

[THE SCOURGE OF TERRORISM IN THE WEST AFRICAN SUB-REGION AND THE IMPACT OF LEGAL SOLUTIONS

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ABSTRACT:

The virulent activities of terrorist groups such as JAMAATU AHLIS-SUNNA LIDDAAWTI WAL JIHAD (Boko Haram) and "JAMA'ATU ANSARULMUSLIMINA FI BILADIS SUDAN" (Ansaru) against Nigeria and her neighbours, and attacks by Al-Qaeda in the Islamic Maghreb (AQIM), the Movement for Unity and Jihad in West Africa (MUJAO), and Ansar Dine on government institutions and other targets in Niger, Mali and Mauritania, have shaken the peace and sense of security of the West African sub-region. The countries ravaged by the sordid actions of these groups, individually and collectively, have been constrained to proffer solutions to curb terrorist activities. For example, the African Union has supported the formation of a Multi-National Joint Task Force (MNJTF) of 8,750 men, men drawn from Nigeria, Niger, Chad, Cameroon, and Benin to engage and defeat Boko Haram. Nigeria also recently adopted a national anti-terrorism strategy. This paper examines the legal response to the problem of terrorism in West Africa with specific focus on Nigeria. A key component of Nigeria's fight against terrorism is the reform of the statutory and institutional framework for dealing with terrorism. However, a review of the causes of terrorism, Nigeria's Terrorism (Prevention) (Amendment) Act 2013, and the emerging case law on terrorism in the country, suggest that legal solutions to the menace of terrorism are important, but legal solutions to the problems of terrorism in Nigeria and the West African sub-region can only achieve the desired objectives if the extant legal strategies are pursued side by side with non-legal solutions in a nuanced manner. This paper also recommends that Nigeria and other countries in West Africa learn from the experience of countries like the United Kingdom, the United States of America, India, Pakistan, and Sri-Lanka, that have adapted their laws and institutions to better respond to the ravaging effects of terrorism.

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1. INTRODUCTION

Actual violence or threats of use of violence to inspire fear among the populace has existed for centuries³ and different societies have devised several strategies to deal with terrorism. International response to terrorism dates back to the League of Nations.⁴ Images of Al Qaeda terrorist attacks in the United States of America on September 11, 2001, the September 21, 2013 Al Shabaab attack on the Westgate Mall in Nairobi, Kenya,⁵ and the kidnap of over 200 school girls in April, 2014 from Chibok, Borno State in North Eastern Nigeria by Boko Haram,⁶ have separately and collectively conveyed to the global consciousness the macabre vision of groups bent on imposing their religious, political, and ideological worldview on people through the tactics of terror, fear and savagery.

The relatively more recent terror activities of groups such as JAMAATU AHLIS-SUNNA LIDDAAWTI WAL JIHAD which translates as “People Committed to the Propagation of the Prophet’s Teachings and Jihad”⁷ otherwise known as “Boko Haram” and “JAMA’ATU ANSARULMUSLIMINA FI BILADIS SUDAN” (Ansaru) against Nigeria and her neighbours, as well as attacks by Al-Qaeda in the Islamic Maghreb (AQIM), the Movement for Unity and Jihad in West Africa (MUJAO), and Ansar Dine on government institutions and other targets in Niger, Mali and Mauritania, have raised the tempo and undermined the peace and sense of security of the West African sub-region.

We must admit that the phenomenon of terrorism in West Africa (W.A)⁸ is more recent than in other regions of the world,⁹ the possible exception being Nigeria that experienced the Maitasine

³ See B. Golder and G. Williams, “What is ‘Terrorism’? Problem of Legal Definition” University of New South Wales Law Journal, Vol. 27, No. 2 (2004) pp 270-295 at 270

⁴ P.N. Lyman, “The War on Terrorism in Africa” John Harbeson (ed.) *Africa in World Politics* available at http://www.cfr.org/content/thinktank/Lyman_chapter_Terrorism.pdf Last visited 08/04/2015 16:34 PM

⁵ For a western account of the attack see L.P. Blanchard “The September 2013 Terrorist Attack in Kenya: In Brief” Congressional Research Service, November 14, 2013; Kenya’s main legislation on terrorism is The Prevention of Terrorism Act 2013, No. 30 of 2012

⁶ See Human Rights Watch, “Those Terrible Weeks in their Camp’: Boko Haram Violence against Women and Girls in Northeastern Nigeria” (Washington DC: Human Rights Watch, 2014) p. 22

⁷ M. C. de Montclos “Boko Haram and politics: From insurgency to terrorism” in M. P. de Montclos (ed.) *Boko Haram: Islamism, politics, security and the state in Nigeria* (Lieden: African Studies Centre, 2014) p. 135

⁸ Only Mali, Niger and Nigeria are affected by the activities of terrorist groups in the West African Sub-Region.

Religious uprising in the early 1980s. Recent terrorist attacks in a number of West African countries have resulted in large number of human casualties and the destruction of property.¹⁰ The Financial Action Task Force (FATF) and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) have linked terrorist activities with money laundering and identified countries most affected by terrorism in West Africa as: Burkina Faso, Mali, Niger, Nigeria, Senegal and Mauritania.¹¹

The Federal Government of Nigeria proscribed “BOKO HARAM” and “ANSARU” in 2013 on the ground that the activities of both organizations constitute acts of terrorism.¹² The countries ravaged by these groups, individually and collectively, have been constrained to adopt a combination of military and intelligence options with legal responses and strategies.¹³

Discourse on terrorism in the West African sub-region locates the area in the context of the larger global “war on terror”.¹⁴ Permutations of terrorist groups¹⁵ operating in the sub-region,¹⁶ and diverse responses to terrorism in the sub-region have provoked the assertion that West Africa possesses characteristics that make the region vulnerable to terrorist groups.¹⁷ Extant literature¹⁸ on terrorism failed to sufficiently address legal responses that governments and institutions have put in place to curtail the activities of terrorism in the sub-region.¹⁹ Nigeria and other countries in Africa mostly affected by terrorism may not have sufficient legal mechanisms for dealing with

⁹ Christian Walter “Defining Terrorism in National and International Law” available at <http://edoc.mpil.de/conference-on-terrorism/index.cfm> Web, p.4

¹⁰ Terrorist Financing in West Africa, FATF Report October, 2013, p. 3

¹¹ *ibid*

¹² See the Terrorism (Prevention) (Proscription Order) Notice , 2013

¹³ For responses to terrorism in the context of the global counter-terrorism strategy, see Jason Ipe, James Cockayne and Alistair Miller, *Implementing the UN Counter-Terrorism Strategy in West Africa*, Center on Global Counterterrorism Cooperation, September 2010

¹⁴ See for instance C I. Obi “Terrorism in West Africa: Real, emerging or imagined threats” *African Security Review* Vol. 15 No. 3(Year....) 87 where the author situates the threats of terrorism in West Africa in the context of the security calculations of western countries.

¹⁵ See for instance, Human Rights Watch, “Those Terrible Weeks in Their Camp”: Boko Haram Violence against Women and Girls in Northeast Nigeria , *supra*

¹⁶ Lyman, *supra*, footnote 2

¹⁷ Jason Ipe, James Cockayne and Alistair Miller, *Implementing the UN Counter-Terrorism Strategy in West Africa*, *supra* p. 6

¹⁸ See for example F. C. Onuoha and G. E. Ezirim “Terrorism” and Transnational Organized Crime in West Africa, *Aljazeera Report*, 24 June 2013

¹⁹ See Dakas C.J. Dakas “Terrorism in the Aviation Sector: The Human Rights Dimension of the Use of Body Scanners” in Epiphany Azinge and Fatima Bello (eds.) *Law and Security in Nigeria* (Lagos: N.I.A.L.S, 2011) pp 1-23

investigation and trial of suspects²⁰ when compared with the United Kingdom,²¹ United States of America,²² and other developing countries like India,²³ Pakistan or Sri Lanka.

This paper discusses the legal responses to terrorism in West Africa, particularly Nigeria from the comparative view of similar responses in countries like the U.K, USA and developing countries like India, Pakistan and Sri Lanka that have had extensive experiences in dealing with terrorism.

It suggests that Nigeria, and indeed other countries in West Africa can learn from the responses of the legal framework for combating terrorism of the other countries to meet the intractable challenges of investigation and trial of terrorist cases. The paper at the same time, cautions that legal responses should be pursued as part of multi-pronged options that address the root causes of terrorism in the sub-region.

