NATIONAL SECURITY, TERRORISM, AND DEVELOPMENT IN NIGERIA

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Paper presented at the 45th Annual Conference of the Nigerian Association of Law Teachers held at the University of Lagos, 18th – 20th June, 2012.
The reality of modern Nigeria is the danger of disruptive centrifugal socio-economic and political forces which have combined to produce irreconcilable contradictions of alarming proportions. The failure of past governmental efforts to chart and vigorously pursue an authentic developmental agenda has given rise to the growth of insecurity and terrorism. Theoretically and pragmatically, the concepts of national security, terrorism and development are interwoven because the presence or absence of each has telling consequences for any society. The disturbing issue, however, is that government efforts at curbing terrorism or promoting national security and development have been uncoordinated. Indeed, government efforts in that regard have been ad hoc and dysfunctional. In other words, successive Nigerian governments prefer to tackle problems as they arise in an ideological vacuum. This paper argues that there should be a re-conceptualization of this approach in favour of a holistic and ideology driven approach. The paper also critically examines the Nigerian statutory response to the challenge of terrorism in the context of its socio-political landscape and implications. The paper finds the Nigerian response dynamic but also exposes the loop-holes in the law with a view to an urgent review.

1. Introduction
Towards the gable end of the last millennium, global events and conditions revealed that the ideological and conceptual battles of the 21st Century will revolve on issues of security, terrorism and development. The September 11, 2001 attacks and destruction of the Twin Towers and a wing of the Pentagon building in the United States of America, the global economic meltdown which was prefaced by the collapse of the Asian Tigers, an inequitable world economic order, etc, constitute the prologue to the intractable problems which nations of the world are now passing through. Today, the impact of these contradictions is felt more in the developing nations where a number of factors such as inept leadership and economic weakness have combined to cripple their capacity to tackle the debilitating problems of terrorism and insecurity, or to pilot meaningful national development.

National security, terrorism and development are not conceptual integers but interlacing phenomena, the presence or absence of which have mutually telling consequences for any society. The mutually impacting character of these concepts dictate the urgency in seeking intellectual clarity of their ramifications before developing a concerted and coordinated programme of action.

As a developing nation, Nigeria has had more than a fair share of fear of insecurity, terrorism and dislocated development agenda. The internecine conflicts occasioned by boundary clashes and ethno-religious crisis, the pervasive kidnapping of citizens and foreign nationals for ransom, the outright brigandage of ethnic militias often predicated on self-determination, the tragedy of barren

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econometric models pioneered by less than dedicated leaders, which only expand and deepen the abyss of under-development, are sign-posts of the Nigerian nightmare.

However, in the trudging steps to tackle the challenges of terrorism, insecurity and underdevelopment, the discernible approaches of past and present government efforts in that regard have largely been ad-hoc and dysfunctional. In other words, successive Nigerian governments prefer to tackle problems as they arise in an ideological vacuum. Again, flowing from this ad-hoc approach is the conceptualization and treatment of the challenges of terrorism, national security and development as if they are mutually exclusive categories. Moreover, although our statute books are replete with laws designed to combat terrorism and insecurity, the socio-political and psycho dimensional incumbents which ventilate the vices have constantly been glossed over by Nigerian political actors with the hope that time will take care of things, or at worst they employ state power to repress dissent. The net effect is that notwithstanding the copious provisions in various national policy documents intended to foster development they have remained mere pious exhortations.

In this paper we shall urge a re-conceptualization of the ad-hoc approach in favour of a holistic and ideology driven approach. It will be argued that only such a re-conceptualization will provide the platform for a symbiotic onslaught against disruptive forces in the triadic interactional processes.

2. The Concept of Development.

The key concept in our discourse is development. It is a multi-faceted concept which encapsulates an agenda for the promotion of national security and elimination of terrorism. It is therefore important to grasp its ontological basis as a prelude to unraveling the deeper contours of national security and terrorism.

Earlier theories and models of development perceived it as the process of transition from traditionality to modernity or purely as an economic issue in terms of increased Gross Domestic Product (GDP). While these elements are part of development, contemporary literature and praxis tend towards a more encompassing approach which considers other socio-economic indicators such as ‘infant mortality, maternal mortality, shifts in social status, employment opportunity, life expectancy, decrease in fertility, as well as housing, water supply, nutrition, education, etc.’

Modern ideas about development hold that true development must be people oriented. Thus if these issues are not critically addressed ‘it would be strange to call the result development, even if per capita income doubled’. Also, as a process, development includes the people’s capacity to manage and induce positive change.

In this regard, education plays a vital role by providing tools to face the challenges of making and multiplying choices.

3 O. Obasanjo and A. Mabogunje, *op. cit.*, p.3.
Clearly, the concept of development suggests a continuum. It is not a completed state of affairs but an on-going process. What is important in any development agenda is to contextualize it within the socio-political and economic conditions of a people and not to ape or transplant indices of development peculiar to another people. Western intellectual export model of development orientated us to perceive development from the lenses of the western world. This is perhaps the greatest disservice of colonialism. It has accentuated the sense of xenomania by discouraging home grown ideas or portraying them as un-sophisticated. Axiomatically no two countries are the same, and it stands to reason that their development models cannot be the same. The intellectual misconception of development seriously affected the planning and execution of development programmes in Nigeria at the incipient stages of our nationhood when a solid foundation for development should have been established.

The issue of rural development is a case in point. Rural development should be an integrated agenda to emancipate the rural folks from the miseries of poverty and ignorance, but government development plans up to 1980 portrayed it as an issue to be achieved through agricultural modernization. This approach was inspired by the colonialists who were in a hurry to satisfy the excessive demand for raw materials by the huge industrial concerns in metropolitan Europe. However, seeing that agricultural modernization has not produced significant results, government in the Fourth National Development Plan (1981-85) decided to adopt ‘an integrated and multi-disciplinary approach which would take into account major factors affecting the welfare of the rural population.…’ Admittedly, considerable time and energy had been lost before the conceptual re-think.

Another factor which has helped in disorienting Nigeria’s development agenda is the colonial policy on education. Colonial educational policy was not vocationally or technically oriented, but skewed to providing basic education which could equip the local people with the means of communication with the British imperialists. In the few secondary schools that were established by missionary organizations at the time no convincing efforts were made to expose Nigerians to the rudiments of technological creativity, instead, for colonial purposes, premium was placed on the history of the British Empire, the British Constitution, English economic history, etc. In keeping with its imperialist policies the University College, Ibadan, which was the only higher educational institution of that standing at that time tended to concentrate on the liberal arts more than any other

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discipline. In the opinion of British policy makers, the college was to produce an intellectual aristocracy on the Oxbridge pattern who will become the future ruling elite.

The colonial occupational pattern dominated by Europeans conferred more power, prestige, and economic returns on administrative and allied clerical personnel than on technical and scientific oriented personnel of comparable qualifications. This prevailing attitude results in the over-production of persons best suited for office and administrative jobs, and a large and growing army of educated persons who cannot be absorbed either in the primitive agricultural and manufacturing sectors which employ outdated and foreign-derived technology. Undoubtedly, such persons become ready recruits for crime and other forms of social deviance. Thus while education is supposed to open the gateway to modernization, the colonial philosophy underlying the Western oriented educational structure for Nigeria tended to retard dynamic progress tailored along the needs of Nigerians.

