention and Combating of Terrorism.

<sup>77</sup>Okoronye I. Terrorism in International Law, *supra*, 14.

<sup>78</sup>UNODC, 'Universal Legal Framework against Terrorism' <https://www.unodc.org>terrorism>. Accessed 26/5/2020

<sup>79</sup>*Ibid.*

<sup>80</sup>*Ibid.*

<sup>81</sup>*Ibid.*

<sup>82</sup>Hereinafter called the Convention.

<sup>83</sup>Hereinafter called the Hague Hijacking Convention.

<sup>84</sup>United Nations International Instruments related to the Prevention and Suppression of International Terrorism, <https://www.unodc.org>terrorism>. Accessed 26/5/2020.

<sup>85</sup>Hereinafter called the Montreal Convention.

<sup>86</sup>Hereinafter called the Convention on the Prevention and Punishment of Crimes.

cooperation in prevention of crimes set forth in *article 2* and communication to all state parties about an alleged flee of an offender.

**International Convention against the Taking of Hostages:** The international convention against the taking of hostages<sup>87</sup> came into force on 3<sup>rd</sup> of June 1983. The need to curb the offence of hostage taking necessitated the putting in place of this convention by the international community.

### **5. Institutional Framework for Combating Terrorism in Nigeria**

In order to effectively combat the threat of the new form of terrorism or ‘mega terrorism’<sup>88</sup> a number of institutions, constitute the institutional architecture of Nigeria’s counter-terrorism efforts. These institutions are primarily vested with the avowed responsibility of addressing the security challenges posed especially by terrorist-activities and ensuring that country is safe, secure and at peace, by preventing and suppressing terrorism. Under the Terrorism Prevention Act, 2011 (as amended),<sup>89</sup> Nigeria’s one-stop, concerted and radical response to the scourge of insurgency (terrorism) by way of a legal framework,<sup>90</sup> various institutions are established to assist in the fight against terrorism. The most relevant of these institutions are:

**Office of the Attorney General:** The office of the Attorney General in Nigeria is constitutionally provided, both for the state and that of the federation.<sup>91</sup> It is instructive to observe that there are copious provisions in the selfsame 1999 Constitution, as regards to the overriding powers of the attorney general of the state and the federation, respectively to undertake and institute criminal proceedings against any person, before any court of law in the country,<sup>92</sup> amongst others. The Attorney-General of the Federation has the enormous responsibility to strengthen and enhance the existing legal framework, for the purposes of ensuring conformity of Nigeria’s counter-terrorism laws and policies with international standards and the United Nations Conventions on Terrorism. He shall also maintain 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.<sup>93</sup>

**Office of National Security Adviser (ONSA):** The Office of National Security Adviser<sup>94</sup> is now the coordinating body for all security and enforcement agencies in matters relating to terrorism. The office is also reposed with the responsibility of ensuring 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.<sup>95</sup>

**Economic and Financial Crimes Commission, EFCC:** The Economic and Financial Crimes Commission<sup>96</sup> was established in 2004, by an Act of the National Assembly of Nigeria<sup>97</sup> as an agency reposed with the primary responsibility of investigation and prosecution economic crime,<sup>98</sup> as well as acts considered as terrorism, under the Act.

**Nigerian Military:** The Nigeria Army is the land branch of the Nigerian Armed Forces and the longest among the armed forces.<sup>99</sup> The Nigerian Navy is the sea branch of the Nigerian Armed Forces while the Nigerian Air Force which was formally established in 1964 with technical assistance from West Germany is the air division of the Armed Forces.<sup>100</sup> The emergence of *Boko Haram* as a terrorist group in Nigeria significantly changed the country’s security landscape.<sup>101</sup> Hence the Nigerian Army took up the challenge of fighting the terrorist group in line with its constitutional role. The Nigerian Air Force is tactically in charge of the Nigerian air space protection from external aggression; hence they provide air support to the Nigerian Army in course of fight terrorism. The Nigerian Navy is also charged with the responsibility of protecting the sea aspect of the country from external aggression also.

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<sup>87</sup>Hereinafter called the Hostage taking Convention.

<sup>88</sup>Muller H., *Terrorism Proliferation: A European Threat Assessment*, Institute for Security Studies, Chaillot Papers, n.58, March 2003, 22, [www.iss-eu.org](http://www.iss-eu.org). Accessed 20/8/2020.

<sup>89</sup>Hereinafter referred to as ‘TPA 2011 (as amended)’ or the ‘Principal Act’.