2. THE EMERGENCE OF TERRORISM IN THE WEST AFRICAN SUB-REGION

Terrorism in recent times in the African continent may be traced to the events that precipitated America's short-lived intervention in Somalia in 1993 and the bombing of American Embassies in Nairobi, Kenya and Dar El Salaam, Tanzania in 1998.²⁴ The domestic and international terrorism in Africa pre-dates 1991 and the September 11, 2001 terrorist attack on the United States of America. The activities of the Maitasine religious uprising in Borno and Kano States in

²⁰ See for instance C. L. Mwazighe, Legal Responses to Terrorism: Case Study of the Republic of Kenya, being a Thesis submitted in partial fulfillment of the requirements for the award of Master of Arts in Security Studies (Combating Terrorism: Policy and Strategy) from the Naval Postgraduate School, Monterey, California, December, 2012

²¹ E. Parker "Implementation of the UK Terrorism Act 2006–The Relationship between Counterterrorism Law, Free Speech, and the Muslim Community in the United Kingdom Versus the United States" *Emory International Law Review* Vol. 21 (2007) pp 711-757

²² K. Kis-Katos, H. Liebert and G. G. Schulze "On the Origin of Domestic and International Terrorism" University of Freiburg, Department of International Economic Policy, Discussion Paper Series Nr. 12, September, 2010

²³ See for instance, Human Rights Watch, *Back to the Future: India's 2008 Counterterrorism Laws* (New York: Human Rights Watch, 2010); A. Kalhasn, et. al. "Colonial Continuities: Human Rights, Terrorism, and Security Laws in India" *Columbia Journal of Asian Law*, Vol. 20. No. 1 (2006) pp 93-234 ; see also C. Roy "Terrorism in India and Legislation for its Prevention" *Quest - The Journal of UGC - ASC Nainital* Volume 5, Issue 2, November 2011, pp. 206-213

²⁴ See for example K.A. Bolaji "Preventing Terrorism in West Africa: Good Governance or Collective Security?" *Journal of Sustainable Development in Africa* Vol. 12 No.1., 2010 p. 207 at 208

Nigeria in the 1980s, Palestinian orchestrated acts of terrorism against the Embassy of Saudi Arabia and the assassination of an American ambassador in Sudan in the 1980s probably marked the manifestation of international terrorism in Africa. The presence of Osama Bin Laden in Sudan in 1991 and the favourable environment he met there enabled him to build and create a mesh of financial support base for his terrorist operations²⁵ marking a watershed in the evolution of international terrorism in Africa.

Accounts of the emergence of Boko Haram in Nigeria vary,²⁶ but virtually all accounts agree that Boko Haram was founded by Mohammed Yusuf an indigene of Yobe State, North-East Nigeria, the group's current leader is Abubakar Shekau. Boko Haram started as a shadowy group and has metamorphosed from a fiery band of religious preachers into a full blown terrorist group now associated with targeted assassinations, drive-by shootings, suicide bombings, and massive deployment of improvised explosive devices (IEDs), vehicle-borne IEDs, kidnappings and hostage takings.²⁷ Until recently, the group occupied a huge expanse of Nigerian territory.

Boko Haram professes hatred for western education, secular government and institutions. Their *modus operandi* is to attack soft targets like schools, markets bus stops, barracks, media houses, supermarkets, churches, mosques or public buildings.²⁸ The kidnapping of over 200 school girls from Chibok, mass murder and destruction of entire towns reflects the brutality and ferocity.

²⁵ P.N. Lyman "The War on Terrorism in Africa" in J. Harbeson (ed.) Africa in World Politics. Web.

²⁶ See for instance J.O. Abimbola and S.A. Adesote "Domestic Terrorism and Boko Haram Insurgency in Nigeria, Issues and trends: A Historical Discourse" Journal of Arts and Contemporary Society, Vol. 4, September 2012, pp 11-29; F.F. Akinfala, G.A. Akinbode and I. Kemmer, "Boko Haram and Terrorism in Northern Nigeria: (A Psychological Analysis)" British Journal of Arts and Social Sciences Vol. 17 No. 1 (2014) pp 115-136; D.J.O. Omale "Terrorism and Counter Terrorism in Nigeria: Theoretical Paradigms and Lessons for Public Policy" Canadian Social Science Vol. 9, No. 3, (2013) pp 96-103; P. Roelofs, "Framing and Blaming: Discourse Analysis of the Boko Haram Uprising, July 2009" in M. P. de Montclos (ed.) Boko Haram: Islamism, politics, security and the state in Nigeria supra p.110

²⁷ K. Mohammed, "The message and methods of Boko Haram" in M. P. de Montclos (ed.) Boko Haram: Islamism, Politics, Security and the State in Nigeria, *ibid.* p. 9

²⁸ Newspaper accounts of the victimization of Nigerians by Boko Haram abound. See for instance "Dozens Killed, Scores Injured in Sallah Day Suicide Bombing" Thisday Newspaper Wednesday 15 January, 2014; "129 Girls Abducted by Boko Haram as Abuja Death Toll Rises to 76" Thisday, Wednesday 16 April, 2014; "Boko Haram in Gruesome Murder of 43 FGC Students" Thisday Wednesday 26 February, 2014; K. Komolafe "Schools as Killing Fields" Thisday Wednesday 26 February, 2014, backpage; "Boko Haram Extremists Attack Another Bornu Town, Kill 51" Thisday Thursday 13 February, 2014; "Another 98 Killed in Attacks on Bornu" Thisday Monday 14 April, 2014; "Boko Haram Kills 17 in Bornu Market Attack" Thisday Monday 24 March, 2014; "Gunmen Level Bornu Village in 3 Hours" Leadership Newspaper, Monday 24.02.14; "Two Years After, Terror Strikes Again in Abuja" Thisday Tuesday 15 April, 2014; "US, UK, Mark, Others Condemn 'Senseless Bombing'" Thisday Tuesday 15 April, 2014, p. 8

The formulation and execution of a plan of action against Boko Haram and other terrorist groups operating in West Africa requires an in-depth understanding of the origin of the group, their structure and motivation, and their objectives. A deep understanding of the operations of terrorism and terrorist groups is needed to dispel unfounded conclusions that terrorist groups have links with political parties or individuals.²⁹

Boko Haram is strongly rooted in its domestic context and grew out of confrontation with the Nigerian State. Viewed from this perspective, the problem of Boko Haram was until very recently, a purely domestic Nigerian affair that required immediate government response. However, recent Boko Haram attacks on Cameroon, Niger, and Chad have internationalized the activities of the group and will require the joint efforts of other countries to curtail the spread of the problem.

3. LEGAL DEFINITION OF TERRORISM

Terrorism is derived from the latin term “*Terrere*” which means: “to make to tremble.” It is traditionally associated with the reign of terror during the French Revolution. However, the use of terror for political objectives predates the French Revolution. Jewish Zealots or Sicarii employed targeted public assassinations as a form of expression of rebellion against Roman rule. The Assassins or Hashishin, Hashshiyin of the 13th Century also employed targeted assassinations as a weapon of terrorism.³⁰

“Terrorism” is a value-laden term, therefore, “no consensus has emerged on the determinants of terror.”³¹ Gérard Chaliand and Arnaud Blin in their book *The History of Terrorism: From Antiquity to Al Qaeda*³² observed that:

²⁹ See for instance a story titled: “Second Nyanya Bomb Blast Fuels Fear of Political Motive” Thisday Friday 2 May, 2014; see also another story titled: “FG Links Boko Haram to Political Party” Thisday Thursday 10 July, 2014

³⁰ See Gérard Chaliand and Arnaud Blin “Zealots and Assassins” in Gérard Chaliand and Arnaud Blin (eds.) *The History of Terrorism From Antiquity to Al Qaeda* Translated by Edward Schneider, Kathryn Pulver, and Jesse Browner (Berkeley: University of California Press, 2007) pp 55-78

³¹ K. Kis-Katos, H. Liebert and G. G. Schulze “On the Origin of Domestic and International Terrorism” University of Freiburg, Department of International Economic Policy, Discussion Paper Series Nr. 12, September, 2010, p. 2

The terrorist phenomenon is more difficult to conceptualize than it would at first appear to be. The issue tends to be confused by ideological interpretations, along with the temptation, especially on the part of governments, to resort to diabolical imagery whenever the term is trotted out. A good place to start might be by recalling that the point of terror is to terrorize...³³

Studies approach terrorism either from the perspective of the origin of the phenomenon or the character of victims of terror.³⁴ More significantly, a well founded unease with the use of the term as a legal concept has manifested among legal scholars.³⁵ Despite the difficulties of conceptualizing the term, several definitions of terrorism can be found in municipal law and international legal instruments. For example, section 1(1) (b) of the Terrorism Act, 2000³⁶ and section 113 (1) (c) of the Anti-terrorism, Crime and Security Act, 2001³⁷ of the United Kingdom (amended by section 34 of the Terrorism Act, 2006) defines terrorism, *inter alia*, as:

“the use or threat of action designed to influence the government or to intimidate the public or a section of the public . . . for the purpose of advancing a political, religious or ideological cause” or to influence a government or intimidate an international organization.’’