Indeed, it is contended that much of Nigeria’s social as well as political and economic problems have emanated from this defective colonial educational policy. Even a casual observer of Nigeria’s social problems will agree that this foundational problem associated with colonial education philosophy still hunts the country. The insatiable quest for, in many cases, unearned paper qualification is only a sample of the problem. The danger, of course, is that Nigeria seems to be experiencing a boom in just literacy rather than education. Beyond the mere ability to read and write, education should have breadth and depth. Education in its breadth liberates the mind and equips the individual with the tools to make choices in a manner that positively attunes his world view and strategizes him as an agent for positive social change. In its depth, education enables the individual to channel accumulated and processed experiences of the wider intellectual and physical worlds to develop his personality and new ideas which are concretized in material and social inventions of lasting values to the present and future generations.

Political development is yet another central aspect of the concept of development. The attainment of nationhood on October 1, 1960, raised hopes among Nigerians that with political emancipation secured, economic, social and psychological development are guaranteed. However, political events which have unfolded since independence have rendered those expectations largely chimerical. Nigeria’s political history has witnessed several transitions from civilian democracy to military dictatorship. This seeming game of musical chairs is occasioned by a warped political culture which impels members of the Nigerian political class to behave in ways that always suggest a general

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9 Ibid.
11 Ibid., p.102.
13 E.C. Amucheazi, loc. cit., p.22.
15 Ibid, p.255.
preparedness to commit political class suicide. The demise of the First and Second Republics in Nigeria is attributable to the whole or partial absence of the essentials of constitutional democracy such as the requirements of a democratic spirit, commitment to constitutionalism, national ethic, public accountability, welfare of the citizens, etc.\textsuperscript{16} Worse still, in this present political dispensation the samples of decay and contradictions which facilitated the collapse of Nigeria’s previous attempts at constitutional democracy are still present with even greater ferocity. Intra-elite and inter-ethnic conflicts, corruption, indiscipline, roguish elections, religious intolerance, etc, have now assumed alarming and ideological proportions.

Chapter II of the 1999 Constitution which deals with the Fundamental Objectives and Directive Principles of State Policy provide our rulers with a convenient ideological starting point for the development and prosperity of our nation. Section 14(1) expresses that Nigeria shall be a state based on the principles of democracy and social justice. It also declares that sovereignty belongs to the people of Nigeria, and that the security and welfare of the people shall be the main purpose of government, and guarantees participation by Nigerians in their government in accordance with the Constitution.\textsuperscript{17} The Chapter also sets out the political objectives, economic objectives, social objectives, educational objectives, foreign policy objectives and environmental objectives.\textsuperscript{18} It further outlines directive on Nigerian cultures, obligations of the mass media, national ethics and duties of the Nigerian citizen.\textsuperscript{19}

Although the said Chapter II of the 1999 Constitution is not justiciable,\textsuperscript{20} in the sense that a breach of any of the provisions cannot form the basis for litigation, its provisions nevertheless constitute veritable ideological building blocks. In our opinion, the provisions of the said chapter are sacrosanct and envisions the \textit{fons et origo} of the Nigerian social contract. It provides the benchmarks for the assessment of any government in Nigeria. In this regard, Nigerian courts have a salutary role to play. The Constitution has invested the courts with the important and expansive role of interpreting and constructing a written Constitution.\textsuperscript{21} ‘The Constitution is a mere skeleton. It is interpretation by the courts that adds flesh and infuses blood into the skeleton to make it a living organism. It is therefore not an idle boast to say that the Constitution is what the judges say it is.’\textsuperscript{22} The courts should therefore shed the garb of the phonographic or declaratory idea of the judicial process which turns the judge into a formalist, an automaton and a mere slot machine,\textsuperscript{23} and put on the toga of judicial activism so as to

\textsuperscript{17} Section 14(2).
\textsuperscript{18} See sections 15-20, respectively.
\textsuperscript{19} See sections 21-24, respectively.
\textsuperscript{20} See section 6(6)(c) of the Constitution.
\textsuperscript{21} See generally the provisions of section 6 of the Constitution.
properly blend legal justice with social justice. In this way the courts will formalize public policy and be an ally of socio-economic transformation. The point we are trying to canvass is that Nigerian courts in their interpretative jurisdiction should adopt an approach that will give Chapter II a justiciable impetus.

The courts in India have blazed the trail. The Indian Constitution contains provisions similar to our Chapter II and Chapter IV on fundamental human rights. What the Indian courts have done in a plethora of cases\textsuperscript{24} is to adopt an interpretative approach that strikes a harmonious balance between the two chapters. As Bhagwati J., explained:

Together they are intended to carry out the objectives set out in the preamble of the Constitution and to establish an egalitarian social order informed with political, social and economic justice, and ensuring the dignity of the individual not only to a few privileged persons but to the entire people of the country, including the have-nots and the handicapped, the lowliest and the lost.\textsuperscript{25}

In the same vein, Beg J., observed:

Perhaps the best way of describing the relations between the Fundamental Rights of individual citizens, which imposed corresponding obligations upon the State, and the Directive Principles would be to look at the Directive Principles as laying down the part of the progress towards the allied objectives and aims stated in the preamble with Fundamental Rights as the limits of that part, like the banks of a flowing river which could be mended or amended by displacements, curtailments or enlargements of any path according to the needs of those that use that path. In other words, the requirements of the path were more important... If the paths needed widening or narrowing or changing, the limits would be changed. It seems impossible to say that the path laid down by the directive principles is less important than that path.\textsuperscript{26}

It is gratifying to note that Nigerian courts seem to be coming to terms with this approach.\textsuperscript{27} What our courts should now do is to adopt this approach with ideological consistency as the Indian courts.

Now, a major problem facing Nigeria’s development agenda is the suspicion and cynicism with which the average Nigerian views government efforts at development. This negative attitude stems from the fact that almost every administration, democratic and military, since independence has faced a legitimacy crisis, coupled with the unbridled corruption and unresponsiveness of the political class. The concomitant effects are that, first, the government seems unable to mobilize people for change or for the continuity of change, and second, the prospects of achieving national integration are dimmed. Mobilization and national integration are indispensable elements in the development continuum. They

\textsuperscript{25} Minerva Mills v. Union of India, AIR (1980), SC at 1989.
\textsuperscript{26} Kesavenanda Barati v. State of Kerala, AIR (1973) SC at 1970.
however thrive on vision, sincerity of purpose, accountability and responsive leadership. Clearly, these factors are scarce commodities in Nigeria’s political environment. It is therefore not surprising that government efforts at mobilizing the people\(^{28}\) and achieving national integration\(^{29}\) have not yielded expected dividends.

3. **The National Security Question in Nigeria**

Like other concepts dealing with human conditions, national security or security is not amendable to any specific definition. It has been pressed to service by oppressors and the oppressed. It has become a convenient term to explain the inexplicable and rationalize the illogical. Indeed, it has become mystical, mythical, and even mysterious in the minds of many people.\(^{30}\) In the name of national security the United States of America attacked Iraq and overthrew Saddam Hussein, Muammar Gaddafi killed many Libyan citizens who demanded an end to his inglorious forty-two year rule, and Hitler massacred over six million Jews. It is also in the name of national security that President Assad of Syria is exterminating thousands of Syrians, for legitimately demanding political reforms. National security informed the decimation of Odi people of Bayelsa State, and shoot-at-sight order issued to security agents by Nigerian leaders against innocent protesters.

