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Combating Transnational Crimes Using The Nigerian Criminal Justice System

¹MADU, Vivian Chukwudumebi & ²KANIYE-EBEKU, Charity Olunma

¹Nigerian Institute Of Advanced Legal Studies
University Of Lagos, Lagos, Nigeria
Email: viviane1st@yahoo.com

Department Of Commercial and Industrial Law,
University Of Port Harcourt, Port Harcourt, Nigeria
Email: joshidav@yahoo.co.uk

ABSTRACT

Under international humanitarian law, there are exceptions to countering transnational crimes such as terrorism. Nigeria's status and role as a regional power continue to impact the entire West African sub-region. However, the country is facing serious security challenges that are complicated by transnational threats which are associated with organised crime and the activities of jihadist movements. Security threats linked to the activities of terrorists and human traffickers in West Africa have attracted considerable attention from scholars, policymakers and practitioners alike. This study aims to comprehend the nature of transnational crimes in Nigeria and how to utilize international legal provisions to combat them within the Nigerian Criminal Justice System. The paper finds that although the Nigerian government has made efforts through its legal framework aimed at combatting terrorism, kidnapping and other transnational crimes, there still exist gaps in the law. The study concludes that there is no controversy about the desirability of the Nigerian government to curb transnational organised crime and jihadist activities in the country. However, the complexities of strategies and modalities for effective curbing of transnational threats still require in-depth and concerted efforts than have been given by stakeholders.

Keywords: Terrorism, Kidnapping, Challenges, Human Rights violations.

1.0 INTRODUCTION

Transnational crimes can be described as crimes that cut across more than one jurisdiction.¹ Transnational crime can be defined as offences whose inception, prevention and/or direct or indirect effects involve more than one country.² It could be in the form of drug trafficking, human trafficking or arms smuggling from one jurisdiction to another. At other times transnational crime could be comprised of a crime that was plotted and planned within one country and executed in another country. These crimes have now

MADU, Vivian Chukwudumebi, Associate Research Professor, Nigerian Institute of Advanced Legal Studies
Phone: 08034449725 Email: viviane1st@yahoo.com, and KANIYE-EBEKU, Charity Olunma, Department of Commercial and Industrial Law, University of Port Harcourt, Rivers State, Nigeria. Phone +2348163374776, email: joshidav@yahoo.co.uk

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² (UN Doc. A CONF. 169/15/Add. 1 (1995).

been transformed into contemporary transnational networks with complex organisational structures and institutions. It has been acknowledged that some West African states have historical ties and exchanges that date back to pre-colonial times which relationships have been beneficial for the economic advantages of the countries and in the same vein have been abused. There is therefore a need for the development of transnational relations, it is also possible to argue that globalization is a critical factor in the current trends and patterns of transnationalism in West Africa. This study notes the revived interest in transnational processes. It acknowledges that scholars of transnationalism have begun to draw attention to the challenges of transnational threats including cross-border crimes and transnational terrorism as well as the imperativeness of collective action to guarantee peace³ and security in a region threatened by transnational organised crime.

Free-flow of arms into Nigeria generally has contributed both to the increase in the number of violent conflicts in the country and also to their intensity. Nigeria accounts for about 70% of the illegal small arms in the West Africa sub-region (West Africa Network for Peacebuilding, 2013, 4). These arms are sourced from within West Africa and the world supply of arms through the collaboration of Nigerians and foreigners. Most of the seizures by the NCS were done along the border with Benin. Also, the proximity of some of the conflict zones in West and Central Africa to Nigerian land and sea borders has aggravated the illicit flows of small arms and light weapons. Illegal arms smuggling is a common feature in West Africa involving some transnational networks. Other possible sources may include leakages from national armouries often as a result of collusion between criminal gangs and armed and security forces and, pilfering of weapons by unscrupulous peacekeepers in the conflicts in West Africa. Local manufacture of arms also accounts for significant numbers in Nigeria and Ghana. The Arab Spring and indeed the civil war in Libya resulted in the dispersal of militias and significant arms flows in West Africa and the Sahel region.⁴

1.1 Efforts of the Criminal Justice System at Combating Transnational Crimes

The civilian JTF has, in the past, been active in the fight against Boko Haram's militancy in the area; yet, its operations subsided as the military intensified its counter-insurgency campaign. However, as it became increasingly apparent that the military efforts are oftentimes ineffective in containing insurgency, the civilian JTF revamped its operations. The Civilian JTF's successful operations confirm local perceptions that such a non-official force is necessary to counteract the deficiencies of the military. While it has proven effective in combating the militants, growing vigilante operations as some analysts posit may challenge the official state security apparatus running the counter-insurgency operations in the region, undermining the military's operational hierarchy and thus potentially further destabilizing the region. Similarly, the sect's use of the media (particularly the Internet) for propaganda purposes became more pronounced. It equally graduated from attacks on relatively low profile to high profile targets such as the Nigeria Police headquarters and the United Nations building in Abuja. The complexity and level of sophistication which the sect attained challenged the capacity of security agencies and other institutions involved in the Nigerian government's counter-terrorism effort, particularly as coordination and the needed synergy among them proved inadequate. Ambushes, improvised explosive devices, kidnappings, apparently random bombings, and selective shootings, for example, prove extremely difficult to combat and can be morally and physically debilitating to the victims. When directed at military or security forces, such tactics incite security forces to overreact, wear away morale, provide weapons and equipment that may be left behind or captured, and keep the counter-insurgency effort off-balance. This was what happened in 2015 when Amnesty International reported thus: In the course of security operations against Boko Haram in north-east Nigeria, Nigerian military forces have extrajudicially executed more than 1,200

³ V Ekundayo, Nigeria Terrorists Act: A right step (2012) opinion <http://www.punch.ng.com/business/2012>.

⁴ Adedeji Adekunle, Complex Crimes and Challenges to law Enforcement in Administration of Justice and Good Governance in Nigeria (Essays in Honour of Hon. Justice A. Katsina Alu GCON CJN (Rtd) Epiphany Azinge and Adedeji Adekunle (Eds) NIALS 2011, p.85.

people;⁵ they have arbitrarily arrested at least 20,000 people, mostly young men and boys; and have committed countless acts of torture. Hundreds, if not thousands, of Nigerians have become victims of enforced disappearance;⁶ and at least 7,000 people have died in military detention as a result of starvation, extreme overcrowding and denial of medical assistance.⁷ Furthermore, Boko Haram's activities have now transcended Nigeria's borders, particularly in terms of training, financing, recruitment, kidnapping, and arms acquisition, thereby raising concerns over border management and Nigeria's relations with her immediate neighbours. Equally significant is the sect's links with international terrorist organisations like Al-Qaeda in the Islamic Maghreb, Al Shabaab, and lately its pledge of allegiance to the Islamic State of Iraq and Syria (ISIS) to the extent of renaming itself as the Islamic State's West African Province (ISWAP). The situation was made worse with the sect's embrace of the ISIS tactics of beheadings of victims. It abducted women and schoolgirls and engaged females (including girls as young as 10 years) for suicide terrorism (Akbar, 2015). Boko Haram's massive expansion between 2014 and 2015 prompted a re-invigorated state effort to contain the insurgency in line with the UN Global Counter-Terrorism Strategy, which calls for a holistic inclusive approach to counterterrorism. With their own countries threatened, the armies of Chad, Cameroon, and Niger began cooperating with the Nigerian government to prevent it from so easily fleeing across porous borders. The result is the decision to deploy the Multi-National Joint Task Force (MNJTF), headquarters in N'Djamena, Chad, on July 30th, 2015 to pep up the fight against Boko Haram.

1.2 Challenges of Combating Transnational Crimes

Transnational crimes are diverse. They range from terrorism, drug trafficking, human trafficking, advanced fee and internet fraud, diamond smuggling, forgery, cigarette smuggling, illegal manufacture of firearms, trafficking in firearms, armed robbery and the theft and smuggling of oil. However, the focus of this work is limited to terrorism and kidnapping/human trafficking as an aspect of transnational crime.