The Nigerian Terrorism (Prevention) Act, 2011³⁸ section 1(2) does not define “terrorism” but describes “acts of terrorism” to mean:

‘an act which is deliberately done with malice aforethought and which: (a) may seriously harm or damage a country or an international organization; (b) is intended or can reasonably be regarded as having been intended to— (i) unduly compel a government or international organization to perform or abstain from performing any act; (ii) seriously intimidate a population; (iii) seriously destabilize or destroy the fundamental, political,

³² Translated by Edward Schneider, Kathryn Pulver, and Jesse Browner (Berkeley: University of California Press, 2007)

³³ *Ibid* at 2

³⁴ K. Kis-Katos, H. Liebert and G. G. Schulze, *op. cit* at 2

³⁵ R.R. Baxter, “A Sceptical Look at the Concept of Terrorism” *Akron Law Review*. Vol.7 (1973/74) 380

³⁶ C. 11

³⁷ C.24

³⁸ as amended by the Terrorism (Prevention) (Amendment) Act, 2013,

constitutional, economic or social structures of a country or an international organization; or (iv) otherwise influence such government or international organization by intimidation or coercion; and (c) involves or causes, as the case may be— (i) an attack upon a person's life which may cause serious bodily harm or death; (ii) kidnapping of a person; (iii) destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss; (iv) the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b)(iv) of this subsection; (v) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of biological and chemical weapons without lawful authority (vi) the release of dangerous substance or causing of fire, explosions or floods, the effect of which is to endanger human life; (vii) interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life; (d) an act or omission in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria.' But under section 1(3) of the 2011 Act, demonstration or stoppage of work is not a terrorist act within the meaning of this definition provided that the act is not intended to result in any harm referred to in subsection (2) (b)(i), (ii) or (iv) of this section.³⁹

From the perspective of section 1(2) of the Terrorism (Prevention) Act 2011, terrorist acts must have certain effects before they can be categorised as terrorism. These effects include the

³⁹ See also Articles 4(xxxix) and 6 of the African Model Anti-Terrorism Law adopted by the 17th Session of the Assembly of the African Union, Malabo, 30 June-1 July 2011 for a definition of "terrorist act" and "terrorism."

creation of fear or terror. Section 402 of the Criminal Law of Lagos State, 2011 also defines terrorism as:

(1) any act which may endanger the life, physical integrity or freedom of, or cause serious injury or death of any person, or group of persons, or causes or may cause damage to property, natural resources, environmental or cultural heritage and is calculated or intended to—

(a) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment of it to do or abstain from doing any act or to adopt or abandon a particular stand point, or to act according to certain principles; or

(b) disrupt any public service, the delivery of any essential service to the public or to create public emergency, or

(c) create a situation of breakdown of law and order in the state; or

(2) any promotion, sponsorship of, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organization or procurement of any act referred to in paragraph (1)(a)(b) and (c) of this Section.

Under the Criminal Law of Lagos State,⁴⁰

an act constitutes terrorism if it is perpetrated with the relevant intent; that is, to intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or section thereof to do or forbear from doing a particular act or pursue a particular policy or initiative or principles.

In contrast with the Nigerian position, Title 22 of the United States of America Federal Code defines terrorism as “premeditated, politically motivated violence perpetrated against noncombatant targets by sub national groups or clandestine agents, usually intended to influence an audience.” From these, and similar definitions of terrorism, it can be gleaned that terrorists may be motivated by political, religious and ideological beliefs to perpetrate or threaten to perpetrate acts of violence against victims to influence government and international institutions. The victims of terrorism are usually not the cause of the violence but are targeted to achieve an aim or aims.

⁴⁰ See section 402 Laws of Lagos State, 2011

For legal purposes, an act amounts to terrorism when such acts involves the use of threat or use of violence; such acts have political, religious or ideological objectives; and is calculated to terrorize, that is, to cause the government, the public, a segment of either or both to fear or “tremble.” These components are captured by Paragraph 4 of the United Nations Declaration on Measures to Eliminate Terrorism, 1994. Also, the financing of any of such activities qualifies as terrorism from the legal perspective. The diversity of definitions of terrorism militates against the adoption of a universally acceptable definition. However, for purposes of this discussion, this paper accepts the description of terrorism by Bassiouni⁴¹ that:

Terrorism is the label affixed to certain unlawful acts of violence or to a strategy of unlawful terror-inspiring violence perpetrated or carried out by ideologically motivated persons and performed in such a way so as to produce a psychological impact exceeding the actual effects of danger or harm caused, in order to achieve a power-related outcome.

4. NON-LEGAL RESPONSES TO TERRORISM IN WEST AFRICA

In an open letter titled: “BEFORE IT IS TOO LATE” former President Chief Olusegun Obasanjo⁴² has advocated a “carrot and stick approach”⁴³ as a solution to the problem of Boko Haram to former President Goodluck Ebele Jonathan.⁴⁴ It is apposite to refer to rather lengthy excerpt from this letter. Chief Obasanjo stated thus:

Knowing the genesis of Boko Haram and the reasons for escalation of violence from that sector with the widespread and ramification of the menace of Boko Haram within and outside the Nigerian borders, conventional military actions based on standard phases of military operations alone will not permanently and effectively deal with the issue of Boko Haram. There are many strands and layers of causes that require different solutions, approaches and antidotes. Drug, indoctrination, fundamentalism, gun trafficking, hate culture, human trafficking,

⁴¹ M. C. Bassiouni “Prolegomenon to Terror Violence” Creighton Law Review, Vol. 12(1979) pp 745-779 at 745

⁴² President, Federal Republic of Nigeria 1999 – 2007.

⁴³ “Obasanjo’s Letter to Jonathan” Leadership Newspaper Thursday 12.12.13, p. 6

⁴⁴ President, Federal Republic of Nigeria 2011 - 2015

*money laundering, religion, poverty, unemployment, poor education, revenge and international terrorism are among factors that have effect on Boko Haram. One single prescription cannot cure all these ailments that combine in Boko Haram. Should we pursue war against violence without understanding the root causes of the violence and applying solutions to deal with all underlying factors-root, stem and branches? Nigeria is bleeding and the hemorrhage must be stopped. I am convinced that you can initiate measures that will bring all hands on deck to deal effectively with this great menace.*⁴⁵

As Chief Obasanjo rightly pointed out, the menace of Boko Haram, and generally terrorism in West Africa, have deep multi-layered causes that require a multi-track response or “solutions and antidotes.” The Nigerian government has pursued a hybrid response to the problem of Boko Haram. Among the responses are declaration of state of emergency in the States most affected by Boko Haram, the military option, negotiation, enlistment of local vigilante groups, solicitation of international support, formation of the Multi-National Joint Task Force (MNJTF) to engage and defeat Boko Haram and legal responses.

4.1 Declaration of State of Emergency in Bornu, Yobe, and Adamawa States

The gestation and emergence of Boko Haram from a band of fiery preachers into a violent group propelled law enforcement agencies in Nigeria into action. When the group first reared its head, there were spates of arrests and the death in custody of the alleged founder of the group Mohammed Yusuf might have driven the group underground only for them to reemerge strong with capacity to launch attacks on military and police formations, schools, markets, and bus stations. The rampant attacks of the group culminated in the declaration of a state of emergency in Borno, Yobe, and Adamawa States on 14th May, 2013. Rather than mitigating the crisis, the declaration of a state of emergency apparently emboldened Boko Haram. Ironically, the group captured a huge swathe of Nigerian territory in the above mentioned States which has now been substantially reclaimed by the Nigerian military in collaboration with the Multi-National Joint Task Force and the vigilante group.