Although national security has become a bug-word, in an objective sense security “can be measured by the absence of threat, anxiety or danger. However, and more importantly, security has a subjective sense, which can be measured by the absence of fear that threat, anxiety or danger will materialize. In other words, it is a value associated with confidence in physical safety and other most cherished values”.\(^{31}\) Specifically, for security to exist there should be a coexistence of security in the objective sense and security in the subjective sense. Thus where safety does not exist in the objective sense but there is confidence that it does exist, then there is likely to be security at least in the short term.\(^{32}\)

It is important to note that contemporary intellectual discourse of national security has shifted emphasis from the traditional conception of security in terms of physical or military engagement, and opened new vistas. Since national security is a human condition which rests on the defense, protection and preservation of cherished values it is now broadly conceived as embracing “non-military dimension such as the environment, migration, ethno-religious and nationalist identities, poverty and

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28 The first formal and institutional effort made by government to mobilize people for development is the establishment of the Mass Mobilization for Self Reliance, Social Justice and Economic Recovery (MAMSER) now National Orientation Agency (NOA).
29 The establishment of the National Youth Service Corps (NYSC) and Unity Schools (known as Federal Government Colleges) represent efforts in this regard.
31 Ibid., p.16.
32 Ibid.
human insecurity and disease”. This brings to the fore the conceptual intersection between development and national security.

Obviously, development challenges invariably lead to security problems, and as Georges Nzongoa-Ntalaja observed, transformation is not possible where there is violence or the institutions and processes of governance are unresponsive, unaccountable or simply ineffective. Consequently, if national security is to be achieved then such critical developmental issues as good governance, eradicating poverty, providing infrastructure and enhancing accountability must be vigorously pursued. For instance, as one commentator has rightly observed:

Development in Africa is regularly threatened by the persistence of poverty. This in turn creates insecurity with respect to decent livelihood and human survival. Poverty has not only reduced the ability of people to lead productive lives in Africa, but also exacerbated identity conflicts along communal, ethnic, religious and regional lines. For example, poverty has continued to aggravate tension in the relationship of the indigenes and non-indigenes in all parts of Nigeria where the ‘citizenship question’ and ‘settlers question’ have degenerated into incessant conflicts.

Again, it is our view that the most serious challenges to the national security question in Nigeria is the public perception of government as the source of insecurity rather than the provider of security in keeping with the first postulates of the Nigerian social contract as enshrined in section 14(2) of the 1999 Constitution. Most of the intra-state conflict witnessed in Nigeria is not only as a result of the diminished capacity of the government to provide for the welfare of the people, but in addition traceable to the, most times, unwritten policies and actions of governments which promote economic marginalization, political victimization or exclusion and social discrimination. These disruptive indices induce a conflictual psychological make-up in the citizens and spirals violence. Under such circumstances the people’s attention turns ‘from creative production to creative violence’. The Niger Delta crisis exemplifies this problem.

4. Concept of Terrorism

Despite the fact that terrorism is one of the most heinous crimes that strike at the very heart of the people in virtually every corner of the globe, terrorism as a crime or a concept is not easily defined. In fact, one can rightly assert that a generally acceptable definition of the concept of terrorism has not yet been found. According to Professor Eqbal Ahmad, “I have examined at least twenty official documents on terrorism. Not one defines the word. All of them explain it, express it emotively, polemically, to

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36 M. Ejiofor, op. cit.
arouse our emotions rather than exercise our intelligence”.\textsuperscript{39} Similarly, Whitebeck asserts that “it is no accident that there is no agreed definition of ‘terrorism’, since the word is so subjective as to be devoid of any inherent meaning”.\textsuperscript{40} He also asserts that “at the same time, the word is extremely dangerous, because people tend to believe that it does have meaning and to use and abuse the word by applying it to whatever they hate as a way of avoiding rational thought and discussion and, frequently, excusing their own illegal and immoral behaviour”.\textsuperscript{41} At the Rome Conference leading to the adoption of the International Criminal Court Statute (ICC Statute), there were sharp divisions among countries over its inclusion as an international crime. The eventual non-inclusion in the ICC statute compelled Turkey and Sri Lanka to abstain from voting to adopt the ICC Statute. The definitional problems usually revolve around two major issues, to wit: nature of the act and persons who can commit the act. Do the perpetrators include States or State-actors or is it only non-State actors? Does it refer to only politically motivated acts or also to non-politically motivated acts? Are acts of resistance or protests acts of terror? What are acts of resistance and what are acts of terror. The matter is so subjectively perceived by different groups that we are now accustomed to the cliché that “one man’s terrorist is another man’s freedom fighter”.\textsuperscript{42} According to former UN Secretary-General, Kofi Annan, “the protracted debate about what is terrorism is whether States can be guilty of it as well as non-State groups and whether it includes acts of resistance against foreign occupation”.\textsuperscript{43} He then defined terrorism as any action that is intended to cause death or serious bodily harm to civilians or non-combatants, with the purpose of intimidating a population or compelling a government or international organization to do something or not to do something.\textsuperscript{44} Schmid and Jongman define it as:

\textbf{An anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, state actors, for idiosyncratic, criminal, or political reasons, whereby - in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat and violent-based communication processes between terrorist organization, imperiled victims, and main targets are used to manipulate the main target (audience(s), turning it into a target of}

\textsuperscript{39} Quoted in George Pumphrey, “Types of Terrorism and 9/11”, at globalresearch.ca/articles/PUM306A.html, accessed on 10/June/2012. In fact, scholars and practitioners have put forward at least 109 possible definitions. See Kalliopi K. Koufa, UN Special Rapporteur on Terrorism and Human Rights, in her Progress Report to the Sub-Commission on the Promotion and protection of Human Rights, UN Doc. E/CN.4/Sub.2/2001/31, paras. 32-33.


\textsuperscript{41} \textit{Ibid}.


\textsuperscript{44} Kofi Annan, \textit{ibid}.
terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.\textsuperscript{45}

As a result of lack of consensus on the definition of terrorism, most international organizations have adopted what Faga refers to as the “sectoral approach”,\textsuperscript{46} an approach which focuses on various aspects of terrorism. For instance, the Geneva Convention adopted under the auspices of the League of Nations and which never really took effect defined terrorism as “all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or group of persons or the general public”.\textsuperscript{47} The Draft Code of Offences Against the Peace and Security of Mankind prepared by the United Nations International Law Commission in 1954 studied the question of both a general definition and criminalization of specific acts of terrorism but at the end of the day did not arrive at any definition of terrorism. The United Nations 1994 Declaration on Measures to Eliminate International Terrorism defines terrorism as criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes… in any circumstances unjustifiable whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature.\textsuperscript{48} In 1996, the United Nations General Assembly constituted an \textit{ad hoc} Committee to streamline efforts to arrive at a comprehensive definition of terrorism. That Committee did not succeed. The 1999 Convention for the Suppression of Financing of Terrorism, despite being a specialized instrument contains a generic definition of terrorism as any act intended to cause death or serious bodily injury to a civilian or to any person not taking part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing an act.\textsuperscript{49} Terrorism usually evokes a state of violence and fear reminiscent of Thomas Hobbes natural law state in which life is nasty, brutish and short. At the mere mention of the word, what readily comes to mind is a picture of people being terrified for no just cause, people being compelled against their will by the threat of violence or actual infliction of violence on their persons and property to behave or refrain from behaving in a particular manner especially from person or persons with whom they have no direct conflict. Hence, the use of the word, terrorism, being a coinage from the word terror, which means to


\textsuperscript{46} Supra footnote 42.