Eradicating insurgency in any polity is a wishful thinking just like evaluating the success or failure of the counter-insurgency strategies. That is why Clark⁸ contends thus, "Defeating terrorism is more difficult and far-reaching than we have assumed.... We may be advancing the ball down the field at will, running over our opponent's defences, but winning the game is another matter altogether." More importantly to this study, drawing from Clark's assertion, is the question of appropriate and workable strategies for countering the threat of terrorism. In the Campbell Systematic Review, it is observed that "there is an almost complete absence of evaluation research on counter-terrorism strategies."⁹ It is added that for the few studies available, some strategies do not appear to be effective as they "either didn't work or sometimes increased the likelihood of terrorism and terrorism-related harm."¹⁰ This seems to reflect the Nigerian situation, as there is no existing evidence of a comprehensive review of Nigeria's responses or strategies to counter terrorism either by policy makers or researchers.¹¹

Opinions are divided amongst analysts over the motivating force behind the disturbing inter agency feud in Nigeria. As a result, there is no consensus about the factors that provide the luxuriance for inter-security agency wrangle in Nigeria. The prevalent view, however, is that it stems from a multiplicity of sources which aggregate to a complex dimension of no love lost amongst the security agencies. The

⁵ Akin-Ibidapo Obe: "Human Rights and State Security, the Nigerian Experience," in Akintunde O. Obolade (ed); A Blue print for Nigerian Law, (Faculty of Law, University of Lagos 1995) p. 289

⁶ M.T Ladan, Criminal Justice and the New Security Challenges in Nigeria. Being a public lecture delivered at the Quarterly Public Lecture Series organised by the Institute for Peace and Conflict Resolution, in Abuja.

⁷ Amnesty International. (2015). Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military. London: Amnesty International. Animosity among Nigeria's security agencies hampering fight against Boko Haram – U.S. August 1, 2017 Nicholas Ibekwe <http://www.premiumtimesng.ng>. Retrieved on October 17, 2017 at 1.32pm.

⁸ Clark, W. (2003). Winning modern wars: Iraq, terrorism, and the American empire. New York: Tex. <http://www.ethnologue.com/>

⁹ . Lum, C., Kennedy, L.W. & Sherley, A.J. (2006). The effectiveness of counter-terrorism strategies. Campbell Systematic Reviews, 2. Retrieved from <http://campbellcollaboration.org/lib/download/53/>

¹⁰ Ibid.

¹¹ Eji, E. (2016). Rethinking Nigeria's counter-terrorism strategy. The International Journal of Intelligence, Security, and Public Affairs 18(3), 198-220.

escalating incidences of clashes amongst these security agencies in Nigeria pose the complex question of who guards the guards. This stems from the fact that while the security agencies paradoxically abdicate their statutory responsibility of securing life and property to dissipating their professional skills and material resources in prosecuting debilitating acrimonious rancour, the society that depends so much on them is invariably exposed to the vagaries of security threats. Findings attribute this opprobrious trend to superiority complexes, inflammatory utterances, and jurisdictional conflicts amongst the various security agencies in the country.¹² Apart from the resultant catastrophic loss of lives and properties, the trend fuels threats to national security and ultimately undermines all the extant mitigating measures. From the foregoing analysis, it is incontrovertible that inter-security agencies' disagreement is an ill wind that blows no society any good. Central to this feud is the policy gaps identified in the NACTEST document by the study. Against this backdrop, it is therefore recommended that with the revised NACTEST document under the current NSA boss, Babagana Monguno, there should be a sustained monitoring and evaluation framework that would track the implementation of each stream of the NACTEST programme to avoid clashes of responsibilities. Given this, a review of the NACTEST document is necessary. The focus of such a review ought to be that of addressing the gaps in it as we identified in table 2. For instance, the definition of terrorism as contained in the Anti-terrorism Act (2011 and 2013) should be added to the NACTEST document to avoid multiplicity of definitions of terrorism and related concepts such as electoral violence, farmers-Fulani-herdsmen conflicts and ethnic agitations. In addition, for the reason that fighting terrorism requires intervention across multiple security agencies, effective inter-agency coordination is not only desirable, it is essential to meeting timelines as well as reducing wasteful overlap and unnecessary duplication of roles. However, such efforts could only be enhanced by acknowledging the role played by the various units in achieving a widespread target. To achieve this, the office of the NSA where NACTEST is domiciled should be placed properly for effective supervision. The Presidency should supervise it. The demand, therefore, is for the office of NSA which sits atop the security architecture to provide leadership and its duties streamlined in order not to conflict with the duties of mainstream ministries such as defence and interior. All said and done, inter-agency coordination can only be effective in an environment where:

- i) each agency's responsibilities are clarified; and
- ii) modalities for the sharing of information are provided and the operational guidelines that would ensure the realization of the stated objectives are clearly defined. Since differences in institutional perspectives and individual assumptions can muddle a clear understanding of the challenge, a common sense of possession and commitment is needed, and that can only be a product of an institutional arrangement which is still very much lacking in our polity. Put differently, there is need for effective coordination of counter-terrorism institutions. In this era of fighting unseen enemy, it is important that all the stakeholders improve their knowledge of who the targets are, and that they come to terms with the reality that this is more of an intellectual than physical work. It is a war in which we need the academics, the clerics, the communities and the media among others to interface. The point here is that fighting and defeating security threats like Boko Haram entails more than an application of force. Stabilizing the crisis environment, assisting traumatized populations, and rebuilding societies and institutions are essential to achieving this objective. In addition, the leadership of the various security agencies should open a fluid channel of communication through joint training programs and symposia, inter-security agency sports tournaments, social gatherings as well as joint security operations. These efforts will improve the capacity building of our security agencies and institutions. Finally, seeking international cooperation and assistance and promoting good governance will help to address the drivers of terrorism.

¹² Victor A.O Adetula, Nigeria's Response to Transnational Organised Crime and Jihadist Activities in West Africa, Friedrich Ebert Stiftung West Africa Office Abuja, Nigeria. May 2015.

The emergence of Boko Haram as a terrorist group in Nigeria considerably changed the country's security milieu.¹³ From a quiet religious group in the early 2000s, the group had risen in 2015 to become the deadliest terrorist group. The fight against Boko Haram terrorism in Nigeria recorded a major feat in 2014 when the Federal Government formally established a multi-layer communication structure for implementing National Counter-Terrorism Strategy (NACTEST).¹⁴ The policy was reviewed in 2016. NACTEST is a service-wide collection of counter-terrorism efforts bordering on the deployment of carrot-and-stick approach in fighting terrorism. While the strategy is coordinated by Office of National Security Adviser (ONSA), several ministries, departments and agencies (MDAs) now have clear-cut roles to play in its implementation. According to the policy, each of the MDAs would have a NACTEST desk, based on their core mandates to forestall threats, secure territories, identify, prepare and implement policy directives. The first edition of the counter-terrorism strategy was developed and launched in 2014, with awareness being created. With ONSA being given the mandate to implement the strategy with the participation and buy-in of the relevant stakeholders represented by MDAs. Irrespective of this mandate, the security agencies in appear to be unperturbed as they are engrossed in supremacy rivalry between and among themselves. They include the Department of State Service (DSS), the Federal Road Safety Commission (FRSC), National Drug Law Enforcement Agency (NDLEA), the Economic and Financial Crimes Commission (EFCC), Vehicle Inspection Office (VIO), Independent Corrupt Practices and other related Offences Commission (ICPC), Nigeria Customs Service (NCS), Nigerian Immigration Service (NIS), the Code of Conduct Bureau (CCB), the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), the Nigeria Security and Civil Defence Corp (NSCDC) among others. It is therefore disturbing to observe the prevalence of insecurity and threat to peace in the full glare of the plethora of these security agencies.¹⁵ Assuming that they had collaborated and pooled manpower and logistics together, insecurity and other threats to life and property would have been drastically mitigated, if not effectively eradicated. Although, the Nigeria Police are the lead agency saddled with the statutory task of maintenance of internal law and order for the protection of life and property of the citizenry, other security agencies have been established to complement this daunting task. However, it does appear that rather than being an asset, the security agencies in Nigeria have become liabilities.¹⁶ This stems from the fact that the assigned overlapping roles and duplicated duties invariably eventuate into pervasive acrimonious rivalries. More so, the citizenry is often massively confused over which among the array of security agencies to look up to in times of security exigency. As a result, it seems as little or nothing has been, or is being done to combat crime and tackle insurgency in the country. Eventually, the proliferated security agencies appear to have been exacerbating crime rate and insecurity in Nigeria as they dissipate both human and material resources in supremacy rivalry occasioned by jurisdictional conflicts, personality clashes and struggles for operational funding at the expense of other agencies.¹⁷ In Nigeria, opinions are divided amongst analysts over the motivating force behind this disconcerting trend. As a result, there is no consensus about the factors that provide the fertile ground for inter-security agencies' scuffle in Nigeria. The prevalent view, however, is that it stems from a multiplicity of sources which aggregate to a complex dimension of no love lost amongst the security agencies. The forum for the

¹³ Onu, U.D., Idike, A.N., Eme, O.I. & Obioji, J.N. (2017). Boko Haram and human security challenges in Nigeria: The way forward. *Specialty Journal of Politics and Law*, 2(1), 12-28.