⁴⁵ *ibid*

Paradoxically, the Nigerian military have been more effective after the National Assembly refused an extension of the state of emergency⁴⁶ than under the roughly two years that the emergency rule lasted in the focal arrears of Boko Haram onslaught.⁴⁷

4.2 Negotiation with Boko Haram

Nigeria's former President Olusegun Obasanjo is among personalities that had attempted to reach out to members of Boko Haram. The Federal Government of Nigeria also attempted through a minister, Tanimu Turaki, to negotiate with the group, particularly after the kidnap of the Chibok girls. However, no visible result was achieved. Apart from negotiation, the National Security Adviser, Retired Colonel Sambo Dasuki on 17th March, 2014 unveiled a document titled: "Soft Approach to Countering Terrorism in Nigeria" where he made a case for complementing the military and law enforcement responses with winning the hearts and minds of members of Boko Haram and rehabilitating members of the sect. The soft approach sought to address the socio-economic and psychological causes of the Boko Haram. Abukakar Shekau, the current leader of Boko Haram then demanded that the members of the sect held by government, including those who had been convicted of bombing the Madallah Catholic Church near Abuja be freed, as pre-condition for any negotiation with government or release of the Chibok girls.⁴⁸

The negotiation option may assist in addressing the political and economic drivers of recruitment of terrorists but such negotiation should not involve the payment of ransom for kidnapping as this will violate Nigeria's obligation under the July 2009 decision by the African Union to Combat the Payment of Ransom to Terrorist Groups. In addition, the payment of ransom, or agreement to demands of terrorists would open doors which would threaten the very foundation of society because it would send the message to the outside world that State attention can be obtained by threats or violence.

⁴⁶ See "FG to Seek Extension of Emergency Rule in North-East" Thisday Tuesday 18 November, 2014

⁴⁷ See the comments of Rafeal Serrano and Zacharias Pieri "By the numbers: The Nigerian State's Effort to counter Boko Haram" in M. P. de Montclos (ed.) *Boko Haram: Islamism, politics, security and the state in Nigeria* supra pp 193-212

⁴⁸ See "Boko Haram Insists on Prisoners-for Girls Swap" This day Wednesday 9 July, 2014

4.3 . Solicitation of International Support

Nigeria sought the assistance of the international community in its fight against Boko Haram. The United States and United Kingdom have both contributed in the training of Nigerian personnel and provision of intelligence support. A British team actually collaborated with the Nigerian military in a failed operation to rescue a British national that was kidnapped and kept in Sokoto State. France has assisted in persuading Chad, Cameroon, Niger and Benin Republic⁴⁹ to join her in the Multi-National Joint Task Force that has succeeded in substantially routing Boko Haram and retrieving Nigerian territory from the group.

4.4 Formation of the Multi-National Joint Task Force (MNJTF)

Nigeria's quest for international support to fight Boko Haram received a boost with the formation of the Multi-National Joint Task Force (MNJTF)⁵⁰ This force has received the backing of the African Union and the United Nations. The MNJTF has successfully liberated many towns in Nigeria that hitherto were under the control of Boko Haram. The MNJTF has also prevented members of the sect from retreating into member states in the Sub-Region to launch fresh attacks on Nigeria. The recent successes against Boko Haram must be complemented by well thought out strategies to prevent the rebuilding and resurgence of the sect. This would be possible if the Nigerian government calmly and dispassionately identify the root causes of the problem and executes a marshal plan to rebuild the North Eastern part of the country mostly affected by the insurgency of Boko Haram.

5. LEGAL FRAMEWORK FOR DEALING WITH TERRORISM IN NIGERIA

The legal framework for dealing with terrorism in Nigeria comprises the body of terrorist offences created by different legislation in Nigeria, the institutional mechanisms for the enforcement of such legislations, and the punishment for acts of terrorism.

⁴⁹ See "How France will Support Nigeria's anti-terror war" The Guardian Newspaper, Tuesday, April 8, 2014

⁵⁰ This comprised of 8,750 men from Nigeria, Niger, Cameroon, Chad and Benin Republic.

5.1 Legislative Framework

The main legislation that criminalizes terrorism in Nigeria is the Terrorism (Prevention) (Amendment) Act, 2013 (TPAA 2013). This Act amended the Terrorism (Prevention) Act, 2011. Apart from these enactments, the Money Laundering (Prohibition) Act, 2011⁵¹ as amended by the Money Laundering (Prohibition) (Amendment) Act, 2012, and the Economic and Financial Crimes Commissions Act, 2002 (as amended) criminalize terrorist financing. This part focuses on the TPAA 2013 and provisions relating to terrorist financing in other enactments in Nigeria.

5.1.1 Overview of Provisions of the TPAA 2013

Apart from section 1(3) of the TPAA 2013 which defines “terrorist act,” section 40(g) of the Act constitutes any conduct that infringes certain international conventions against terrorism as offences under the Nigerian law.⁵²

By incorporating the conventions and protocols into the Terrorism (Prevention) (Amendment) Act, the National Assembly has domesticated them and their provisions are applicable as if the conventions and protocols had been originally made as part of the Nigerian law. The TPAA 2013 covers four broad areas, namely: (1) provision for designating persons and entities as terrorists, freezing of assets; (2) terrorist offences; (3) allocation of responsibility to the office of the

⁵¹ Act No. 11 of 2011

⁵² The Conventions and protocols includes: (i) Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; (ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; (iii) Convention for the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973; (iv) International Convention against the Taking of Hostages, 1979; (v) Convention on the Physical Protection of Nuclear Material, 1980; (vi) Protocol for the Suppression of Unlawful Acts of violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; (ix) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988; (ix) The International Convention for the Suppression of Terrorist Bombing, 1997; (x) The Convention against Terrorist Financing; (xi) Convention on Offences and certain other Acts committed on Board Aircraft, and (xii) Convention on the Making of Plastic Explosives for the purpose of Detection.

National Security Adviser and the Attorney General of the Federation; and (4) special provisions on responses to the problem of terrorism such as terrorist investigations, powers of courts, etc.

The TPAA 2013 has created a large number of terrorism offences⁵³ a few of which will be mentioned here. The Act defines the following as offences, namely:

1. offences against internationally protected persons;⁵⁴
2. terrorist meeting;⁵⁵
3. soliciting and giving support to terrorist groups, and provision of facilities in support of terrorist acts, inciting, and promotion of commission of terrorist acts;⁵⁶
4. provision of training and instruction to terrorists or terrorist groups;⁵⁷
5. concealing of information about terrorism;⁵⁸
6. financing of terrorism and funds to support terrorism;⁵⁹
7. dealing in terrorist property;⁶⁰
8. hostage taking;⁶¹
9. membership of proscribed organization;⁶²
10. offences by an entity;⁶³ etc.

Pursuant to section 16 of the TPAA 2013, the Federal Government of Nigeria proscribed “BOKO HARAM,” and all other terrorist organisations in the country.⁶⁴ On 10th June, 2013, the Central Bank of Nigeria directed all banks and financial institutions in Nigeria to report details of all accounts held by or in the names of both organizations. By that directive, any bank or financial institution that transacts business with any of the organizations or its members runs the risk of being prosecuted under the relevant laws for complicity in acts of terrorism.

⁵³ See sections 3-25 of the Act.

⁵⁴ Section 3 TPAA 2013

⁵⁵ Section 4 TPAA 2013

⁵⁶ Section 5,11 and 12 respectively, *ibid*

⁵⁷ Section 7 *ibid*

⁵⁸ Section 8 *ibid*

⁵⁹ Section 10 and 13 respectively, *ibid*

⁶⁰ Section 14 *ibid*

⁶¹ Section 15 *ibid*

⁶² Section 16 *ibid*

⁶³ Section 25 *ibid*

⁶⁴ See the Terrorism (Prevention) (Proscription Order) Notice , 2013

5.1.2 Prohibition of Terrorist Financing

Section 13 TPAA 2013 criminalizes diverse forms of complicity in terrorist financing. Under this provision, the solicitation, acquisition, collection, receipt, possession or rendering of services by any means to terrorists or terrorist groups is an offence violation of which renders the offender liable upon conviction to life imprisonment.⁶⁵ Also, any arrangement relating to terrorist property is also an offence.⁶⁶ It is also an offence to deal in terrorist property.⁶⁷

The Money Laundering (Prohibition) (Amendment) Act, 2012 (MLA 2012) requires financial institutions to observe due diligence to verify the identity of their customers upon pain of punishment.⁶⁸ Section 15 of the Act also criminalizes different phases of money laundering. The Act mandates the appropriate authority to issue regulations to give effect to its provisions. On 3rd May, 2013, the Central Bank of Nigeria issued the regulation amending the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Regulation, 2009 to bring the regulation in line with the MLA 2012, the TPAA 2013, and the Revised Financial Action Task Force Recommendations, 2012. The amended regulation, inter alia, invigorates customer due diligence, suspicious transaction reporting, prohibits numbered, anonymous or fictitious accounts, and shell banks. The amended regulation further enjoins relevant institutions to conduct risk assessment and verification of account holders/customers.