\textsuperscript{47} Article 2(1) of the Convention for the Prevention and Punishment of Terrorism.


\textsuperscript{49} Cf UN Security Council Resolution 1566 which defines it as criminal acts including against civilians, committed with the intent to cause death or serious bodily harm, or by taking of hostages, with the purpose to provoke terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or abstain from doing any act.
terrorize or terrify. Thus, the Black’s Law Dictionary defines terrorism as “the use or threat of violence to intimidate or cause panic especially as a means of affecting political conduct”.  

Similarly, terrorism is not easily classified. Thus, writers have come up with different classifications based on the perspective from which they view the subject. The categories already identified include: Revolutionary terrorism, Friendly fire terrorism and false flag terrorism, Nationalist, Religious, State-sponsored, Left wing, Right-wing, Anarchist terrorism, State terrorism, Bioterrorism, Nuclear terrorism, Ecoterrorism and Cyber terrorism, Local, State, Transnational or Globalized terrorism, Domestic terrorism, Political terrorism, Crime-related terrorism, Narco terrorism, Issue-motivated terrorism, Eco-terrorism, International terrorism, State-sponsored terrorism.

The elements of terrorism would usually include the nature of the act, parties to the offence, motive or intention and targets. Different forms of terror will determine the choice of target victims, but it has been observed that diplomats, civilian and military intelligence officers, key state officials including heads of government and public officials, airlines and national security and economic key points are top on the list of target victims. Of great concern is Laquer’s prediction that “the terrorist of the future will be less ideological, more likely to harbour ethnic grievances, harder to distinguish from other criminals, and a particular threat to technological advanced societies”. Is this what is happening to Nigeria?

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51 See George Pumphrey, *loc.cit*.

52 See “Types of Terrorism” at [http://www.suu.edu/faculty/frank/inc/02Types](http://www.suu.edu/faculty/frank/inc/02Types) accessed June 13 2012.


54 Michael R. Kraig, “Terrorism” at [http://moral.youtube.cm/watch?v=7gozuru5QdA](http://moral.youtube.cm/watch?v=7gozuru5QdA), accessed 10/6/2012.


58 *Ibid*.

Causes of terrorism have been identified to include rational motivation, psychological motivation, culture and religion.⁶⁰ “Psychological motivation for terrorism derives from the terrorist’s personal dissatisfaction with his life and accomplishments. Terrorists tend to project their own anti-social motivations onto others, creating a polarized “we versus they” outlook.⁶¹ According to Mazrui, the “us versus them” confrontation is the most persistent theme in world-order perceptions. There is a tendency in monotheism to divide the human race between believers and unbelievers, between the virtuous and the sinful, between good and evil, between ‘us’ and ‘them’.”⁶² Psychological motivation seems to be inextricably inter-twined with poverty and economic disadvantage which have been identified as major factors fueling terrorism.⁶³ Statistics show that approximately 15% of the world’s population consumes 85% of global resources and that third world countries are the worst affected.⁶⁴ In our humble view, poverty and economic disadvantage bring to the fore the relationship between terrorism on the one hand and national security and development on the other hand. Culture and religion are two other factors that propel terrorism. Certain cultures encourage violence. Culture and religion cannot be down-played. Religious fundamentalism is a major cause of terrorism because fundamentalists believe that all means can be deployed to achieve religious revival. The end justifies the means.⁶⁵

Colonialism and nationalism⁶⁶ with the associated struggle for self determination has also been identified as a major cause of terrorism around the globe, and there is visible and substantial relationship between the right to self determination and many groups generally seen today as terrorists.⁶⁷ Zalman therefore appears to be substantially right when he summed up the causes of terrorism in the presence of social and political injustice.⁶⁸

The modus operandi of terrorists includes but is not limited to bombings, hostage taking/kidnapping, sabotage, murder, and generally creating an air of insecurity. Terrorist organizations hardly succeed without serious support and assistance sometimes from States, individuals and organizations sympathetic to the cause the terrorists profess to fight. The support usually comes in different ways including: financial support, weapons supply, military, para-military

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⁶¹ Ibid.
⁶⁶ Ibid.
and other training, and other technical support such as supply of passports and travel documents, propaganda support and release of documents and information.

5. **Terrorism in Nigeria.**

A few years back, it was almost impossible to think or conceive of Nigeria as host to terrorist activities, let alone the magnitude of terror being witnessed today in the country. Our knowledge of terrorism appeared to have been limited to what we hear or read in the news media about goings-on in places like Pakistan, Afghanistan, Iraq, Iran, Israel, etc. The feeling of being secure in spite of all the tale signs was such that a learned writer felt able to assert that:

> …. One can say that so far the threat of terrorism in Nigeria is more perceived than real. This assertion is based on the fact that none of these alerts has been accompanied with tangible evidence of arrests or actual logistics deployed by the suspected terrorists for an attack … Nigeria has never experienced any terrorist attack in the mould of the Kenyan and Tanzanian type, in which the al Qaeda bombed US Embassies in Tanzania and Kenya in 1998 leaving 258 people dead and more than 5,000 injured. What the State often indiscriminately describe as terrorists in Nigeria are the Niger Delta Militants who are agitating for control over the oil resources on their land, and its expropriation/exploitation by the State and multinational oil companies to the detriment of their environment, political opponents and some Islamic militants whose links with al Qaeda terrorists network is very unclear. 69

Certainly, this opinion is no longer valid in the face of terrorist activities witnessed in this country since the year 2010. Between 2010 and date, Nigeria has witnessed untold terror especially in the Northern Nigeria. Some of these terrorist activities include October 1, 2011 bombing of the Police Force Headquarter in Abuja; Christmas day bombing of the St Theresa’s Catholic Church Madalla in Suleja Niger State near Abuja the Federal Capital Territory on December 25, 2011; 70; Easter day bombings of April 8, 2012; 71 United Nations Building Bombing in Abuja of 26 August 2011; Kaduna Bombings of June 18, 2012 and August 14, 2012; 72 Kano Bombings; 73 Bauchi Bombings; 74 Maiduguri

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Bombing; Discovery of explosive manufacturing factory in Kabba, Kogi State on March 26, 2012;\textsuperscript{75} Discovery of explosives manufacturing factory in Suleja, Niger State, on September 6, 2011, etc.\textsuperscript{76} With all these, it can now be asserted with certainty that terrorism is here with us. The legal regime for combating terrorism in Nigeria comprises both international instruments and domestic instruments.