¹⁴ Adeniyi, O. (2012). Terrorism and inter-agency coordination in Nigeria. A paper presented by the Chairman, Editorial Board of Thisday Newspapers Group, at the 2012 Chief of Army Staff Conference, Asaba, Delta State on November 26.

¹⁵ Akbar, J. (2015, July 10). Like master, like servant: Nigerian terror group Boko Haram releases first beheading video since pledging allegiance to ISIS. *Daily Mail Online*. Retrieved from <http://www.dailymail.co.uk/news/article-3156551/Like-master-like-servantNigerian-terrorgroup-Boko-Haram-releases-beheading-video-pledging-allegiance-ISIS.html>.

¹⁶ Alemika, E. E. A. (2003). Police accountability in Nigeria: Framework and Limitations. In E.E.A. Alemike and T.C. Chukwuma (Eds.) *Civilian oversight and accountability of Police in Nigeria* (pp. 45-48). Lagos: Center for Law Enforcement Education, Nigeria (CLEEN).

¹⁷ Amnesty International. (2015). *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military*. London: Amnesty International. *Animosity among Nigeria's security agencies hampering the fight against Boko Haram – U.S.* August 1, 2017 Nicholas Ibekwe <http://www.premiumtimesng.com>. Retrieved on October 17, 2017 at 1.32 pm.

Military, Police and Paramilitary Public Relations Officers Forum (MILPOPPROF, 2007)¹⁸ narrowed the incessant conflicts between and among security agencies in Nigeria to a communication gap. This, according to them, is prevalent among the junior officers who, out of ignorance about the complementary roles of other sister agencies, always plunge into unnecessary and avoidable violent clashes. Marizu (2007)¹⁹ attributes the phenomenon to the defence of regime survival. In other words, the conflict is a product of each agency's perception of the other as a threat to its relevance and survival. Thus, in a bid to uphold its ego and assert its relevance, the older security agency would unleash attacks on the personnel of the newer sister agency to crush it out of existence or at least, bully it into subservience. A few studies have focused on the debilitating inter-agency rivalries. This perhaps explains why Alemika (2003),²⁰ Omoigui (2006),²¹ and Odoma (2014),²² in their separate studies, lamented that the inter-agency feuds in Nigeria had exposed the country and her citizenry to perpetual threats, nightmares, and insecurity. More so, the ugly trend has dwarfed the giant status of Nigeria as an insecure and unsafe haven for foreign investments.²³ Unfortunately, no one interrogates the security policy implications of this trend and its links with the aggravation of insecurity and how they undermine the war against insurgency in Nigeria. This paper, therefore, attempts to ascertain how the NACTEST policy document promotes inter-agency rivalry with a view to exploring avenues to stemming the tide for effective collaboration and efficient operational agility.

As a security challenge, however, the Government's counter terrorism policy appears unsuccessful.²⁴ This chapter discusses the nature and dimension of transnational crimes such as terrorism and kidnapping. The efforts of the criminal justice system at combating these transnational crimes and the challenges being faced.

The chapter reveals flaws in the policy directions, noting that Government's military-centric approach was not guided by any documented national strategy until the release of National Counter Terrorism Strategy (NACTEST) in 2014 ostensibly coordinated by the Office of the National Security Advisor (ONSA). Even at this, NACTEST is observed to be fraught with gaps that question its suitability as a counter-terrorism policy document for Nigeria. Among the observed policy gaps include the animosity between and among Nigeria's security agencies and their unwillingness to share intelligence hampering effort at effectively combating the Boko Haram insurgency in the country's North-east.²⁵

1.3 Legal Provisions for Combating Transnational Crime in Nigeria

The Terrorism Prevention and Prohibition Act²⁶ provides for certain offences and punishment. For instance, the Act criminalises as offence, soliciting or rendering support to members of a terrorist group,²⁷

¹⁸ MILPOPPROF. (2007). Communiqué of the Conference of Military, Police and Paramilitary Public Relations Officers Forum held in Lagos, 8 February.

¹⁹ Marizu, C. O. (2007). Inter forces harmony. An address delivered by the Air Officer Commanding Logistics Command at the Conference of Military, Police and Paramilitary Public Relations Officers Forum (MILPOPPROF), Lagos, 8th February.

²⁰ Alemika, E. E. A. (2003). Police accountability in Nigeria: Framework and Limitations. In E.E.A. Alemika and T.C. Chukwuma (Eds.) *Civilian oversight and accountability of Police in Nigeria* (pp. 45-48). Lagos: Centre for Law Enforcement Education, Nigeria (CLEEN).

²¹ Omoigui, A.N. (2006). Inter-service relations: Imperative for jointness. A public lecture delivered at the National War (Defence) College, Abuja, 27 January.

²² Odoma, S. (2014). Superiority struggles and inter-agency feud in Nigeria. *Global Journal of Human, Social Sciences, Sociology and Culture*. 14(5): 33-41.

²³ Petraeus, H. and Amos, F., "FM 3-24 Counterinsurgency," Marine Corps War fighting Publication No. 3-33.5, Department of the Army, Washington, D.C. 2006. Reuters. (2011). Map of Nigeria locating fatalities as a result of Boko Haram attacks from January to July 2011.

²⁴ Pérouse DeMontclos, M-A. (2014). Nigeria's interminable insurgency? Addressing the Boko Haram crisis. Research Paper Africa Programme, Chatham House. Retrieved from https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140901_BokoHaramPerousedMontclos

²⁵ Odoma, S. (2011). An appraisal of army-police clashes in Lagos, Nigeria: 200-2010. Unpublished PhD Thesis presented to the Department of Sociology, University of Ibadan, Nigeria.

²⁶ Terrorism (Prevention and Prohibition) Act 2022

²⁷ Section 13 TPPA.

and harbouring any member of a terrorist group.²⁸ A person is deemed to have committed an offence of concealment if the person knows or suspects a person to be a member of a terrorist group but makes no effort to report such a person to the relevant security authority.²⁹ A person who voluntarily joins the members of any terrorist group is deemed to be a member of such terrorist group and equally commits an offence punishable under the Act.³⁰

Membership Offence in Nigeria

“Membership of a terrorist group or proscribed organization

A person who is a member or professes to be a member of a terrorist group or a proscribed entity, in or outside Nigeria, commits an offence, and is liable on conviction to imprisonment for a term of at least 20 years and up to a maximum of life imprisonment.³¹

(2) It shall be a defence for a person charged with an offence under subsection (1) that—

(a) the entity, in respect of which the charge is brought, was not a terrorist group or a proscribed entity at the time that person became a member or began to profess membership of that group or entity; and

(b) the person has not taken part in the activities of that group or entity, after it became a terrorist group or proscribed entity.

(3) A person who belongs or professes to belong to a proscribed entity, in or outside Nigeria, commits an offence, and is liable on conviction to life imprisonment.

(4) It shall be a defence for a person charged with an offence under subsection (3) that—

(a) the entity, in respect of which the charge is brought, had not been designated to be a proscribed entity at the time the person charged became or began to profess membership of the entity; and

(b) the person has not taken part in the activities of that entity at any time after it has been designated to be a proscribed entity.

Although the wordings of Section 25 of the TPPA are clear on how a group becomes a terrorist group which is by proscription. However, there has been instances where persons had been arrested and while still awaiting trial the group under which they were members and arrested for their activities under the group was proscribed. This happened to members of the agitation for Indigenous People of Biafra (IPOB), who were arrested for their membership of the group and while awaiting trial IPOB was proscribed as a terrorist group. This subsequent proscription of a group which was not known to be a terrorist group as at the time of arrest, in the researcher’s opinion, is against the provisions of the constitution and the provisions of the TPPA.³² The constitution forbids retroactive legislation and a man cannot be said to be guilty of an offence unknown to law as at the time of the commission of the offence. Moreover, the members of the Indigenous People of Biafra (IPOB) still insist and maintain that they are not a terrorist organisation, but however a movement for the emancipation of the people of the South-Eastern Nigeria.