Terrorism and terrorist financing are also prohibited by section 15(2) of the Economic and Financial Crimes Commission Act, 2004 (as amended). This provision has been applied in a number of cases to track down terrorist activities. In *Dantur v. FRN*⁶⁹ the appellant was convicted on a two count charge of conspiracy to commit terrorist acts and terrorist acts to wit:

While armed with fire arms and other dangerous weapons, you intimidated, put in fear innocent citizens who are resident in Jos and environs, causing the death of several persons, serious injuries to several others and damage to public and

⁶⁵ See section 13 (1) TPAA 2013

⁶⁶ See section 13 (2) TPAA 2013

⁶⁷ See section 14 TPAA 2013.

⁶⁸ See section 3 MLA 2012

⁶⁹ (Unreported) Appeal No: CA/J/169C/2012 decided on Friday, the 7th day of March, 2014 by the Court of Appeal (Jos Judicial Division)

private properties and natural resources, and you thereby committed an offence contrary to and punishable under SECTION 15(2) OF THE EFCC ACT, 2004.

He was sentenced to 7 years imprisonment. The Court of Appeal affirmed the conviction and sentence. Also, in *Mohammed Auwal & Ors v. FRN*⁷⁰ the appellants were convicted of terrorist acts. The trial court found, inter alia, that “the accused persons ... fifteen in number, going together, armed with Dane guns, bows, arrows, catapults and other weapons within the vicinity of a place caused damage to property and killed several persons in order to cause fear and intimidate the public or a particular segment thereof or to intimidate such person.” The Court of Appeal affirmed the conviction that “the conduct of the fifteen accused persons qualifies as an attempt to intimidate people or put people in fear as prescribed under Section 46(a) (ii) [EFCC Act]”⁷¹

The appellant in *Achem v. FRN*⁷² was convicted upon a two count charge of:

1. *Wilfully providing money with intent that it be used for an act of terrorism contrary to and punishable under section 15(1) of the Economic and Financial Crimes (Establishment) Act 2004;*
2. *Providing economic resources in order to facilitate the commission of a terrorist act contrary to and punishable under section 15(1) of the Economic and Financial Crimes (Establishment) Act 2004.*

At the end of the trial, the Federal High Court convicted him on the two counts and sentenced him to 6 years imprisonment on each count to run concurrently. It is worthy of note to state that the appellant applied for bail pending appeal at the Court of Appeal which application was refused on the ground of national security.

5.2 Procedural Framework for Dealing with Terrorism in Nigeria

The procedural framework for dealing with terrorism in Nigeria includes the investigation powers of law enforcement agencies, the procedure for criminal trials in Nigeria, and punishment

⁷⁰ (Unreported) Appeal No: CA/J/183C/2011 decided on Wednesday the 27th day of March, 2013 by the Court of Appeal, Jos Judicial Division. (Note, the above cases are cited in an unpublished text on criminal law in Nigeria)

⁷¹ *ibid*

⁷² (2014) LPELR-23202 (CA)

for acts of terrorism under the extant legislation. The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), (the Constitution)⁷³ guarantees a right to personal liberty, under which no person shall be arrested without probable cause. In addition, section 35(2) of the Constitution enshrines a right to silence and to avoid answering any questions until after consultation with a legal practitioner or any other person of his own choice. However, the application of these constitutional provisions guarantees fair hearing.⁷⁴

The Constitution⁷⁵ further provides that an arrested person shall be arraigned before a competent court within a reasonable time. For serious offences, the reasonable time shall not be longer than two days or such longer period as a court may consider appropriate. Section 36 of the Constitution guarantees the right to fair hearing which includes the right to an independent court, presumption of innocence, right to counsel, freedom from compelled self incrimination, adequate time and facilities to prepare his defence. Retroactive criminal statute is prohibited, and no person shall be punished for an offence not contained in a written law.⁷⁶

The general powers of the police in Nigeria are contained in section 4 of the Police Act, the Criminal Procedure Code,⁷⁷ and the Criminal Procedure Act.⁷⁸ The Nigeria Police Force is the main investigative agency in Nigeria. However, other agencies like the National Intelligence Agency, the Department of State Services (DSS), the Economic and Financial Crimes Commission (EFCC), and the Nigerian Immigration Services, amongst others, also play important roles in the investigation and prosecution of terrorism related cases.

Sections 24 and 25 of the TPAA, 2013 empower a judge to issue warrants for purposes of searches and seizures during terrorist investigations. However, where application to a judge for a warrant would cause delay prejudicial to the maintenance of public safety or order, an officer of a law enforcement agency may enter and search any premises or place, search any person in such place, arrest and detain any person whom the officer reasonably suspects to have committed or likely to commit an offence under the Act. A court may, upon ex-parte application by a law

⁷³ Section 35(2)

⁷⁴ For discussion on this, see: E. O. Onoja "The Relationship between the Constitutional Right to Silence and Confessions in Nigeria" *African Journal of Legal Studies* Vol. 6 (2013) pp1-23

⁷⁵ Section 34 (4) & (5)

⁷⁶ See section 36 (8)- (12) CFRN 1999 (as amended)

⁷⁷ Applicable to Northern States

⁷⁸ Applicable to Southern States and the Federal High Court

enforcement agency grant an order of detention for a period not exceeding 90 days, subject to renewal for a similar period, until conclusion of investigation and prosecution of the case that occasioned the arrest or detention. This suggests that the legislature considers that detention of terrorism suspects without bail is a measure reasonably required in the interest of public security.

Sections 33 and 34 of the Act pertain to the protection of informants, information and witnesses. Relevant agencies are enjoined to employ all reasonable measures to protect the identity and life of informants. A court may of its own motion or upon the application of the Attorney-General, or relevant law enforcement agency protect a witness or any person in any proceeding and take such measures as it deems fit to keep the identity and address of a witness or person secret.⁷⁹ These provisions are laudable. But the provisions need to be backed up with an organized witness and informant protection programme similar to the type being used by the U.S Federal Bureau of Investigations.

The court vested with jurisdiction to try terrorism offences under the TPAA 2013 is the Federal High Court.⁸⁰ Any division of the court may try a relevant offence, notwithstanding the judicial division in Nigeria where the offence was committed. The court also has universal jurisdiction in relation to offences of terrorism.⁸¹ Section 32(5) of the Act empowers the court to adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct of matters. To realize the aim of quick disposal of terrorism cases, an application for stay of proceedings in respect of terrorism cases shall not be entertained until judgment is delivered.⁸²

Extradition in Nigeria is regulated by the Extradition Act.⁸³ Nigeria is a signatory to the ECOWAS Regional Convention on Judicial Mutual Legal Assistance on criminal matters,⁸⁴ and ECOWAS Regional Convention on Extradition 1/PI/8/94.⁸⁵ In addition, Nigeria has entered into mutual legal assistance and extradition treaties with Benin Republic, Ghana, Ireland, Italy, South Africa, Spain, Thailand, Togo, the United Kingdom and the United States of America. Nigeria

⁷⁹ See section 34 TPAA 2013

⁸⁰ See section 32 of the Act

⁸¹ See section 32(1) (c) of the Act.

⁸² See section 32(6) of the Act.

⁸³ Cap. 125 Laws of the Federation of Nigeria, 1990

⁸⁴ Signed on 29 July 1992 in Dakar (ECOWAS/A/PI/7/92)

⁸⁵ Signed on 6 August 1994 in Abuja (ECOWAS, 1/PI/8/94).

does not have a formal extradition treaty with Sudan, but successfully obtained the extradition of Abubakar Ogwuche from The Republic of Sudan to Nigeria.⁸⁶

5.3 The Role of the Judiciary

The bane of the criminal justice system in Nigeria is the slow pace of disposal of cases. The Nigerian judiciary has stepped in to accelerate the determination of terrorism cases and other serious offences by introducing practice directions for trials and appeals in terrorism cases. The Chief Judge of the Federal High Court issued the Federal High Court (Criminal) Practice Direction, 2013. The Practice Direction is applicable to terrorism, kidnapping, trafficking in persons, rape, corruption and money laundering cases.⁸⁷ The main object of the Practice Directive is to establish a system of case management that would ensure fair and impartial administration of criminal justice to eliminate unnecessary delay and expense of parties.