As a frontline member of the United Nations, Nigeria has been very active in participating in International and Regional instruments to combat terrorism. Sampson has made a beautiful tabulation and status of such instruments.\textsuperscript{77} The major drawback to these instruments is that as international agreements, they have no application in Nigeria unless domesticated in accordance with section 12 of the Constitution of the Federal Republic of Nigeria 1999 as amended and in line with the Supreme Court of Nigeria decision in \textit{Fawehinmi v Abacha}.\textsuperscript{78} Happily enough, one can rightly say that with the enactment of the Terrorism Prevention Act No.10 of 2011, that clog has been removed because a cursory look at that Act will reveal that it appears to be a synthesis of the various international treaties and protocols on terrorism and this may also account for the various lapses that will be observed in the Act when we turn to domestic legal regime for terrorism in Nigeria.

6. **Domestic Legal Regime for Combating Terrorism in Nigeria**

The Penal Code and Criminal Code are replete with provisions or offences that resemble or exhibit the characteristics of terrorism. However, both Codes did not have specific provision on terrorism. Following the 9/11 attacks on the United States World Trade Centre and Pentagon and the consequent United Nations and OAU (AU) resolutions, it became not only expedient but necessary for Nigeria

\textsuperscript{74} There have been series of bombings in Bauchi the last of which occurred on Sunday September 23, 2012. See BBC News, “Nigeria Church Bombed in Bauchi, Boko Haram Flashpoint,” at \url{http://www.bbc.co.uk/news/world-africa-19691781} accessed September 24, 2012.


\textsuperscript{78} [2000] 6 NWLR (Pt. 660) 228 SC.
either to amend existing legislation or enact entirely new and comprehensive legislation on terrorism. These were the contending approaches. In 2004, the Federal government of Nigeria enacted the Economic and Financial Crimes Commission Establishment Act (EFCC Act). The EFCC Act in sections 15 and 46 outlawed terrorism and provided a punishment of life imprisonment. Section 15 of the Act provides that:

(a) a person who willfully provides or collects by any means, directly or indirectly money from any other persons with intent that the money shall be used or is in the knowledge that the money shall be used for any act of terrorism, commits an offence under this act and is liable on conviction to imprisonment for life.

(b) Any person who commits or attempts to commit a terrorist act or participates in or facilities the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life.

(c) Any person who makes funds, financial assets or economic resources or financial or other related services available for use to any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.

Section 46 on the other hand provides that terrorism is:

(a) Any act which is a violation of the Criminal Code or the Penal Code and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to any person, any number or group of persons or cause or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i) Intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing an act, or to adopt or abandon certain principles; or

(ii) Disrupt any public services, the delivery of any essential service to the public or to create a public emergency; or

(iii) Create general insurrection in a state.

(b) Any promotion, sponsorship of, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i) to (iii).

The definition of terrorism under the EFCC Act appears to be circumlocutus. The definition by reference to acts under the Penal Code or the Criminal Code appears to be a movement in circles without arriving anywhere. This is because, terrorism by that definition is any violent act under the two codes provided it is done with an intention to instigate fear or panic in the government or induce any government to act in accordance with particular principles or create public emergency or create general insurrection.\(^\text{79}\) Thus if an act occurs, such an act would either be an offence against the Criminal Code or Penal Code or an offence of terrorism depending on which of the penal laws the prosecuting authorities decide best suits the circumstances. The discretion created by section 46 of the EFCC Act appears to be too wide and arbitrary. Sampson has commented on it thus:

A careful examination of section 46 of the Act reveals for instance some interesting but inappropriate drafting when compared with provisions of the Penal and Criminal Codes. The section seems to adopt a blanket approach of assimilation of provisions of the Penal and Criminal Codes that relate however remotely to aspects of terrorism without specifically mentioning the particular provisions sought to be assimilated. By this

\(^{79}\) There may not be any meaningful distinction between treason and the case of insurrection.
The section has inappropriately left to the law enforcement agencies in Nigeria the task of determining what provisions in the two Codes when breached will result in trial for terrorism under the EFCC Act. Moreover, neither the section nor any other provision in the EFCC Act amended the provisions of the Penal or Criminal Codes which it intended to adopt.\textsuperscript{80}

We agree with Sampson. In 2006, a Senator of the Federal Republic of Nigeria, Senator Ben Obi, introduced a private-member bill in the Senate entitled “Prevention of Terrorism Bill 2006”. The bill was swiftly defeated at the Senate in September 2006 for what senators considered the expansive definition of terrorism by the bill and its propensity to be used by the executive to clamp down on opponents.\textsuperscript{81} It appears that whatever doubts, lethargies or reluctance on the part of Nigeria’s policy makers to make a comprehensive and holistic legislation on terrorism were swept away by the incessant terrorist activities manifested in kidnappings, bombings and general terror which have characterized the period 2010-2012. This is evidenced in the swift passage in 2010 of the Terrorism (Prevention) Act No. 10 of 2011.\textsuperscript{82} In pursuance of powers conferred by sections 9 and 39 of the Act, the Attorney-General of the Federation and Minister of Justice has also made regulations in relation to Freezing of International Terrorists’ Funds and Other Related Measures.\textsuperscript{83} There is also the Money Laundering (Prohibition) Act, No. 11 of 2011\textsuperscript{84} which repeals the Money Laundering (Prohibition) Act 2004 and Guidelines for Anti-Money Laundering Combating Financing of Terrorism for the Insurance Industry in Nigeria\textsuperscript{85} and the Securities and Exchange Commission Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Compliance Manual for Capital Market Operators 2010.\textsuperscript{86} All these laws and regulations point to one direction – Nigeria has become proactive as far the legal regime for dealing with terrorism is concerned whether it is described as Domestic, Local, International, Transnational terrorism or by any other nomenclature.

It may be impossible for us to examine all these laws and regulations in minute details. We shall attempt therefore to highlight what we consider as the most significant aspects of each law or regulation and its significance for the fight against terrorism vis-a-vis Nigeria’s national security and development. We start with the principal legislation, the Terrorism (Prevention) Act 2011.

\textbf{6.2.1 An Overview of the Terrorism (Prevention) Act 2011}\textsuperscript{87}

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\textsuperscript{80} Isaac Terwase Sampson, \textit{Loc. Cit}, p. 47. The provisions are also criticized on the ground that they are capable of being used for purposes of political witch-hunting.
\textsuperscript{81} \textit{Ibid}, p. 41.
\textsuperscript{82} The Explanatory Note accompanying the Act shows that it was passed on the same day, 1\textsuperscript{st} June 2011, by both Houses of the National Assembly.
\textsuperscript{83} Terrorism Retention (Freezing of International Terrorists Funds) Regulations, 2011.
\textsuperscript{84} Passed by Senate on 31\textsuperscript{st} May, 2011 and House of Representatives on 1\textsuperscript{st} June, 2011; and assented to by the President 3\textsuperscript{rd} June, 2011.
\textsuperscript{86} Made by the Securities and Exchange Commission, pursuant to section 13 of the Investment and Securities Act, 2007.
\textsuperscript{87} Hereinafter “the Act.”
\end{small}
The Act prohibits any act of terrorism. It defines an act of terrorism to mean “an act which is deliberately done with malice, afore thought 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 destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or
   (iii) 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 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 flood, 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.