1.4 Legal Mechanisms for Combating Terrorism in Nigeria

There are great number of laws in Nigeria that regulate and prosecute terrorism offences in Nigeria, amongst these laws are;

1.4.1 Terrorism (Prevention and Prohibition) Act, 2022 (TPPA)

The Terrorism (Prevention and Prohibition) Act 2022 (TPPA) has a number of positive aspects. First, it consolidates terrorism legislation into a single law. Prior to the enactment of the TPAA, the law was spread across the Terrorism Prevention Act 2011 (TPA) and the Terrorism Prevention (Amendment) Act 2013 (TPAA) which had led to much uncertainty, confusion, difficulty and ambiguity in understanding and applying the law. Furthermore, the objectives of the TPPA³³ are lofty, far-reaching and very admirable, despite the glaring omission of any express commitment towards safeguarding human rights. It is also encouraging that Nigeria has sought to expand the legislative framework to include provisions

²⁸ Section 14 TPPA.

²⁹ Section 15 TPPA.

³⁰ Section 25 TPAA.

³¹ Section 25 Terrorism Prevention and Prohibition Act 2022.

³² Section 25 (3) Terrorism Prevention and Prohibition Act 2022.

³³ Section 1 of the Terrorism Prohibition and Prevention Act 2022.

relating to: the proliferation of weapons of mass destruction; introducing mechanisms relating to financial measures pursuant to the counter-proliferation resolutions.³⁴ They should also attempt to promote improved compliance, implementation and enforcement of the regional and international counter-terrorism conventions; and the establishment of a mechanism to provide compensation to victims of terrorism.

The TPPA is ambitious and complex in the sense that it seeks to establish a multitude of new systems, procedures, structures and committees to try to strengthen the fight against terrorism and the financing of terrorism. For example, the TPPA provides for the establishment of the National Counter-Terrorism Centre (which in turn is tasked with establishing various teams and structures including the Joint Terrorism and Analysis Branch), the Nigeria Sanctions Committee, and the Victims Trust Fund implemented through the Special Victims Trust Fund Committee. The TPPA sets out the overarching framework, but the practical operationalisation of the law will require the development of a huge body of regulations,³⁵ as well as extensive capacity building, collaborative development and coordination, and education and awareness raising. This will be a difficult yet essential task, and one on which the whole success of the practical implementation of the law will depend. This will in turn pose significant challenges to the judiciary as individuals and institutions try to navigate the stormy waters of the nascent procedures, structures and systems.

The National Counter-Terrorism Strategy of Nigeria recognizes the link between the protection of human rights and the effectiveness of counter-terrorism measures, stressing that “the Government believes that respect for international law and human rights must be an integral part of its efforts to counter terrorism.” Respecting human rights is the right thing to do.³⁶ It is right to treat all people with basic human dignity and respect, without discrimination. It is morally right at the individual level, and it is a mark of professionalism and integrity in law enforcement and criminal justice systems. Furthermore, the violation of human rights will directly lead to the alienation of communities that feel anger and mistrust towards the state, a rise in violent extremism, and an increase in the level of the terrorist threats in the country. The level of the terrorist threat in Nigeria emphasizes the importance of the role of the judiciary in promoting and upholding compliance with human rights. From a human rights perspective, the TPPA is disappointing in that it appears to represent a missed opportunity to embed human rights at the core of the terrorism prevention legislation in Nigeria. Furthermore, the major human rights failings of the Terrorism Prevention Act 2011 as amended by the Terrorism Prevention (Amendment) Act 2013 have not been addressed and, to a large extent, have simply been transposed into the new legislation. There are also glaring failings/omissions of the legislation as it relates to women and child rights.

One glaring omission from the definition of acts of terrorism and the terrorist offences set out in the TPPA is the failure to criminalise sexual and gender based violence (SGBV) offences committed in the terrorist context. It would have been appropriate for the TPPA to criminalise rape³⁷ as in the case of the Violence Against Person’s Act. Especially for cases of sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity committed by terrorist groups. The consequent lack of accountability for SGBV offences committed by terrorist groups is very worrisome, as it fails to take account adequately of victim’s rights and it is in violation of Nigeria’s international human rights obligations.³⁸

The TPPA (as per the previous law) is silent as to its applicability to children. The Child Rights Act 2003 which has been passed into law in some States, such as Adamawa, Delta, Kaduna, Benue amongst others. It is wide-ranging in its scope and seeks to put in place a framework for dealing with children which

³⁴ Article 41 of the Charter of the United Nations.

³⁵ Section 95 of the Terrorism Prohibition and Prevention Act 2022.

³⁶ S.J Omotola ‘Combating Poverty for Sustainable Human Development in Nigeria: The Continuing Struggle, *Journal of Poverty*, 12(4)2008 p496-517 in Aghedo & Osumah (2012) *The Boko Haram Uprising: How Should Nigeria Respond?* 3rd World Quarterly Journal p 853-869.

³⁷ Section 1 of the Violence Against Persons (Prohibition) Act 2015.

³⁸ Vivian C Madu and Nnenna J Ebob, *Establishing Gender Sensitive Witness and Victims Protection Measures in Complex Criminal Cases*, *Journal of Law Policy and Globalization*, ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) vol. 112, 2021, 86.

complies with Nigeria's child rights obligations.³⁹ The ambiguity as to the applicability of the law relating to children suspected of being associated with terrorist groups appears to have directly led to some children being placed outside the protective framework of the Child Rights Act, and into an ambiguous limbo in which their rights may not have been adequately safeguarded. International human rights law, most notably in the UN Convention on the Rights of the Child, extends special protection to persons aged below 18 years, and accords a presumption of minority in case of doubt on age.⁴⁰ The recruitment and use of children to participate in conflict, by armed groups, is prohibited in core international treaties ratified by Nigeria, and it is criminalized as a war crime under the Statute of the International Criminal Court. In order to ensure that the rights of children are protected the TPPA should arguably have included language to expressly criminalize the recruitment and use of children by terrorist organizations, and to enshrine the presumption of minority. Many of the children recruited and used in conflict by armed groups, moreover, have been abducted, trafficked, forced into marriage and/or raped by these groups. As victims of violations of their basic human rights, it is the position of the international community⁴¹ that such children should be treated primarily as victims and assisted accordingly. It would appear to have been prudent for the TPPA to have clarified the legislative framework, procedures and safeguards applicable to such children.

The scope of definition of terrorism under the TPPA (as with the previous law) is extremely wide. As a result, many people who never took up arms who perhaps have had a very limited or tangential interaction with terrorists, may well find that their actions and situations place them within the scope of terrorist offences. Even though, in reality, they may have had no choice due to the force, compulsion or duress exerted upon them, their level of culpability may be negligible and they may effectively be victims of terrorism. From a human rights perspective, this is worrying. It classifies huge swathes of people as terrorists and places them under the umbrella of the human rights restrictions contained in the TPPA. Furthermore, the issue is compounded by the fact that many of the terrorist offences carry heavy minimum sentences – for example, membership,⁴² support to terrorists,⁴³ attending a terrorist meeting and harbouring⁴⁴ terrorists all involve minimum sentences of 20 years' imprisonment and, in addition, duress, coercion and intimidation will not constitute a defence to most of the offences set out in the TPPA. Persons with limited culpability, whose actions nevertheless amount to terrorist offences, may as a result be faced with terms of imprisonment which are wholly excessive.

The imposition of minimum sentences is problematic as there will often be circumstances in which the appropriate sentence is less than the minimum, and the Courts should have the flexibility to take the totality of circumstances impacting-on the alleged offence into account.⁴⁵ This was evident under the previous law where the wives (sometimes through forced marriages/kidnappings) of suspected terrorists become liable for hefty sentences for supporting, harbouring or failing to report terrorist activity, simply as a result of their marital status.⁴⁶ In such cases both the law and the imposition of hefty sentences is disproportionate to the magnitude of the offence and thus represents a significant human rights violation. It may well have been more appropriate if all sentencing guidelines set out in the TPPA had been expressed in terms of maximum rather than minimum sentences, thus allowing judges to appropriately exercise their discretion in line with the aggravating and mitigating factors in the case.

Similarly, the courts should arguably have been given unrestricted powers to reduce sentences imposed where mitigating circumstances exist and/or where the accused has cooperated with authorities. This

³⁹ O. Onapaja and B. Uzodike, Boko Haram Terrorism in Nigeria. *African Security Review* 21:3, 24-39

⁴⁰ Damilola, n. 17.

⁴¹ Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles) and in Security Council Resolutions 2427 (2008) and 2331 (2016).

⁴² Section 25 Terrorism Prohibition and Prevention Act 2022.