The Attorney-General of the Federation reported on Monday 24th February, 2014 that more than forty Boko Haram suspects standing trial had been convicted of terrorism-related offences.⁸⁸

6. LEGAL RESPONSES TO TERRORISM IN SELECTED COUNTRIES IN WEST AFRICA

The United Nations Office on Drugs and Crime (UNODC) published a review on the legal regime against terrorism in West and Central Africa in 2008.⁸⁹ Among the countries whose legal regimes were examined are Nigeria, Niger, Mali, Mauritania, Chad, and Ghana. Nigeria has already been examined in this paper. The focus now shifts to other countries that are at the receiving end of attacks by AQIM and Boko Haram.

⁸⁶ The accused who spearheaded the Boko Haram bombing at Nyanya bus stop in Abuja in 2014.

⁸⁷ See Paragraph 1 of the Practice Direction; see also the Court of Appeal Practice Direction, 2013..

⁸⁸ See "President Again Extends Olive Branch to Boko Haram" Thisday Tuesday 25 February, 2014, cover page, and at p.6

⁸⁹ See UNODC, A REVIEW OF THE LEGAL REGIME AGAINST TERRORISM IN WEST AND CENTRAL AFRICA: Angola, Benin, Burkina Faso, et. al., Based on a Background Paper submitted at the Madrid Ministerial Round Table of West and Central African Countries on Counter-Terrorism Legal Framework, 25-26 May 2006, organized by UNODC and hosted by the Kingdom of Spain, WORKING DOCUMENT, October, 2008

6.1 *Niger Republic*: Niger Republic has acceded to most international conventions and protocols against terrorism. Under Article 130 of the Constitution of Niger 1999, international treaties, conventions, protocols or agreements that amend municipal law or create any financial obligation can only be effective if it is domesticated, in tandem with the letter and spirit of Article 130 of the Nigerien Constitution 1999, the country enacted the Counter-Terrorism Act on 23rd June 2008.⁹⁰ Nigerien law also criminalizes money laundering under which bank secrecy cannot be invoked in court. Property or assets suspected to be acquired from terrorist activities may be frozen or seized. The court empowered to try terrorism cases in Niger Republic has universal jurisdiction. Niger Republic is a signatory to the ECOWAS Regional Convention on Judicial Mutual Legal Assistance and ECOWAS Regional Convention on Extradition 1/PI/8/94.⁹¹

6.2 *Mali and Muaritania*: Mali is a signatory to the ECOWAS Regional Conventions on mutual legal assistance and extradition. Mali has acceded to the key international legal instruments against terrorism. Article 116 of the Constitution of Mali provides that treaties and agreements have superior authority over municipal law when they are ratified. The Counter-Terrorism Law⁹² 2008 “incorporates the offences required in international instruments against terrorism.

Financing of terrorism and nuclear terrorism.⁹³ Articles 22 and 24 of the Code of Penal Procedure of Mali confer universal jurisdiction on courts empowered to try terrorism cases. In 2005, Mauritania enacted two laws to specifically incorporate several international treaties, conventions, and protocols against terrorism.⁹⁴ Law No. 2005-47⁹⁵ deals specifically with terrorism, while Law No. 2005-48⁹⁶ is on money laundering and terrorism financing. The Law on terrorism defines a terrorist offence, specifies the intent for such offences, and the modes of participation in such offences.⁹⁷

⁹⁰ Law No. 2008-18

⁹¹ *supra*

⁹² 23 July 2008 (Law No. 08-025)

⁹³ UNODC, *supra*, p. 121

⁹⁴ UNODC, *ibid.* pp 126-127

⁹⁵ Passed on 25 July 2005

⁹⁶ Also passed on 25 July 2005

Article 3 of the terrorism law defines a “terrorist offence” as:

Any offence set forth at Articles 4, 5 and 6 hereafter which, by its nature or context, may pose a serious threat to the State and is committed intentionally in the aim of gravely intimidating the population or unduly coercing public officials to accomplish or abstain from accomplishing an act, or to seriously destabilize or destroy the fundamental values of society and the political, constitutional, economic or social structures of the Nation.

Articles 4-6 of the Law extends the definition of terrorist offence to cover offences against international organizations and institutions, provided that they are intended to intimidate the public or coerce public officials to accomplish or abstain from doing an act or to attack the fundamental values or institutions of society. The Penal Procedure Code 1984⁹⁸ regulates criminal procedure in the country. The Criminal Court of the *Wilaya* of Nouakchott has exclusive jurisdiction over terrorism cases.⁹⁹

7 TERRORISM LEGISLATIONS IN THE UK, USA, INDIA, PAKISTAN AND SRI LANKA:

7.1 Terrorism Legislation in the United Kingdom: The main legislation on terrorism in the UK is the Terrorism Act, 2000, the Anti-Terrorism, Crime and Security Act, 2001, supplemented by the Terrorism Act, 2006 and the Counter-Terrorism Act, 2008. Section 1(1) (a) –(c) TA 2000 defines terrorism to cover certain actions, directed at specified targets or victims, with specified intention or motive.¹⁰⁰ Section 75 of the Counter-Terrorism Act, 2008 extended the motive of terrorists to cover religious and racial motives. Section 62 of the Counter-Terrorism Act, 2008 specifically criminalizes money laundering and terrorist financing. The Terrorism Act, 2000, Terrorism Act, 2006 and the Counter-Terrorism Act, 2008 have universal application.

⁹⁷ See Articles 3-7 of the Law

⁹⁸ Act No. 83-163, July 1984

⁹⁹ UNODC, op. cit p. 129

¹⁰⁰ See David Anderson, Q.C, THE TERRORISM ACTS IN 2012 REPORT OF THE INDEPENDENT REVIEWER ON THE OPERATION OF THE TERRORISM ACT 2000 AND PART 1 OF THE TERRORISM ACT 2006, July 2013, p. 52 available at www.gov.uk/homeoffice .Web

The legal framework for investigation of terrorism in the U.K can be found in the Police and Criminal Evidence Act 1994; the Regulation of Investigatory Powers Act, 2000 and the Terrorism Prevention and Investigation Measures Act, 2011. Parliament specifically enhanced the investigation powers and assets of relevant agencies by enacting the Terrorism Prevention and Investigation Measures Act, 2011 (TPIM). The aim of the TPIM Act “is to protect the public from the risk posed by persons believed to have engaged in terrorism related activity, but who can neither be prosecuted nor deported.”¹⁰¹ In short, it is designed to deal with those the State suspect but have no concrete evidence of involvement in terrorist activities.

“Terrorism prevention and investigation measures” means requirements, restrictions and other provisions which may be made in relation to an individual by virtue of Schedule 1 to the Act.¹⁰² The power to impose a terrorism prevention measure is conferred on the Secretary of State.¹⁰³ The power includes the power of house arrest under exigent circumstances.¹⁰⁴

At the level of trial of terrorism cases, special legislation was introduced in 1973 which authorized a single judge to preside over terrorism trials without a jury. The Terrorism Act, 2000 extended this innovation, but it lapsed in 2007¹⁰⁵ upon the coming into effect of Justice and Security (Northern Ireland) Act, 2007.¹⁰⁶ Evidence that ordinarily may not be admissible may be admissible in terrorism cases in the U.K particularly in Northern Ireland. For example, it was held in *DPP v. Kelly*¹⁰⁷ by the Irish Supreme Court that opinion evidence as to membership of an illegal organization was admissible because the court reasoned that otherwise witnesses would not testify in such cases. This is an interesting case for the trial of terrorism cases in Nigeria. Section 15 of the Evidence Act, 2011 permits the admissibility of illegally obtained evidence where the court is of the opinion that the probative value of the evidence is out-weighed by the prejudicial effect of the evidence. *DPP v. Kelly* may be used to rationalize the admissibility of evidence that ordinarily ought to be rejected, otherwise the ability of the State to prosecute terrorist cases may be limited by strict rules of evidence.

¹⁰¹ Ibid at 4

¹⁰² Section 2(2) TPIM, Act

¹⁰³ Section 2(1) TPIM Act.

¹⁰⁴¹⁰⁴ See section 26 TPIM Act.