<sup>90</sup>Alisigwe, H.C., and Akani, N.K., ‘Legal and Institutional Framework for Counter-Insurgency in Nigeria’, 17, [www.researchgate.net](http://www.researchgate.net). Accessed 11/11/2020

<sup>91</sup>See sections 150 and 195 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>92</sup>Sections 174 and 211.

<sup>93</sup>See section 1A (2) (a) (b) and (c) of the Terrorism (Prevention) (Amendment) Act, 2013.

<sup>94</sup>Referred to as ‘ONSA’, in the Terrorism (Prevention) (Amendment) Act, 2013.

<sup>95</sup>Section 1A (a) (b) and (c) *ibid*.

<sup>96</sup>Also referred to as ‘EFCC’, for short.

<sup>97</sup>Economic and Financial Crimes Commission (establishment) Act 2004, *vide* 1 section thereof.

<sup>98</sup>Section 46 and 15, *ibid*; Onuora Oguno, A and Ajoku, D., ‘*Pitfalls to Prosecuting Corruption in Nigeria*’, Ayoade, M.A., and Igbinedion, S.A (eds) *Legal Perspectives to Corruption Money Laundering and Asset Recovery Nigeria*, Lagos, Faculty of Law, University of Lagos, 2015, 29.

<sup>99</sup>*Ibid*.

<sup>100</sup>*Ibid*.

<sup>101</sup>*Ibid*.

**Nigerian Police:** In furtherance of the role to fight terrorism, the Nigeria Police in line with its power to prosecute criminal cases in Nigeria as derived from the Police Act which is a law enacted by the National Assembly,<sup>102</sup> prosecutes terrorists. This of course is done after investigation. In all the Nigeria Police has made tremendous effort in fighting terrorism despite the challenges it has faced which include among others lack of political will and inadequate personnel and finance to prosecute the fight.

**National Intelligence Agency:** The major role of the National Intelligence Agency has continued to remain the coordination of intelligence with other intelligence agencies to prevent terrorist activities.<sup>103</sup> This has been noted to a laudable major panacea to stable cooperation and coordination of war on terrorism among Nigeria security operatives.<sup>104</sup>

**Department of State Services:** The main responsibilities of the State Security Service are within the country and include counter intelligence, internal security, counter-terrorism and surveillance as well as investigating some other types of grave crimes against the state.<sup>105</sup>

**Courts:** The term *court* is defined as governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice.<sup>106</sup> It also refers the judges who sit to administer justice in jury trials, the judge or presiding magistrates.<sup>107</sup> The term *court* is often used interchangeably with the term *judiciary* because of its special position in the judicial process.<sup>108</sup> The judiciary is one of the arms of government as provided by the 1999 Constitution of Nigeria as amended.<sup>109</sup> It is the arm of government charged with the responsibility of administration of justice.<sup>110</sup>

**Correctional Service:** The correctional service as it were, has been in existence in most societies for many centuries.<sup>111</sup> It is usually a place where individuals were kept either in form confinement after conviction by a court of competent jurisdiction, or detained for awaiting trial or for execution.<sup>112</sup> After the law enforcement agencies finished gathering evidence and giving testimony in court, any offender found guilty is convicted and handed over to correctional service for sentencing.<sup>113</sup>

## 6. Conclusion and Recommendations

In drawing the curtain, as it were, of this subtle exegesis of the legal and institutional framework for the combating terrorism in Nigeria, it needs be stated that terrorism has become prevalent security challenge, in both developed and developing nations of the world with Nigeria as no exception. The history and nature of terrorism has proved terrorism to be a motivated and deliberate political violence or threat of such that is mostly directly targeted at civilian populace. On that score, the focus of the global community has consistently remained how to combat the menace as well as seek possible solution to de-escalate the after effect. Meanwhile, such effects include dilapidated economy resulting from loss of property and funds, together with shock on financial economy, loss of tourism and increased insurance claims. The physical trauma on individuals and loss of loved ones, also constitute one of the effects of terrorism. Above all, it creates a significant fear level for individuals, causing negative work attitude. This is prevalent in the Northern part of Nigeria where terrorists carry out their gruesome activities with the Nigeria security agencies, together with the military not been able to contain them. The problem of terrorists and their activities appears to have lasted this long in Nigeria without a solution at hand, because there is absolute lack of political will to fight terrorism in Nigeria. Corruption, no doubt, is a contributory factor debilitating against efforts to combat terrorism, in Nigeria. Again, the international community's inconsistent commitment to the fight against terrorism in Nigeria has not been helpful. Actual policies and practical commitment have been lacking in the real sense of providing assistance to Nigeria in fighting terrorism. This article, finally concluded that the weakness of the Nigeria institutions that coordinated the fight against terrorism has hindered the progress in the fight against terrorism. This, no doubt, is explained by the fact that the institutions lack the capacity to provide the men with equipment to embark on the fight. While it is conceded that the underdeveloped nature of Nigeria