⁴³ Section 13 Terrorism Prohibition and Prevention Act 2022.

⁴⁴ Section 14 Terrorism Prohibition and Prevention Act 2022.

⁴⁵ G. Emanuel-Chaira. *The Complementary Nature of Human Rights Law, International Humanitarian and Refugee Law, Challenges Response in Terrorism and International Law* (Sanremo 2002).

⁴⁶ M. A Ewi, *Complex Dimension of Terrorism in West Africa Vulnerabilities, Trends and Notorious Terrorist Network* SWAC/OECD 2012.

power has been undermined by the minimum sentencing provisions, and as such impacts both fair trial protections and the operational ability of prosecutors to leverage plea deals and/or proffer agreements to secure the cooperation of defendants in the public interest. However, in the recent case of *Kelvin Ezeigbe v FRN*⁴⁷ the judge in a judicial activism exercised a discretionary power when she held that though some of the counts against Ezeigbe and Azuekor attracted punishment ranging from death sentence, life imprisonment to at least 10 years, jail term, she said she found that the accused had been remorseful of their criminal act and that they had been in custody for about 10 years from the day of their arrest. Justice Nyako, held that the prosecution had been able to establish the counts preferred against Kelvin Ezeigbe and Frank Auekor, who were 1st and 2nd defendants, beyond reasonable doubt. Hence they were sentenced to 20 years, imprisonment which sentence she held would run from the day of their arrest. The judge, however, discharged and acquitted Micheal Omonigho and Momoh Haruna, who were 3rd and 4th defendants, of the counts levelled against them in the terrorism charge.

It is instructive to know that the defendants; Kelvin Ezeigbe, Frank Azuekor, Micheal Omonigho, and Momoh Haruna were first arraigned before Justice Ademola of the Federal High Court, on June 9, 2014, on a 13-count charge bordering on conspiracy, armed robbery, kidnapping and acts of terrorism.

While the three defendants were in court, Haruna was said to be missing after the attack on Kuje Correctional Centre by terrorists on July 5, 2022. They were accused of committing acts of terrorism, contrary to Sections 1, 8, and 10 of the Terrorism Act 2011. They were alleged to have, on August 23, 2013, kidnapped Mr Ozekhome at Iruokpen on his way to Iviukwe in Agenebode, Edo State. Ozekhome was held in captivity for about three weeks before his release allegedly following the payment of N28 million naira ransom.

They were also accused of kidnapping Delta State Commissioner for Higher Education, Prof Hope Eghagha; Attanasius Ugbome, and his friend, Emmanuel Maka Omorogbe, and killing five policemen and two prison officials. The defendants were also alleged to have compelled Eghagha to pay N7 million naira, Ugbome to pay N20 million, and Omorogbe to pay N3.5 million. The five police officers allegedly killed were Paul Ajaka, Sunday Ewanshiha, Micheal Akpada, Bakary Ekong, and Innocent Odoh. They also allegedly killed Lawrence Edora and Oyibo Okoye who were prison officers and made away with their service rifles. The four suspects were refused bail failed on their behalf by their lawyer. While Ezeigbe and Azuekor were held at the facility of the Department of State Service, Omonigho and Haruna were held at Kuje Correctional Centre, Abuja.

1.4.2 Kidnapping/Hostage taking

Instances of Acts of kidnapping and hostage-taking by the members of the Boko Haram Group in Nigeria

Boko Haram has kidnapped several young school girls in Borno and has physically, psychologically, and sexually abused them, as well as using and selling them as sex slaves and/or brides of forced marriages with their fighters.⁴⁸ The most famous example is the Chibok girls' kidnap in 2014. In addition to kidnapping child brides, Human Rights Watch reports state that Boko Haram uses young boys as young as 12 years old as child soldiers.⁴⁹

The Nigerian Constitution⁵⁰ prohibits slavery, servitude, forced or compulsory labour, and inhuman and degrading treatment. Section 42⁵¹ prohibits discrimination, including on grounds of sex. The Constitution⁵² further prohibits the unlawful deprivation of one's personal liberty. Section 46 provides that an aggrieved person is entitled to seek redress for alleged contravention of his/her fundamental rights by applying to the High Court of the State, which shall have jurisdiction to hear applications on

⁴⁷ *FRN v. Kelvin Ezeigbe*, 2023.

⁴⁸ Group asks Nigerian government to rescue 20 'kidnapped' female students in Borno. Premium Times Nigeria; published 27 February 2014.

⁴⁹ Nina Jorgensen, *supra* n. 55

⁵⁰ Section 34, Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁵¹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁵² Section 35, Constitution of the Federal Republic of Nigeria 1999 (as amended).

fundamental human rights issues. It is therefore clear from the foregoing that victims of terrorism and SGBV whose rights have been violated can approach a court of competent jurisdiction to seek redress.⁵³

Nigerian government forces launched an offensive attack in the Borno region in an attempt to dislodge Boko Haram fighters after a state of emergency was called on 14th May 2013. On 5th August 2013 Boko Haram launched dual attacks on Bama and Malam Fatori, leaving 35 dead.⁵⁴ This led to a declaration of a state of emergency which was still in force in May 2014. The state of emergency, applied to the States of Borno, Yobe, and Adamawa in North- Eastern Nigeria.⁵⁵ The offensive had initial success, but the Boko Haram rebels were able to regain their strength. In July 2014, Boko Haram massacred 42 students in Yobe,⁵⁶ bringing the school year to an early end in the State.

On 15th April 2014, terrorists abducted about 276 female students from a college in Chibok in Borno state.⁵⁷ The abduction was widely attributed to Boko Haram.⁵⁸ It was reported that the group had taken the girls to neighbouring Cameroon and Chad where they were perceived to be sold into marriages. The abduction of another eight girls was also reported later. These kidnappings raised public protests, which caught international attention.⁵⁹ Several countries like the United States of America and Britain pledged support to the Nigerian government and helped the military with intelligence gathering on the whereabouts of the girls and the operational camps of Boko Haram.⁶⁰

Ukpong in his article stated that the British Royal Air Force (BRAf) conducted Operation Turus in response to the kidnap of Chibok schoolgirls by Boko Haram in Nigeria.⁶¹ It was reported that the girls were located within the first few weeks of the BRAf mission, but the Nigerian government declined the offer of a rescue operation by BRAf. This was because the Nigerian government viewed any action to be taken as a 'national issue' and for it to be resolved by Nigerian intelligence and security services, the source added that the girls were then tracked by the aircraft as they were dispersed into progressively into smaller groups over the following months.⁶²

The act provides for the offence of abduction reading thus:

“Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct that person and whoever kidnaps or abducts any person shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to a fine”⁶³

In the case of *State v Yunusa Dahiru*, *Ese Oruru* was abducted by one Dahiru from Yenagoa in Bayelsa State and was taken to Kano State, where he forcibly converted her to Islam.⁶⁴ At the time of abduction, Ese Oruru was 14 years old at the time of the incident, was raped, resulting in pregnancy. She was eventually rescued by the police in February 2016 two years after her adoption and brought back to Yenagoa in early March, where she gave birth to a baby girl in May of the same year. The abductor Dahiru on March 8, 2016, was arraigned before the Federal High Court on a five-count charge bordering on criminal abduction, illicit intercourse, sexual exploitation and unlawful carnal knowledge of a minor and he was found guilty of the charges and sentenced appropriately.

⁵³T.J Omidoyin and O.O Oluwayem, *ibid* n. 56.

⁵⁴ Aliu Oladimeji Shodunke, *Boko Haram and Counterinsurgency Operations in Nigeria: Explicating the Military Ordeal*, *African Journal on Terrorism* Volume 11 • Number 2 • December 2021, p.61

⁵⁵Olabanji Akinola, *Boko Haram Insurgency in Nigeria: Between Islamic Fundamentalism, Politics and Poverty*, [2015] 8 *African Security Report*, p.1.

⁵⁶O Akinola, *Boko Haram Insurgency in Nigeria: Between Islamic Fundamentalism, Politics and Poverty*, [2015] 8 *African Security Report*, p.1

⁵⁷Collins Matt, *supra* n. 10.

⁵⁸ "Nigeria rejected British offer to rescue seized Chibok schoolgirls". *The Guardian Newspaper*. 4 March 2017.

⁵⁹S Weeraratne, *ibid* n. 82

⁶⁰Kwede *supra* n. 6.

⁶¹Ukpong *supra* n. 2.

⁶²*Ibid*.