¹⁰⁵ UNODC, Digest of Terrorist Cases (New York: UNODC, 2010) p. 69

¹⁰⁶ Ibid

¹⁰⁷ (2006) 3 I.R. 115

7.2 *Terrorism Legislation in the United States*: Following the 9/11 attacks, the U.S Congress reacted by enacting the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001” (hereinafter called the Patriot Act). It was signed into law by President Bush on October 26, 2001.¹⁰⁸

The Patriot Act consist of ten Titles which includes enhanced powers for relevant agencies in intelligence gathering, particularly electronic surveillance;¹⁰⁹ money laundering and terrorist financing offences;¹¹⁰ creating of new crimes and redefinition of existing crimes, amendment of rules of procedure in terrorism cases; rendition of terrorist suspects, etc.¹¹¹

TITLE VIII of the Patriot Act reads “STRENGTHENING THE CRIMINAL LAWS AGAINST TERRORISM.” Section 802 (a) of the Patriot Act amended Section 2331 of title 18, United States Code. Under section 802 of the Patriot Act “act of terrorism” may be domestic or international. Section 802(5) defines domestic terrorism as any activity-

“(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
“(B) appear to be intended—
“(i) to intimidate or coerce a civilian population;
“(ii) to influence the policy of a government by intimidation or coercion;
or
“(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
“(C) occur primarily within the territorial jurisdiction of the United States.”

The Patriot Act prohibits harbouring of terrorists¹¹² and giving material support to terrorists.¹¹³ Section 804 of the Act criminalizes offences against U.S facilities abroad, including offences by or against a national of the United States. Also, section 808 of the Patriot Act introduced a new “Federal Crime of Terrorism” which includes destruction of aircraft or aircraft facilities, violence

¹⁰⁸ See Keiran Hardy and George Williams “What is ‘Terrorism’? Assessing Domestic Legal Definitions” UCLA Int. Law and Foreign Affairs, Vol. 16 (2011) pp 77-162 at 154

¹⁰⁹ Se TITLE II, entitled “ENHANCED SURVEILLANCE PROCEDURES”; see also TITLE V—REMOVING OBSTACLES TO INVESTIGATING TERRORISM

¹¹⁰ See TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND ANTI TERRORIST FINANCING ACT OF 2001

¹¹¹ For a section by section review of the Patriot Act see Charles Doyle “Terrorism: Section by Section Analysis of the USA PATRIOT Act” CRS Report for Congress, Order Code RL31200, Updated December 10, 2001

¹¹² Section 803

¹¹³ Section 805

at international airports, arson within special maritime and territorial jurisdiction, offences related to biological or chemical weapons, assassination and kidnapping, offences relating to nuclear materials, arson and bombing of Government property risking or causing death, etc.

Interestingly, there is an 8 year limitation period for prosecution of terrorist offences that does not involve death. However, notwithstanding the provision contained in any other law, “an indictment may be found on an information instituted at any time without limitation for any offence listed in section 2332 b(g)(5)(B), if the commission of such offence resulted in, or created a foreseeable risk of, death or serious bodily injury to another person.”¹¹⁴ The maximum sentence for any terrorism offence under the Patriot Act is life imprisonment.¹¹⁵

The United States has combined legal and military responses to terrorism. In 2001, President Bush signed an Executive Order authorising the constitution of Military Tribunals or Commissions to try terrorists consequent upon which many members of Al Qaeda were tried and jailed.¹¹⁶ However, the United States use of Military Commissions instead of regular courts to try terrorists is the subject of much debate. The United States Supreme Court declared the Military Commissions violated the Uniform Code of Military Justice and the Geneva Convention in *Hamdan v. Rumsfeld*.¹¹⁷

Another sore point in the United States strategy for combating international terrorism is the Guantanamo Prison in Cuba. This prison along with the much publicized torture of inmates at Abu Gharib Prison in Iraq, have impacted negatively on the image of the United States both domestically and abroad. However, despite President Obama’s electoral promise to close Guantanamo Prison, he has not succeeded largely because of the opposition from Congress.

¹¹⁴ Section 809(a) of the Patriot Act.

¹¹⁵ See section 810 Patriot Act

¹¹⁶ For an incisive account of the tension between international law, the war powers of the President of the United States, and the global war on terror, see Ryan Goodman and Derk Jinks “International Law, U.S. War Powers and the Global War on Terrorism” Harvard Law Review, Vol. 118 (2005) pp 2653-2662

¹¹⁷ [2006] 548 U.S. 557

Yet another trend in the U.S fight against international terrorism is the use of unmanned aerial vehicles or drones. However, the deaths of many innocent non-combatants and the invasion of the sovereignty of other nations make the use of drones an intensely debatable subject.

The provisions of the Patriot Act, the United States invasion of Iraq, the rendition programme, “enhanced interrogation techniques” and targeted killings using drones have individually and collectively generated debate concerning the use of military force and derogation from basic human right norms. It is interesting to note that the United States has used alleged violation of human rights as an excuse to deny the acquisition of necessary military hardware in Nigeria to combat Boko Haram.

7.3 Terrorism Legislation in India: India’s experience with terrorism legislation¹¹⁸ dates back to the period when it was a British Colony.¹¹⁹ The impact of terrorism on India is probably more far reaching than most countries.¹²⁰ Anil Kalhan and his co-authors have conducted an incisive review of India’s experience with terrorism legislation. According to them, Indian legal provisions “include (1) constitutional provisions and statutes authorizing the declaration of formal states of emergency, (2) constitutional provisions and statutes authorizing preventive detention during non-emergency periods, and (3) substantive criminal laws defining terrorist and other security-related offences during non-emergency periods.”¹²¹ They examined India’s police and criminal justice framework and identified the Central Bureau of Investigation as the organization that “handles complex criminal investigations involving matters such as internal security, espionage, narcotics, and organized crime, particularly when such investigations concern matters of particular national importance or extend across interstate or international borders.”¹²²

¹¹⁸ For a an analysis of Indian legislation on terrorism viewed from similar laws in the UK and the US, see Swati Pandey “Law and Counterterrorism: The Prevention of Terrorism Act in a Strategic Dimension” Institute for Peace and Conflict Studies, New Delhi, Research Paper 4th April, 2004. Available at www.ipcs.org. web

¹¹⁹ See Anil Kalhan, et. al. “Colonial Continuities: Human Rights, Terrorism, and Security Laws in India” Columbia Journal of Asian Law Vol.20 No.1 (2006) pp 93-234

¹²⁰ Ibid at 99

¹²¹ Ibid at 107

¹²² Ibid at 113

Article 14 of the Constitution of India guarantees basic fundamental rights, including custodial rights and rights during interrogation,¹²³ but Article 19 (1), like section 46 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) reasonable restrictions are permitted in the interest of the sovereignty of India, State security or public order. The Maintenance of Internal Security Act, 1971 like its predecessor, contained provisions on preventive detention. The Unlawful Activities (Prevention) Act, 1967 was also enacted.¹²⁴ The latter empowered government to proscribe any association whose activities “disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India.”¹²⁵

The government commenced the passage of a series of sweeping anti-terrorism legislations in 1980 by enacting the National Security Act, 1980 (NSA). The NSA permits preventive detention for up to 12 months without trial. Parliament also enacted the Terrorist Affected Areas (Special Courts) Act, 1984 with the stated purpose of establishing “special courts to adjudicate certain “scheduled offences” related to terrorism in areas designated by the central government, for specified time periods, as “terrorist affected.”¹²⁶ It seems that post colonial India anti-terrorist legislation have tracked significant terrorist attacks. For example, following the heels of the assassination of Indira Gandhi, the Indian Prime Minister, Parliament enacted the Terrorist and Disruptive Activities (Prevention) Act, 1985 which lapsed in 1995.¹²⁷ Another Act, the Prevention of Terrorism Act was enacted in 2004, but it was repealed in 2004. The Mumbai attacks also galvanized the Parliament of India to enact the National Investigation Agency Act, 2008 and to amend the Unlawful Activities (Prevention) Act, 1967.¹²⁸ The latter was amended by the Unlawful Activities (Prevention) Amendment Act, 2012¹²⁹ which criminalized terrorist

¹²³ See *D.K. Basu v. State of West Bengal*, A.I.R. 1997 S.C. 610, 623

¹²⁴ This Act was amended by the Unlawful Activities (Prevention) Amendment Act, 2012, Act. No.3 of 2013

¹²⁵ See section 2(1) (o) of the Act cited at 136 by Kalhan, *op.cit*

¹²⁶ Kalhan, *op. cit.* p.144

¹²⁷ Other anti-terrorism legislations in India include Anti-Hijacking Act (1982); Armed Forces (Punjab and Chandigarh) Special Powers Act (1983); Punjab Disturbed Areas Act (1983); Chandigarh Disturbed Areas Act (1983); Suppression of Unlawful Acts Against Safety of Civil Aviation Act (1982); Terrorist Affected Areas (Special Courts) Act (1984); National Security (Second Amendment) Ordinance (1984); Terrorist and Disruptive Activities (Prevention) Act (1985, amended 1987); National Security Guard Act (1986); Criminal Courts and Security Guard Courts Rules (1987) and the Special Protection Group Act (1988).