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<sup>102</sup>Unini, C. Prosecution of Criminal Cases by the Nigeria Police: Issues, Problems and Prospects. <https://thenigerialawyer.com>. Accessed 13/8/2020.

<sup>103</sup>National Security Adviser 'Key National Agencies Involved in Boko Haram\_Counter- Insurgency Operation' <https://link.springer.com/article/10.1057/341284-020-00237-3/tables>. Accessed 4/8/2020.

<sup>104</sup>*Ibid.*

<sup>105</sup>Wikimedia, 'Military and Intelligence, State Security Service Nigeria' <https://en.wikipedia.org/wiki/state-security-service-%28Nigeria%29>. Accessed 15/8/2020.

<sup>106</sup>Garner, B.A., *Black's Law Dictionary, Seventh Edition*, St. Paul Minn, West Group, 1999, 356

<sup>107</sup>Nwebo, O.E., *The Political Economy of Administration of Justice in a Developing Society*, Owerri, Versatile Publishes, 2004, 86.

<sup>108</sup>*Ibid.*

<sup>109</sup>See section 6 of the 1999 Constitution of Nigeria as Amended.

<sup>110</sup>Iyaji, A., 'The Anti-Corruption of President Yar'Adua/Goodluck Jonathan: A Review of the Role of the Judiciary in Nigeria', Egwemi, V. (ed) *Corruption in Nigeria Issues, Challenges and Possibilities*, Makurdi, Aboki Publishers, 2012, 100.

<sup>111</sup>UN.Human Rights and Prisons *supra* 3.

<sup>112</sup>*Ibid.*

<sup>113</sup>Goodwin College, 'The Different Components of the Criminal Justice System and where you fit in' <https://www.goodwin.edu/enew>. Accessed 15/8/2020.



is a factor that has affected the fight against terrorism, Nigeria evolves re-strategized policies that will enhance efforts at effectively combating terrorism. Nonetheless, commendable efforts are still on to flush out the terrorists, under whatever guise or design, from Nigeria.

Nigeria has shown readiness to fight terrorism despite her shortcomings. At least the fact that the precursor legislation on combating terrorism was amended, is evidence of readiness to fight terrorism. Though there is need to further overhaul the Terrorism (Prevention) (Amendment) Act, 2013 to accommodate certain provisions in United Kingdom legal framework and that of Kenya. For instance, both the United Kingdom and Kenyan legal framework for combating terrorism provide for the criminalization of incitement by way of publication, but such is not contained in the Nigerian legal framework to combat terrorism. It is recommended that it be inserted in Nigeria law to fight terrorism. Again, this article recommended that a provision for interception warrant be made in the Nigeria terrorism Law. This will enable police offices of all categories to go to court to apply for warrant, to enable them intercept communication between terrorists and be able to present such in court during prosecution. This is the position both in United Kingdom and Kenya, respectively. It is also the recommended that the Terrorism (Prevention) (Amendment) Act, 2013 be further amended to reflect a provision similar to that enshrined in the prevention of Terrorism Act 2012 of Kenya, relating to the limitation of certain right and a clearly set out conditions, under which the said right and fundamental freedom of a person or entity, to whom the Act applies, may be limited. Which will underscore reverence to the constitutional right of citizens, particularly against the backdrop that an accused/ defendant or suspect's innocence is guaranteed by clear prescription of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The insertion of such provision relating to the limitation of certain right of individual or entities and a clearly set out conditions, under which the said rights and fundamental freedom of a person or entity, may be limited laws relating to combating terrorism, is particularly apropos under the Nigerian jurisdiction, so as to effectively put in check, the obvious excesses of the security agents of the states, because if their powers of enforcement of the counter terrorism legislations, in that regard, is left open-ended, it is susceptible to abuse. Another important recommendation made in this article is that adoption, promotion and facilitation of extreme belief system be criminalized. This is important because it facilitates ideologically based violence to advance, political, religious or social change.