⁶³ Section 27 of the Child Rights Act.

⁶⁴ Ese Oruru gets justice at last, reported by <https://www.vanguardngr.com>, June 9, 2016.

The Violence Against Persons Prohibition Act (VAPPA) contains the offence of depriving a person of his or her liberty, which is punishable by up to two years imprisonment including criminalization of those who attempt, incite, aid, abet, counsel, receive or assist another to commit the offence.⁶⁵

1.4.3 Human Trafficking:

Human trafficking is prohibited under the Penal code, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 and its amendment of 2005 and the 1999 Constitution of Federal Republic of Nigeria. The Penal Code⁶⁶ prohibits the import, export, removal, buying, selling, disposal, trafficking or dealings with any person as a slave or their acceptance, receipt or detention against the will of any person as a slave, and punishes with imprisonment for a term which may extend to fourteen years and a fine. Whilst the term ‘trafficking’ is not defined under the penal code, a definition of the term is provided under section 82 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 and the amendment of 2005 provides:

all acts involved in the recruitment, transportation within or across Nigerian Borders, purchases, sale, transfer, receipt or harbouring of a person, involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether or not in voluntary servitude (domestic, sexual or reproductive) in forced or bonded labour or in slavery-like conditions.

The Act prohibits the act of trafficking in persons under Section 13(1) and makes any person who commits the offence liable on conviction to imprisonment for a term of not less than two years and a fine of not less than Two Hundred and Fifty Thousand Naira. The Act⁶⁷ also prohibits forced labour⁶⁸ the procurement or recruitment of a person for use in armed conflict.

Trafficking in Persons by Terrorist Groups

The United Nations Convention Against Transnational Organized Crime (UNTOC, also known as the “Palermo Convention”) defined the crime of trafficking in persons and provides a framework to effectively prevent and combat trafficking in persons. Nigeria is a party to the Convention and the Protocol.⁶⁹

“For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation is defined to include, the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

The Act goes further to provide that...

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

This provision applies mostly to parents who for economic benefits send out there under aged children as domestic help.

⁶⁵ Section 10 (1) - (4) Violent Against Persons Prohibition Act.

⁶⁶ Section 279 of Penal Code.

⁶⁷ Section 19 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act.

⁶⁸ Section 22 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act.

⁶⁹ Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of the United Nations Convention against Transnational Organized Crime (UNTOC).

The Act defines a Child to mean any person under eighteen years of age.”⁷⁰

The UN identifies that abduction and trafficking of women and girls is one of the ways for terrorist groups to obtain funds and recruit new members:⁷¹

- i. “Trafficking in persons, in particular women and girls, remains a critical component of the financial flows to certain terrorist groups;” and that,
- ii. “When leading to certain forms of exploitation, is being used by these groups as a driver for recruitment.”

The Security Council therefore

“urges all States to ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and penalize in a manner duly reflecting the seriousness of the offence of trafficking in persons committed with the purpose of supporting terrorist organizations or individual terrorists, including through the financing of and recruitment for the commission of terrorist acts.”

1.5 Rights of Victims of Trafficking in Persons

Persons compelled to join a terrorist group against their will may qualify as victims of trafficking in persons under Nigerian and international law. Victims of trafficking in persons are entitled to specific rights in judicial proceedings, reparations and assistance.⁷² The Trafficking in Persons (Prohibition) Enforcement and Administration Act,⁷³ provides for access to justice, reparations and assistance measures for victims of human trafficking.

Section 61 provides for general protection measures, including protection against discrimination, access to healthcare and other social services, minimization of intrusions into the victim’s personal history during investigation stage, and protection of the victim’s identity.

Section 63 provides for a number of measures with respect to assistance measures during trials:

A victim of trafficking in person shall be provided with:

- (a) information on relevant Court and administrative proceedings;
- (b) assistance to enable the victim’s views and concerns to be presented and considered at appropriate stages of criminal proceedings against the traffickers; and
- (c) counselling and information as regards victim’s legal rights in a language that the victim can understand.

Finally, section 65 provides that a trafficked person is entitled to compensation, restitution and recovery for economic, physical and psychological damages, which shall be assessed and paid out of forfeited assets of the convicted trafficker.⁷⁴

1.5.1 Remedies and Support for Victims under the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015

The Trafficking in Persons (Prohibition) Enforcement and Administration Act, passed by the National Assembly in 2015, contains ample provisions regarding support and remedies for victims of trafficking. The Act provides for the victim’s right not to be discriminated against on usually prohibited grounds including sex, age or having worked in the sex industry.⁷⁵ A trafficked person is guaranteed access to adequate health and other social services during the period of temporary residence in Nigeria.⁷⁶ The Act provides for the protection of the identity of a victim of trafficking.⁷⁷ Also, a trafficked person and his/her

⁷⁰ Article (d) of the United Nations Convention Against Transnational Organized Crime (UNTOC).

⁷¹ UN Security Council Resolution 2331 (2016).

⁷² J Jupp, Strengthening Protection and Support for Victims of Terrorism in Criminal Proceedings in Afghanistan, *Studies in Conflicts and Terrorism*, Vol. 45, 2022, Issue 2, p. 264

⁷³ Sections 61-66 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁷⁴ International Organisation for Migration, *Handbook on Direct Assistance for Victims of Trafficking* (2007).

⁷⁵ Section 61 (a) Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁷⁶ Section 61 (b) Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁷⁷ Section 61 (g) Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

family are protected from intimidation, threats, and reprisals from traffickers and their associates including reprisals from the person in the position of authority.⁷⁸

The Act covers the rights of a victim to information, including relevant court and administrative proceedings, and assistance to enable the victim's views and concerns to be presented and considered at appropriate stages of criminal proceedings against the traffickers. The trafficked person/victim is equally entitled to counselling and information regarding the victim's legal rights in a language that the victim can understand.⁷⁹ The Counselling and Rehabilitation Department of NAPITP (the National Agency for the Prohibition of Trafficking in Persons) is further charged with counselling, aftercare rehabilitation, social reintegration and education of trafficked persons including supporting, advising and facilitating access to legal aid services by victims.⁸⁰

The Act also guarantees victims the right to institute civil action⁸¹ and to be entitled to compensation,⁸² restitution and recovery for economic, physical and psychological damages to be met from the assets, if any, of the convicted trafficker forfeited and paid to the Victims of Trafficking Trust Fund.⁸³ The Trust Fund shall be utilized to pay compensation, restitution and damages to trafficked persons; and to fund victim support services for trafficked persons. Access to justice for victims of terrorism through the justice system needs to be complemented by other support measures, including offering victims the necessary material, medical, psychological and social assistance through governmental, voluntary and community-based means.⁸⁴

1.6 Judicial Compensation Orders and Administrative Reparations Schemes

Judicial Compensation Orders

Victims may obtain reparations through judicial mechanisms, including bringing individual civil claims against perpetrators, or through seeking compensation in criminal proceedings.⁸⁵

The Administration of Criminal Justice Act, 2015, in Section 314(1) empowers the court to award a victim commensurate compensation by the defendant, any other person, or the State. Courts can grant compensation within the scope of their civil or criminal jurisdiction.

The Act⁸⁶ empowers the court to order payment by the defendant, during proceedings or in passing judgment, as compensation to any person injured by the offence, where "substantial compensation is in the opinion of the court recoverable by civil suit" and for the payment of medical costs incurred for treatment of the victim injured by the defendant.

Where the perpetrators responsible for inflicting harm have not been identified or apprehended, or where they are not solvent, it is the responsibility of the State to provide remedies for harm suffered by victims of acts of terrorism on their territory. As the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stated, the duty to protect the rights of victims of terrorism rests primarily with States and includes the duty to provide "pecuniary compensation, including for moral damages sustained; rehabilitation; provision of health care, psychosocial and legal assistance."⁸⁷

⁷⁸ Section 61 (j) Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁷⁹ Section 63 Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁸⁰ Section 12(4) (a)-(c) Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁸¹ Section 65(3) Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁸² Section 65(1) Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁸³ Section 67 Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

⁸⁴ The UN Office of Counter-Terrorism provides an online "Victims of Terrorism Support Portal" to facilitate access to resources for victims, their families and communities – be it psychosocial support, understanding how to access national criminal justice systems or rehabilitation opportunities offered by Member States. <http://victimssupportfunding.org/vsf-women-economic-empowerment-the-journey-so-far>.

⁸⁵ Javier Argomaniz and Oria Lynch, Introduction to the Special Issue: The Complexity of Terrorism-Victims, Perpetrators and Radicalization, *Studies in Conflict and Terrorism*, Vol. 41, 2018, Issue 7, p. 51.