By subsection (3) of section 1, an act which disrupts a service but is committed in pursuance of a protest amounts to an act of terrorism. However, demonstration or stoppage of work including strike actions do not amount to a terrorist act provided that it is not done with the intention to unduly compel a government or international organization to perform or abstain from performing an act; or to seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization by intimidation or coercion.

Section 1 of the Act brings to the fore the definitional problems which surround the concept of terrorism, especially ‘acts-centred’ definition. What is to be brought in and what is to be left out? The definition of terrorism in the Act resembles in broadness the US Patriots Act of 2001 which defines terrorism as an act within the territorial jurisdiction of the United States that is dangerous to human life, that is a violation of the criminal laws of a state or the US, if the act appears to: (i) intimidate or

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88 Section 1 (1) of the Act.
89 Section 1(2) of the Act.
coerce a civilian population; (ii) influence the policy of a government by intimidation or coercion; (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping.

One patent problem raised by section I of the Act is whether all the elements in subsection 2 of section 1 must co-exist conjunctively or whether they are to be interpreted disjunctively in order to establish the commission of an offence? The problem arises because of the absence of the words “or” and “and” at appropriate places. Those words appear only twice at the end of the semi-colons but there are eleven semi-colons in that particular sub-section. This appears to be inelegant drafting. Also, section 1(2) (v) of the Act which makes research into biological and chemical weapons without lawful authority is open to question. It is thought that the sub-section could have been restricted to development of biological and chemical weapons, especially in view of the fact that the Act does not define who the lawful authority is. The bottom line is that the definition of terrorism under the Act is quite broad and covers not only domestic terrorism but also international terrorism.

Section 2 of the Act empowers a Judge in Chambers upon an application made by either the Attorney General of the Federation, the National Security Adviser or the Inspector General of Police to proscribe any organization that participates or collaborates in an act of terrorism, or promotes, encourages or extorts others to commit acts of terrorism. Such an order if made must be published in the official gazette as well as two National Newspapers. A person who belongs or professes to belong to a proscribed organization commits an offence under the Act and is liable on conviction to a maximum sentence of 20 years imprisonment.\(^90\) It is however a defence to prove that the organization had not been declared a proscribed organization at the time the person became or began to profess to be a member of such organization and that he has not taken part in the activities of the organization since the proscription.\(^91\) Under section 2(5) of the Act, the Attorney General upon the approval of the President may withdraw the order if satisfied that such proscribed organization has ceased to engage in act of terror. Section 2 of the Act can be a booby trap for opposition and government must be wary not to use it to subvert the will of the people. The conferrement of power of de-proscription upon the Attorney General and the President raises more questions than answers. Would it have been better if that power was vested in the court that had the power to proscribe in the first instance? It is of note that while section 2(5) provides for an affected person to make an application on notice, the section fails to state the person to whom the application is to be made, whether the President, the Attorney General, the Court or all of them. Section 2 entirely may be revisited in due course.

Sections 4, 5, 6, and 7 of the Act on support for terrorism, harbouring terrorists, providing training for terrorists and failure to make information about terrorism available to law enforcement agencies brings to the fore the problem raised by Sampson in his paper, i.e., the problem of contradictory provisions especially penalties on similar offences under different legislation. In this

\(^{90}\) Section 2(3) (i) of the Act. However section 2(3) (ii) expressly excludes political parties from the definition of proscribed organizations and enjoins that nobody should be treated as a terrorist for or because of his political belief.

\(^{91}\) Section 2(4) of the Act.
regard, it is noteworthy that the Terrorism Prevention Act did not attempt or profess to amend the EFCC Act, so that the two laws continue to be extant. Under section 4 of the Terrorism Prevention Act, any person who knowingly, in any manner, solicits or renders support for- (a) an act of terrorism; or (b) a proscribed organization or an internationally suspected terrorist group, commits an offence under the Act and shall on conviction be liable to a maximum of 20 years imprisonment. Where death results from the terrorist act, the penalty shall be a death sentence, and for the purposes of the section, support includes incitement, offer of material assistance, weapons including biological, chemical, or nuclear weapons, explosives, training, transportation, false documentation or identification, offer or provision of moral assistance including invitation to adhere to a proscribed organization; and the provision of, or making available such financial or other related services as may be prescribed in the Act.

Sections 5, 6 and 7 provide for a maximum of 10 years imprisonment for harbouring terrorists, providing training for terrorists and failure to disclose information to security agencies respectively. On the other hand, the EFFC Act in section 46 provides for a life imprisonment. Sections 5, 6 and 7 of the Terrorism Prevention Act are expressly covered by section 46 of the EFCC Act.

Section 8 of the Act deals with obstruction of terrorism investigation. Section 8(1) provides that “a person who- (a) discloses to another anything which is likely to prejudice a terrorist investigation; or (b) interferes with material which is likely to be relevant to a terrorist investigation commits an offence and shall on conviction be liable to imprisonment for a maximum term of 10 years. By section 8(2), it is a defence to prove that the accused did not know and had no reasonable cause to suspect that the disclosure was likely to affect a terrorist investigation, or that he had reasonable excuse for the disclosure or interference. The provisions however do not apply to legal practitioners in connection with the provision of legal advice to his clients provided that the disclosure is not with a view to furthering a criminal purpose; nor does it apply to disclosure for the purpose of actual or contemplated legal proceedings.

Section 9 (1) of the Act empowers the President on the recommendation of the National International Security Adviser or Inspector General of Police to declare a person to be a terrorism suspected international terrorist where he –

a. Reasonably suspects that the person:

b. Is or has been involved in the commission, preparation or instigation of acts of international terrorism;

ii. is a member of or belongs to an international terrorist group, or recognized as such under the provisions of this Act.

iii. has link with an international terrorist group, and he reasonably believes that the person is a risk to national security.

b. Is listed as a person involved in terrorist acts in any resolution of the United Nations Security Council or in any instrument of the African Union or Economic Community of West African States; and

c. The person is considered as a person involved in terrorist acts by such State or other organization as the president may approve.
Section 9 (1) deliberately or inadvertently creates the office of a National International Security Adviser. It is not clear whether the intention is to dualize the office of the National Security Adviser but it is thought that the inclusion of the word ‘international’ is inadvertent. The provisions of section 9(1) of the Act are indeed very odd and show a remarkable example of inelegant draftsmanship if not sheer carelessness and incompetence. By section 9(2), a person declared to be a suspected international terrorist shall be notified as soon as is reasonably practicable. If the person is not a Nigerian citizen by birth, he may be deprived of that citizenship under section 9(3). Section 9(4) is very important. It gives the President the power, acting on the recommendation of the National Security Adviser, to declare any group to be an International Terrorist Group.

Section 9 (5) empowers the Attorney General of the Federation to make regulations for the freezing of the funds, financial assets or other economic resources of an international terrorist or international terrorist group whether held or owned directly or indirectly. Section 9(5) is important because funding is the life-wire of terrorism. The Attorney General has already made the requisite regulations.\footnote{Supra note 63.}

Section 9(7) gives an insight into the nature and definition of international terrorism in Nigeria. The sub-section defines international terrorism as an act of terrorism involving a non-citizen, a person of dual citizenship; or groups or individuals, whose terrorist activities are foreign based or directed by the countries or groups outside Nigeria or whose activities transcend national boundaries. This definition in our humble opinion captures the whole essence of international terrorism – there is an international element.