¹²⁸ See Caesar Roy, “Terrorism in India and Legislation for its Prevention” *Quest - The Journal of UGC - ASC Nainital* Volume 5, Issue 2, November 2011, pp. 206-213, p.208

¹²⁹ *supra*

(Special Courts) Act, 1992 were passed in later years to address changes in circumstances in the country.

However, the first specific provision on terrorism in Pakistan is the Anti-Terrorism Act 1997. Section 6 (1) of the Act defined “terrorism” thus:

“terrorism” means the use or threat of action where:

(a) the action falls within the meaning of subsection (2), and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or

(c) the use of threat is made for the purpose of advancing a religious, sectarian or ethnic cause.

Section 13 of the 1997 Act established the Anti-Terrorism Court. The ATC has exclusive jurisdiction over terrorist cases. The Supreme Court of Pakistan declared in *Mehram Ali vs. Federation of Pakistan*¹³⁶ that some key provisions of the Act were unconstitutional. The Anti-Terrorism Act was amended in 1998 by the Anti-Terrorism (Amendment) Ordinance 1998.¹³⁷ The 1998 Act fixed tenure for judges of the Anti-Terrorism Courts.

Another high point in the evolution of terrorism legislation in Pakistan was the enactment of the Anti-Terrorism (Amendment) Ordinance 2001, section 39-C of which repealed the Suppression of Terrorist Activities Act, 1975 and the Anti-Terrorism Act, 1997 while section 11-A proscribed any organization concerned with terrorism to be a terrorist organization. On the other hand, section 11-V made terrorism a universal crime such that any person who participates in terrorist activities in Pakistan or outside her borders is liable to imprisonment for 7 years. The Anti-Terrorism (Amendment) Ordinance 2002 introduced “a military person” into the composition of the Anti-Terrorism Court while the Anti-Terrorism (Amendment) Ordinance, 2004 and 2005 increased the maximum punishment for terrorism from 14 years to life imprisonment. Pakistan

¹³⁶ *ibid.* at 6

¹³⁷ *ibid*

introduced the Prevention of Electronic Crimes Act, 2007 to deal, inter alia, with cyber-terrorism.

Successive enactments on terrorism in Pakistan, in line with the country's constitution, legitimize preventive detention.¹³⁸ Also, terrorism investigations are taken seriously by provisions of successive legislation on terrorism in Pakistan. Under section 19(1) of the 1997 Act, as amended, investigations shall be conducted by a team of officers and concluded within 7 working days and the report forwarded directly to the Anti-Terrorism Court. To underscore the importance of such investigations, section 27 of the Anti-Terrorism Act, 1997 (as amended) empowers a court that adjudicates over a terrorism case to impose a term of imprisonment summarily against an investigating officer or person concerned with investigation if the court finds that the officer "failed to carry out the investigation properly or diligently or have failed to pursue the case properly and in breach of their duties."

Criminal Procedure in Pakistan is regulated by Code of Criminal Procedure, 1898,¹³⁹ as amended by legislations on terrorism. For instance, under section 27 of the Anti-Terrorism Act, 1997, a voluntary confessional statement made to a police officer is admissible unlike in other cases where the Code of Criminal Procedure requires that a confession shall be made before a Magistrate before it is admissible. To expedite trial, Anti-Terrorism Courts (ATC) are required to treat cases with dispatch. Consequently, the ATC shall not give more than two consecutive adjournments during trial. If defence counsel does not appear after two consecutive adjournments, the ATC shall appoint a counsel to represent the accused. Failure of the ATC to comply with the provisions for fast track shall render the presiding officer liable to disciplinary action.¹⁴⁰ Only the ATC may grant bail.

The Protection of Pakistan Ordinance 2013 and the Protection of Pakistan (Amendment) Ordinance 2014 are designed to protect against the waging of war against the State of Pakistan including wars waged by "Enemy Aliens" and "Enemy Combatants".¹⁴¹ Section 6 of the 2014

¹³⁸ For instance see sections 11EE and 11EEE of the Anti-Terrorism Act 1997

¹³⁹ Act V of 1898

¹⁴⁰ See section 19(8) Anti-Terrorism Act 1997 (as amended)

¹⁴¹ See section 2 of the 2014 Amendment.

Amendment permits preventive detention for up to 90 days while section 14 creates a reverse burden of proof under which an accused may be presumed to be waging war against Pakistan unless he proves his non-involvement in such crimes.¹⁴²

7.4 Sri Lanka: Sri Lanka's experience with the Liberation Tigers of Tamil Eelam (LTTE) "Tamil Tigers" galvanized the country to introduce far-reaching anti terrorism regulations and legislations. Article 155 of the Constitution of Sri Lanka empowered the President to make emergency regulations "amending or suspending the operation of the provisions of any law, except the provisions of the Constitution." Sri Lanka declared a state of emergency in 1971 which lasted until 2011 when the Tamil Tigers were eventually defeated.

Under section 9 (1) of the Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979, a person may be detained for a period of 3 months without trial where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity.

The Prevention of Terrorism Act (PTA) was introduced as a temporary law in 1979, and made permanent in 1981. The Act allows the suspension of certain rights of criminal procedure, including the right of individuals to be presumed innocent, as a means to prevent terrorism and other unlawful activities. Under the Act, people can be arrested without charge or trial and detained for up to 18 months while police investigate the possibility of their involvement in illegal activity. The Act allows for indefinite detention on the order of a magistrate pending trial.¹⁴³

8 CONCLUSION/RECOMMENDATIONS:

Terrorism in West Africa has deep multi-layered causes that require a multi-track response or "solutions and antidotes." A purely legal approach would be inadequate to address problems of indoctrination, poverty, poor education, illiteracy, political and social alienation, injustice, etc. But purely legal responses could however be targeted at the criminal ramifications of terrorism that are soluble by resort to the criminal justice apparatus. From the brief discussion of the legal

¹⁴² See Pakistan Institute of Legislative Development and Transparency Legislative Brief No. 19, April 2014 on Protection of Pakistan Ordinance 2013 and Protection of Pakistan (Amendment) Ordinance 2014. Available at www.pildat.org. Web

¹⁴³ Amnesty International, Sri Lanka: Briefing to Committee Against Torture , October 2011, p. 16

regime for dealing with terrorism in the U.K, U.S, India, Pakistan, and Sri Lanka, it can be deduced that no country's laws or institutions are perfect but West African countries affected by terrorist activities surely have a lot to learn from the U.K, United States, India, Pakistan, and Sri Lanka in their relative successes in combating similar forms of extremism. The unique lessons to learn from each country however reside in the detail and level of conformity with international norms and the instruments for meeting the exigencies of emergency situations created by terrorist groups.

The lesson to learn from all these countries as a group is that the capacity for law alone to deal with all terrorism related challenges should be viewed critically. However, extraordinary powers of investigation, reform of the rules of evidence particularly adverse inferences, and the creation of special courts for the trial of terrorism suspects are some of the key issues that governments in West African countries need to look at very closely to determine the feasibility and legality of the introduction of such measures under domestic law. It is necessary that States clearly demarcate the role of the military and draft legislation in a way to avoid their deployment in an overly broad manner. The society must be wary of "temporary" emergency powers overriding ordinary law enacted for the same purpose that gradually become permanent¹⁴⁴ to the detriment of the fundamental rights and liberty of the people.

¹⁴⁴ Victor V. Ramraj "Anti-Terrorism Legislation in Comparative Perspective: Some Policy Concerns" a paper presented at the Libertas (Lawyers' League for Liberty) symposium, The Terrorism Threat: Balancing State Interests and the Protection of Individual Liberties, Manila, 11 October 2005. Sponsored by the American Bar Association-Asian Law Initiative (ABA-Asia) p. 12