⁸⁶ Section 319 Administration of Criminal Justice Act 2015.

⁸⁷ A/66/310, paras. 20-24.

Administrative Schemes

Administrative reparations programme is defined as an out-of-court process used by States to provide reparation to massive numbers of victims of gross violations of international human rights law and/or serious violations of international humanitarian law.⁸⁸ In such programmes, States identify the violations and the victims to be redressed and provide them with reparation through an established procedure. Reparation can also be ordered by national or international courts against a State or against the perpetrator of the crime, as applicable.⁸⁹

Reparations and other forms of support may be offered through administrative schemes, such as national compensation funds. Administrative schemes are particularly relevant for victims of terrorism, in light of the large numbers of victims and large-scale damage resulting from terrorist attacks, the fact that the perpetrators may be unidentifiable or deceased, and in many cases lack the necessary means to meet obligations for court ordered remedies.⁹⁰

The Nigeria Foundation for the Support of Victims of Terrorism (also known as the Victims Support Fund), an initiative of the Federal Government, is tasked with assessing and administering support to and raising awareness for the victims of the conflict with Boko Haram. It aims to respond to the immediate needs of victims of terrorism, ranging from psychosocial, educational support for terror-affected and displaced children, support for hospitals to provide free treatment to victims, and facilitation of foster programming for children affected by terrorism.

1.7 Implementation of the Legal Provisions

A critical aspect of the offence of terrorism which is said to distinguish it from other offences of similar nature is the impact of the force used. This impact is not usually directed at a specific person but is meant to create intense fear and anxiety both physically and psychologically in the minds of members of the public. This fear has the effect of coercing, forcing, and intimidating them to do or abstain from doing any act or to adopt or abandon a particular view, policy or position to act according to certain principles. This was the decision of the Supreme Court in the case of *Musa Adulmumini v Federal Republic of Nigeria*.⁹¹ In the instant case the appellant was one of several persons arraigned before the Federal High Court Jos, for conspiracy to commit terrorist acts punishable under section 5 of the Criminal Code Act Cap. C38LFN 2004; illegal possession of fire arms, punishable under section 5 of the same Criminal Code Act, and the commission of act of terrorism punishable under section 15(2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004. The alleged criminal act was committed around the 8th day of March 2008 in Jos and its environs, including the Mangu Local government area of Plateau State. The appellant featured in the first and third counts, which respectively accused him and others of conspiracy to commit acts of terrorism. In these two charges, he was the 7th and 9th accused. All the accused persons including the appellant, were convicted for the two offences alleged in the first and third charges. They were each sentenced to two years and ten years of imprisonment for committing the said offences of criminal conspiracy to commit acts of terrorism and the commission of terrorist acts respectively. The appellant appealed his conviction and sentence to the Court of Appeal sitting at Jos, but his appeal failed. The said Court of Appeal dismissed his appeal and affirmed the conviction and sentencing imposed on him by the Federal High Court. On further appeal to the Supreme Court, the concurrent findings of the lower court that the conduct of the appellant and his group while armed with dangerous weapons and going about menacingly in the area was calculated to instil fear in the members of the public and intimidate them within the meaning of terrorism.⁹²

⁸⁸ The Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence (2014).

⁸⁹ K Douglas report on Victoria's neighbourhood justice centre in Australia, in her work titled "Therapeutic jurisprudence, restorative justice and the law" <http://www.therapeuticjurisprudence.org> 10 May 2007, accessed 14th January 2020.

⁹⁰ ICAN and UNDP, *Invisible Women, Gendered Dimensions of Return, Rehabilitation and Reintegration from Violent Extremism* (2019).

⁹¹ (2017) LPELR 43726 SC.

⁹² Section 46 of the EFCC Act.

In the case of *Musa Abdulmumini v Federal Republic of Nigeria*, the defendant relied on the defence of self-defence and private property under section 59 of the Penal Code Law of Plateau State.⁹³ While the court agreed that the appellant was entitled to, and in fact, the court was bound to consider all defences available to the defence,⁹⁴ the question was whether a defence under state law could avail a defendant when charged for a federal offence. The Supreme Court stated a principle of law that the appellant cannot, ordinarily resort to the provisions of a State law and invoke the defendants therein to plead a statutory defence against federal offence for which he stands on trial. While affirming this principle, the court agreed with counsel for the appellant that in so far as section 46(a) of the EFCC Act defines terrorism to incorporate violations of the Criminal Code and Penal Code, the defences in those statutes is also incorporated by implication. While we agree with the Supreme Court on the incorporation of defences in other statutes, it is submitted that this is a challenge to prosecutors who prosecute under the EFCC Act for terrorism offence.

With the Federal High Court practice direction, the prosecution of terrorism offences is given priority by the court and the prosecutor has the responsibility of ensuring that there is a quick dispensation of justice by his preparedness and minimising delays and unnecessary adjournments. In the case of the *Federal Republic of Nigeria v Mustapha Fawaz*⁹⁵ and others, the case commenced on 29th July 2013 with the prosecution calling 10 witnesses and tendering 27 exhibits for the prosecution of its case, while the defence opened on 2nd November 2013. Dissatisfied with part of the judgement of the trial court the 3rd defendant appealed to the Court of Appeal Abuja Division⁹⁶ and the Appeal was held on 12th June 2014 and judgement was delivered on 18th July 2014. In the case of *Charles Ododo v Peoples Democratic Party*,⁹⁷ the Supreme Court in considering the guiding principles of the Supreme Court practice direction 2013, especially section 2 (a) held that other mentioned offences⁹⁸ shall be given priority in the preparation and publication of the weekly cause list.

The case of *Adamu v Karumi v the Federal Republic of Nigeria*⁹⁹ is significant in the interpretation of the commencement date of the Terrorism (Prevention) (Amendment) Act 2013. In this case, the Appellant with three others was arraigned before the trial court for the offences of conspiracy to commit felony i.e. terrorism, concealing information about acts of terrorism, committing acts preparatory to or in furtherance of acts of terrorism and having prohibited firearms and ammunition. Initially, about 17 persons were arraigned but in the course of the trial, 13 others were discharged under a nolle prosequi filed by the Attorney General of Lagos State. The trial then proceeded against the remaining 4 including the Appellant. The Respondent called six witnesses and tendered 34 exhibits in its case against the Appellant, while the Appellant testified for himself. At the end of the trial, the court found the Appellant guilty, convicted and sentenced him, thus the appeal to the Court of Appeal. One of the grounds of appeal was that the trial judge erred in convicting the appellant under the Terrorism (Prevention) (Amendment) Act 2013. He argued that the commencement date is not indicated on the face of the Terrorism Act, 2013 and the omission would make the commencement date the 24th day of May 2013, being the date the Boko Haram sect was proscribed as a terrorist organisation and brought to the notice of the public and the Appellant who is to be affected by it. Consequently, the Act cannot be applicable because the Appellant was arrested on the 21st of March, 2013 before the Act came into effect. Furthermore, the trial judge ought not to have relied on the Interpretation Act to find that the commencement date can begin from the date the Act was signed into law by the President because such reasoning can only apply to civil legislation which confers benefit and not to criminal legislation which confers penalty. The Court of Appeal in dismissing the appeal agreed on the application of the Interpretation Act to the determination of the commencement date of the Amendment Act. It held that the Act has no commencement date but has

⁹³ The section provides that nothing is an offence which is done in lawful exercise of the right private defence.

⁹⁴ See *Ahmed v State* (1999) 7 NWLR (pt. 612) 641 at 681.

⁹⁵ FHC/ABJ/CR/112/2013(unreported).

⁹⁶ Appeal No; CA/A/197C/2014.

⁹⁷ (2015) LPELER 24738.

⁹⁸ Offences such as rape, kidnapping, corruption, money laundering and human trafficking.