Section 10 of the Act re-enacts section 46 of the EFCC Act on suppression of financing of terrorism for all intents and purposes though not in exact words and provides for 10 years imprisonment. Section 11 expressly outlaws hostage-taking in all its ramifications and also provides for 10 years imprisonment. Section 12 empowers the National Security Adviser or the IGP with the approval of the President to seize any cash reasonably suspected to be intended to be used for the purposes of terrorism or to belong to, or held in trust for a proscribed organization or represents property obtained through acts of terrorism. The provisions of section 12 on seizure of terrorist cash raise some practical problems. While section 12(1) empowers the NSA and the IGP to seize terrorist cash, sub-section 2 empowers them to seize such cash only if the seizure is incidental to an arrest search; or the property is liable to forfeiture upon process issued by the court following an application made by the Attorney General, the NSA or the IGP with the approval of the President. However, sub-section 3 of that section gives the NSA and the IGP authority to exercise their powers under subsection 1 whether or not any proceedings have been brought for an offence in connection with the terrorist cash. Section 12(4) provides that a Judge in Chambers shall not make an order for seizure of
the cash unless he is satisfied that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism or consists of resources of a proscribed organization or is or represents property obtained through terrorist activities; and such an order will remain valid for 69 days until the production of the cash in court in proceedings against the suspect. The question is, “must there be a court order for a seizure to take place?” Ordinarily, this type of seizure must be predicated on a court order and we think that this appears to be the intention of section 12. However, the provisions of section 12(3) appear to have rendered every other provision of that section redundant and useless. The section is another example of inelegant drafting.

Sections 13, 14, 15 and 17 of the Act deal with terrorist funding, obligation to report suspicious transaction relating to terrorism, dealing in terrorist property, attachment of property, and property tracking respectively and either provides for a 10 or 5 years imprisonment as the case may be. As already stated, it is not clear whether these provisions are intended to override those of the EFCC Act or indeed the Money Laundering Act 2011 with its subsidiary instruments and other laws.

Sections 18 - 23 deal with mutual assistance and extradition. What is significant here is that section 22 makes terrorism an extradition offence, so that there is no question about it.

Part V of the Act deals with investigation. Section 24 in that part provides that the NSA or the IGP may apply to the court for the issuance of a warrant for the purposes of terrorism investigation, and the court may issue a warrant to enter, search, seize and retain any relevant material found. Section 24 may have to be read in conjunction with section 12(3) but even if that were to be, it will still not water down the import of section 12(3) especially when viewed in the light of section 25 which empowers the IGP or the NSA in a case of verifiable urgency to enter and search and seize premises or persons, vehicles, boards, vessels, etc. Section 24 restricts the locus standi of persons capable of applying for such warrants to the IGP and NSA. There is no power of delegation here. Why an agency such as the EFCC was left out here is not clear but it is thought that it would have been better to make the power a delegable one such as is found in section 28 of the Act where the NSA or the IGP can delegate functions to an officer not below the rank of a Chief Superintendent of Police.

Section 35 of the Act vests enormous powers on the Registrar General of the Corporate Affairs Commission to revoke or refuse registration of charities connected with terrorist groups. This provision is against the backdrop that such organization may be major instruments of funds transfer to terrorist groups. There is however a safety net for any group whose registration is refused or revoked. Such an organization may apply to the court and the court where a revocation order is not reasonable shall order the continued registration of the charity.

An obvious gap in the Terrorism Act is the inability of the Act to address the question of State-terrorism or State-sponsored terrorism. The entire provisions of the Act appear to have been skewed against private individuals. This paper is of the view that the Act should go further to address concerns raised by state-terrorism. Very often, State-actors and State agencies engage in acts of terror against
the very citizens they were established to protect.\textsuperscript{93} Any law purporting to deal adequately with issues of terrorism must deal with State-terrorism, otherwise, it may amount to no more than an exercise in self-deception.

**6.2.2 Jurisdiction to Try Offences and Impose Penalties**

The Federal High Court is vested with the sole jurisdiction to try offences and impose penalties under the Act. An interesting feature of the Terrorism Prevention Act is that it treats the jurisdiction to try offences as if it were different from jurisdiction to impose punishments provided by the Act. Also, it treats support for terrorism as if it were different form aiding and abetting under the general criminal law. In other words, it treats aiding and abetting as if it is not the same with principal offending. This is totally unwarranted. A close study of the provisions relating to the imposition of punishments gives cause for worry. First of all, section 32 (2)(a) of the Act provides that the Federal High Court shall have jurisdiction to impose any penalty provided for an offence under this Act provided that the penalty for an offence does not exceed 20 years; while section 32 (2)(b) provides that the court shall have power to order sentences imposed under this Act to be served consecutively provided that the term of such sentences does not, in the aggregate exceed 30 years. The implication of these provisions is that the court cannot impose the sentence of life imprisonment provided in various parts of the Act, as for instance section 33 (1) (a). We shall reproduce verbatim the provisions of section 33 of the Act because they are indeed very significant. Section 33 of the Act provides as follows:

(1) Subject to subsection (3) of this section a person who commits Penalties, an offence under this Act is liable on conviction—

(a) in the case of an offence under sections 1 and 10 of this Act, to life imprisonment or to a fine of not less than 150 million Naira or both;

(b) in the case of an offence under sections 2, 3, 4, 5, 8, 9, 12 and 14 to an imprisonment for a term of not less than 3 years and not exceeding 20 years ;

(c) in the case of an offence under sections 6 and 7, to an imprisonment for a term of not less than 2 years and not exceeding 15 years ;

(d) in the case of an offence under sections 25 and 29 to a fine not exceeding N1,000,000.00 or an imprisonment for a term not exceeding 5 years or both ; and

(e) where death results from any terrorist act, the penalty shall be life imprisonment.

(2) The court before which a person is convicted of an offence under this Act may, in addition to any penalty imposed by the court, order the forfeiture of.