⁹⁹ (2016) LPELR 40473 CA.

been assented to by the President on the 21st of February 2013. This was about a month before the arrest of the Appellant the Interpretation Act applies to all statutes in the country and that where no commencement date is named in a legislation, then such legislation comes into effect on the day the President assents to it. It is not the contention that in this case, the Terrorism (Prevention) (Amendment) Act was assented to on the 21st day of February 2013, a month before the Appellant was arrested. Furthermore, the argument that the Terrorism (Prevention) (Amendment) Act came into effect on the 24th May 2013 is not supported by evidence, assent is done once and it was done on the 21st day of February 2013. It is important to state that a similar conclusion was arrived at, in the case of *Alli Mohammed Modu v Federal Republic of Nigeria*,¹⁰⁰ and *Ibrahim Usman Alli v Federal Republic of Nigeria*.¹⁰¹

1.8 Analysis of the Application of the Legal System

Comparison with Sentences for Ancillary Offences under the UK Terrorism Act

Under the UK's anti-terrorism legislation, persons found guilty of perpetrating acts of terrorism are liable to be punished by sentences comparable in severity to those available under the Terrorism Prevention and Prohibition Act. On 9th July 2007, four defendants, Muktar Saaid Ibrahim, Yasin Hassan Omar, Ramzi Mohammed and Hussain Osman, were found guilty of conspiracy to murder. The four attempted bombers were each sentenced to life imprisonment, with a minimum of 40 years imprisonment.¹⁰²

The sentences available for support offences, however, are very different. In the United Kingdom, for instance, a person found guilty of support for a terrorist organisation is liable on conviction "to imprisonment for a term not exceeding ten years, or to a fine or to both."¹⁰³ Membership in a terrorist organisation is punishable by imprisonment not exceeding ten years.¹⁰⁴

1.9 Conclusion

There can hardly be any controversy about the desirability of effective control of organised crime and jihadist activities in West Africa by the Nigerian government and the governments of the neighbouring countries. However, the complexities of strategies and modalities for effectively combating transnational organised crime and other transnational threats still demands in-depth attention than have been given by the stakeholders. On the one hand, one can argue with some conviction that the prospects for effective control of cross-border crimes in West Africa are positive. Both at bilateral and multilateral levels, Nigeria has shown commitment to working with other countries within the West African sub-region to address the menace of transnational criminality including smuggling, human trafficking and cross-border banditry. Nigeria seems to have considered seriously the lessons from the experiences of other regions of the world that show that cross-border crime can be effectively addressed only through cooperation of all the countries involved. On the threat of jihadism, Nigeria has recorded mixed results so far. The initial official perception of the Boko Haram insurgent group as 'local' was indeed misleading, and so was the overwhelming emphasis on military approach to curb the activities of the insurgency groups. At one time the Jonathan Presidency announced what seemed like a platform for negotiation but that never went far. Similarly, the unilateral declaration of ceasefire by the leadership of the armed forces only served to reveal the inconsistency and disconnection in the official response to the Boko Haram insurgency. It is however interesting that Nigeria appears to be making noticeable progress with the situation. For example, virtually all the areas that were previously under the control of the insurgents have been freed by April 2015, over 700 women and girls have been rescued from Sambisa Forest, and the efforts to rehabilitate the people of the areas are ongoing. The intervention of the MNJTF comprising of troops from Nigeria, Cameroon, Chad and Niger is a welcome development. This however needs to be complemented by commensurate politico-diplomatic processes that may help find solution beyond the military defeat of the insurgents. Furthermore, the Nigerian government and other stakeholders need to understand the social and economic conditions that promoted the Boko Haram insurgency and come up with long-term solutions. The existence of many new and renewed wars in Africa is linked with the crisis

¹⁰⁰ (2016) LPELTR 40471 CA.

¹⁰¹ (2016) LPELR 40472 CA.

¹⁰² Shaw, n. 63 and <https://www.jstor.org>.

¹⁰³ Section 12, United Kingdom's Terrorism Act 2000.

¹⁰⁴ Section 11, United Kingdom's Terrorism Act 2000.

of governance “bad governments and stagnant economies” which in turn have impoverished the people most of whom are now discontented. In this regard, strategies for political settlement of the issues underlying the Boko Haram insurgency need to be put in place. This calls for political will and readiness on the part of all stakeholders to negotiate and make compromises. Within the West African sub-region, there is need for Nigeria's immediate neighbours to rethink their strict adherence to sovereignty, which may inhibit support for transnational initiatives. Also, the dominance of restricted notion of security that pervade official circles, and the general apathy and lack of courage among civil society organizations and other non-state actors in West Africa to organize across national frontiers and engage in security discourse, all have the tendency to limit the prospects of effective control of transnational criminality. The strengthening of regional organisations and the emergence of new sub-regional networks are important features of the post-Cold War system. Regional and sub-regional institutions are becoming increasingly prominent in contemporary international relations. The complexity of security challenges in the post-bipolar world requires greater cooperation and coordination among states within a region and sub region. Current waves of globalisation are already promoting sub-regional consensus-building and coordination. The inability of many national governments to address problems with cross-border dimensions such as drug and human trafficking makes a sub-regionalist approach imperative. Thus, states in the West African sub-region should continue to promote cooperation in the areas of economic development and security. The importance of the support of the international community cannot be over emphasised. For example, there is need to broaden the notion of preventive diplomacy in West Africa to include support for governments in the sub-region to help them address illicit trafficking, transnational organised crime, terrorism, and some other forms of violence that constitute serious threats to peace and security in the sub-region. In 2011, Africa experienced 978 terrorist attacks, an 11 per cent increase over 2010 and mainly attributable to the increase in Boko Haram attacks (from 31 in 2010 to 136 in 2011) in Nigeria (US Department of State 2012). Concerted efforts by the international community are required to check illicit trade networks and the activities of terrorist organisations in West Africa. Already there are some initiatives in this direction by African regional organisations. The 360th AU Peace and Security meeting on 22 March 2013 addressed issues of preventive diplomacy and noted the significant reduction in conflicts in Africa as a result of collective AU efforts supported by international partners. While these efforts are commendable, powerful nations, notably the US States, Russia and key EU members need to support regional and sub-regional initiatives on the ground by providing technical and financial resources. The importance of effective regional-national partnerships in the management of regional security cannot be overstressed. To effectively address the security challenges in West Africa, there is a need to engage a network of regional and local actors as opposed to a unilateral single nation approach. There are a few examples of national-regional initiatives. However, there is much to be done to improve on the performance of some of the regional-national partnerships in conflict resolution.

1.10 Recommendations

The Nigerian government and other stakeholders need to understand the social and economic conditions that promoted the Boko Haram insurgency and come up with long-term solutions. The existence of many new and renewed wars in Africa is linked with the crisis of governance “bad governments and stagnant economies” which in turn have impoverished the people most of whom are now discontented. In this regard, strategies for political settlement of the issues underlying the Boko Haram insurgency need to be put in place. This calls for political will and readiness on the part of all stakeholders to negotiate and make compromises. Within the West African sub-region, there is a need for Nigeria's immediate neighbours to rethink their strict adherence to sovereignty, which may inhibit support for transnational initiatives. Also, the dominance of restricted notion of security that pervades official circles, and the general apathy and lack of courage among civil society organizations and other non-state actors in West Africa to organize across national frontiers and engage in security discourse, all tend to limit the prospects of effective control of transnational criminality.

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the post-bipolar world requires greater cooperation and coordination among states within a region and sub-region. Current waves of globalisation are already promoting sub-regional consensus-building and coordination. The inability of many national governments to address problems with cross-border dimensions such as drug and human trafficking makes a sub-regionalist approach imperative. Thus, states in the West African sub-region should continue to promote cooperation in the areas of economic development and security. The importance of the support of the international community cannot be overemphasised. For example, there is a need to broaden the notion of preventive diplomacy in West Africa to include support for governments in the sub-region to help them address illicit trafficking, transnational organised crime, terrorism, and some other forms of violence that constitute serious threats to peace and security in the sub-region. In 2011, Africa experienced 978 terrorist attacks, an 11 per cent increase over 2010 and mainly attributable to the increase in Boko Haram attacks (from 31 in 2010 to 136 in 2011) in Nigeria (US Department of State 2012). Concerted efforts by the international community are required to check illicit trade networks and the activities of terrorist organisations in West Africa. Already there are some initiatives in this direction by African regional organisations. The 360th AU Peace and Security meeting on 22 March 2013 addressed issues of preventive diplomacy and noted the significant reduction in conflicts in Africa as a result of collective AU efforts supported by international partners. While these efforts are commendable, powerful nations, notably the US States, Russia and key EU members need to support regional and sub-regional initiatives on the ground by providing technical and financial resources. The importance of effective regional-national partnerships in the management of regional security cannot be overstressed. To effectively address the security challenges in West Africa, there is a need to engage a network of regional and local actors as opposed to a unilateral single-nation approach. There are a few examples of national-regional initiatives. However, there is much to be done to improve the performance of some of the regional-national partnerships in conflict resolution.