\textsuperscript{93} The attack on Odi people of Bayelsa State under former President Olusegun Obasanjo is a typical example of such acts of terrorism. On November 19, 1999, soldiers under the direction of the former head of state sacked the Niger Delta town leaving in its wake one of the most brutal invasions of a people in the history of Nigeria. See “Genocide in Odi” at \texttt{http://www.unitedijawstates.com/odi.html last visited September 24, 2012.}
Section 33 as a whole is difficult to understand. The section starts with a false premise, to wit: “a person who commits Penalties, an offence under this Act is liable to conviction”. It is difficult to understand what the Act means by “a person who commits Penalties, an offence under this Act” when ‘penalties’ is not defined anywhere in the Act. The phrase presupposes that ‘penalties’ is an offence under the Act but a search through the Act will reveal no such offence. Secondly, the section is made subject to subsection (3) of that section but there is no such provision in the Act as subsection (3) of section 33. This in our humble view is a terrible oversight if not a blunder. More importantly however, as alluded above is that section 33 appears to rubbish all the other parts of the Act dealing with punishment for offences. Whereas the various substantive enacting sections creating specific offences created specific punishments for those offences, section 33 purports to create parallel irreconcilable punishments for the same offences, thus, compounding the already existing contradictions between the Act and the EFCC and other Acts. Again, this is totally unwarranted. For instance, it is difficult to reconcile sections 1 and 10 with 33 (i)(a) of the Act. The definition of ‘acts of terrorism’ in section 1 for which section 33(1)(a) provides a punishment of life imprisonment or a fine of not less than 150 million naira or both covers virtually all or most of the offences created in the Act including sections 2-9 for which the respective sections provided different punishments ranging from 5, 10 to 20 years. In effect, section 33 says that a person who commits an act of terrorism is liable on conviction to life imprisonment or a fine of not less than 150 million naira or both but a person who arranges, manages, assists in arranging a terrorist meeting or who provides logistics, equipment or facilities for an act of terrorism (section 3); or who renders support for acts of terrorism which include incitement to commit a terrorist act or offer of material assistance or the provision of financial services (section 4); or provides harbor for terrorists (section 5) will not be treated as a principal offender and therefore liable to between 3 and 20 years imprisonment maximum. Sections 6 and 7 specifically provides for a maximum of 10 years imprisonment but section 33 later stipulates a maximum of 15 years for the two sections. Section 33 provides for punishment to the tune of N1,000,000.00 or 5 years imprisonment for offences under sections 25 and 29 of the Act but sections 25 and 29 of the Act create no offences. Section 4(2) of the Act on death penalty directly contradicts section 33(1)(e) of the Act. While section 4(2) provides that “without prejudice to subsection (2) of this section, where death results from any terrorist act, the penalty shall be death sentence”, section 33(1)(e) provides that “where death results from any terrorist act, the penalty shall be life imprisonment”. Section 33(2) makes no sense at all. It requires a court to make an order of forfeiture without stating what is to be forfeited.

The position of this paper is that the contradictions above are beyond the precincts of what a judge saddled with the determination of a case can resolve by judicial activism. There is thus an urgent need to revisit the Act with a view to harmonizing the punishments provided in the Act not only within the Act itself but also with other related Acts. For a start, section 33 of the Act should be expunged entirely and the necessary amendments be incorporated in the various relevant sections of the Act which create the offence and punishment.
6.2.3 The Money Laundering (Prohibition) Act 2011

This Act is targeted not only at proceeds or funding of terrorism but a wide range of crimes that touch the fundamentals of a truly liberal and democratic society founded on the rule of law. The Act seeks to make it impossible for those who launder or ‘wash’ or try to make clean the proceeds of their crimes especially high crimes that tend to cut across transnational borders such as terrorism, drug trafficking, trafficking in persons, etc. Section 15 of the Act outlaws money laundering in all its forms.

Section 18 of the Act makes aiders, abettors and conspirators guilty as principal offenders. Section 16 of the Act on the other hand creates offences in relation to directors and employees of financial institutions who fail to make necessary reports or destroys records relating to international transfer of funds to the CBN and SEC or carries out transactions relating to international transfer of funds under false identity. Such a person may be liable to between 2 and 3 years while in the case of a corporate offender, it may be liable to a fine of between N1,000,000 and N25,000,000. Interestingly, the Act makes corporate bodies criminally liable and where a body corporate is convicted, the court may order that such body corporate shall be wound up and all its assets and properties forfeited to the Federal Government. Again, the Federal High Court shall have exclusive jurisdiction.

6.2.4 The SEC Anti-Money Laundering/Combating Financing Terrorism Compliance Manual for Capital Market Operators

This Regulation has copious provisions on terrorist financing red flags, i.e., symptoms and signs to look out for and places enhanced duties and obligations on financial institutions and their employees to monitor and make necessary reports. The red flags include persons involved in a transaction share an address or phone number particularly when the address is also a business location or does not seem to correspond to the stated occupation; securities transaction by a non-profit or charitable organization for which there appears to be no link between the stated activity of the organization and other parties to the transaction; large volumes of securities transactions through a business account where there appears to be no logical business or other economic purpose for the transfers, particularly when this activity involves designated high-risk locations; the stated occupation of the clients is inconsistent with the type and level of account activity; multiple personal and business accounts or the accounts of non-profit organizations or charities that are used to collect and channel securities to a small number of foreign beneficiaries; or where employee exhibits a lavish lifestyle that cannot be justified by his/her salary, refuses to comply with operating guidelines or is reluctant to take vacation. The only snag about these regulations is the high risk of interfering with personal liberties especially privacy rights because

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94 Act No. 11 of 2011.
95 S. 19 of the Act.
96 S. 20 of the Act.
97 SEC Regulations No.1, 2011. The Guidelines for Anti-Money Laundering Combating Financing of Terrorism for the Insurance Industry has similar provisions even though the arrangement of that Regulations appear to be haphazard.
research has already shown that as the war against terrorism tightens, human rights and personal freedoms become sacrificial lambs.\textsuperscript{98}

7. Conclusion
There is a very close nexus between terrorism and national security. If security is defined as a state of being secure, free from danger, safe, stable, confident and assured, then terrorism is the exact opposite of security because terrorism encapsulates a state of fear and insecurity characterized by instability and lack of confidence in the ability of the State to provide the most basic welfare needs of the citizens, one of which is security of life and property. There can be no security of life and property in a state of terror because terror engenders insecurity. On the other hand, there can be no development in a state of terror and insecurity because security of life and property is what engenders growth and envelopment.

We think that the effect of the Terrorism Prevention Act is to domesticate virtually all the international and regional Conventions on terrorism to which Nigeria is a signatory. Despite few noticeable lapses, Nigeria’s legal regime for dealing with terrorism is very robust and can in fact, compare with any other regime in the world. The Terrorism Prevention Act appears to be a consolidation statute but it has created problems of its own in not expressly repealing relevant parts of other laws or giving directions on its relationship with those other laws. The Act appears to have been hastily passed. We think that the attitude of the authorities has been to act out of the abundance of caution. The problem right now is not legislation. The problem would lie with the enforcement of the provisions of the law; and more importantly, on how the authorities deal with the fundamental issue of development. We do not appear to have gotten our development paradigm and agenda right. If we get the development agenda and paradigm right, we would not have to grapple with domestic terrorism which is one of the greatest factors militating against Nigeria’s march towards national security and development today.\textsuperscript{99} This development agenda must be founded on education including peace and security education which has been identified as a critical factor for sustainable peace and national development.\textsuperscript{100} On the other hand, a purposive and harmonious interpretation of the provisions of Chapter Two of the Constitution must now be pursued by our courts at all levels.

We prognosticate that unless the political class take urgent steps to redress their insensitivity to the plight of Nigerians by governing according to the dictates of the Constitution and the Will of the people, the collateral damages which their collective stupor have done to national psyche by distorting


\textsuperscript{99}See Nasir Ahmad El-Rufai, “Nigeria: The Challenge of Internal Security and Implications for National Development”, lecture delivered at the Annual Reunion Public Lecture of Obafemi Awolowo University Muslim Graduates Association of Nigeria (UNIFEMCA) on Saturday 19\textsuperscript{th} May 2012. According to El-Rufai, our state of insecurity is a cumulative effect of leadership failure over time and the political class is largely disconnected from the expectations of ordinary Nigerians. P.4.

values and attitudes, the present phase of insecurity and terrorism being witnessed in the country may only be the prologue to mutual national annihilation.