

## **Legal Responses to the Boko Haram Challenge: An Assessment of Nigeria's Terrorism (Prevention) Act, 2011**

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### **Introduction**

The scourge of terrorism has since become a reality of our everyday existence. If some thirty years ago, the exploits of the Con Bendants, Symbionese Liberation Army, Bader Meinhof's Red Brigades, Japanese Red Army, Tupamaros and Sendero Luminoso (or the Shining Path), seemed remote, sporadic or episodic, today, the atrocities of innumerable terrorist groups all over the world especially, Islamic fundamentalists such as Al Qaeda, Talibans and El Shabbab have become commonplace and assumed an eerie permanence on the global landscape so much so that people have now become numb to the successively outrageous nature of terrorist acts perpetrated by these common enemies of humanity. The threat posed to international peace and security by these modern day crusaders of evil is such that the very survival of human civilization might well be in question except and unless decisive action is taken by the international community to arrest the growing incidence of terrorism. This explains the rationale for the adoption by the family of nations of several international anti-terrorism instruments whose signatories are obliged to implement them within their respective legal orders.

Until recently, Nigeria seemed to have been immune to terrorist activities. Indeed, this paper would have seemed grossly out of place if it had been presented say, five years ago. However, the horrendous acts of terrorism wrought in the hands of sundry local dissident forces in the recent past would seem to have effectively put an end to all that. The country has since lost its innocence as terrorist incidents masterminded by MEND, the Boko Haram and some other faceless groups have become commonplace on the nation's landscape with deleterious consequences for our reputation and our erstwhile smug satisfaction that it could not happen here.

The shibboleth of Nigerians being the world's happiest people with tremendous *joie de vivre* and who would, therefore, not embrace suicide missions or any ultra hazardous activities, for that matter, has since proven a great exaggeration. As terrorist incident after terrorist incident occurred in the country, the fact has now been rudely brought home to us that Nigerians are indeed part of the human race and the earlier we came to grips with that reality, the better for all of us.

It is against this backdrop that the Terrorism (Prevention) Act, 2011 needs to be appraised. Accordingly, it is intended in this presentation to examine the extant anti-terrorism law in broad outline before zeroing-in on its salient aspects, particularly the acts that are considered tantamount to terrorism and the sanctions prescribed thereto, especially in light of the

upsurge in terrorist activities, especially masterminded by the Boko Haram. Besides, the effort by the law-maker to strike a balance between human rights protection and the necessity to contain terrorism would be adumbrated before assessing prospects for achieving the intentions and efficacy of the attempt to contain terrorism through the law.

The reaction of the Nigerian authorities by putting in place actions aimed at stemming the rising tide of terrorism and insecurity across the country seems quite understandable and well-intentioned but except the anti-terrorist measures envisaged are properly calibrated and well-focused, in the final analysis, they might be tepid, insufficiently comprehensive, if not downright dysfunctional and counter-productive. However, before coming to a judgment either way, it seems apposite to grasp the essence of the phenomenon and situate terrorism properly within the matrix of internal and external dynamics of societal evolution.

### **Understanding Terrorism: Domestic and International Perspectives**

In simple language, terrorism implies all acts aimed at compelling a person(s) to behave in a manner desired by the terrorist at the pain of threat, intimidation or even death if the victim(s) failed to behave as demanded by the terrorist(s). Furthermore, terrorist acts are usually intended to elicit behaviour which ordinarily might not be in agreement with the will of the victim(s) but targeted at certain politically incorrect ends. Accordingly, illegitimate use of force or threat of same is, to all intents and purposes, a manifestation, one way or another, of terrorism. Furthermore, terrorism feeds on fear and resultant incapacitation by the victim such that the terrorist thereby adorns the garb of impunity and invincibility in the eyes of the victim(s).

In consonance with social contract theories, the transition from the state of nature to the state of civil society was effected by way of agreement among members of society to transfer their natural right of self-preservation through making resort to self-help to the state in consequence of which they can experience a peaceful existence, rest assured of law and order, certainty, predictability in their co-habitation with their neighbours and the rest of society. Accordingly, each and every member of society is guaranteed peace and security in their interaction with other members, with the state wielding its monopoly of force in protecting the common weal.

In line with the liberal democratic tradition, failure by government to afford the people requisite protection from arbitrariness and illegal use of force by criminal elements and social delinquents could quite easily warrant a change of the government through the ballot-box at the next available opportunity. In light of this, however, terrorism should be considered as constituting an affront to democratic praxis and is, therefore, a deliberate and calculated attempt to bring about change in society in an illegal, untoward and illegitimate fashion. Accordingly, terrorism is frowned against by all who espouse a belief in democracy and the rule of law.

Terrorism is tantamount to insurrection and a thinly-veiled attempt to overthrow the status quo. What this means, in effect, is that where and when every member of society is assured of his day in court, there would be no room or justification for terrorist acts. However, denial of justice and resort to terrorist acts by the government itself could well provide much-needed ammunition to forces that do not wish it well and who may now insist on a policy of “fighting fire with fire,” thereby giving rise to the aphorism of one man’s terrorist being another’s freedom fighter. Nevertheless, however justifiable the motives or intentions of the terrorist might be, his actions are vitiated by the methods he employs in fighting his cause. Terrorism is, therefore, a veritable reflection of the saying that the road to hell is paved with good intentions.

The maintenance of international peace and security is a categorical imperative of the contemporary world. In fact, non-use or threat of use of force is today a norm of *jus cogens*, that is to say, a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a norm of similar character.<sup>1</sup> When this is coupled to the rule of *pacta sunt servanda*,<sup>2</sup> that is to say, the requirement to faithfully observe treaty obligations, it becomes self-evident that the international community had no choice but to put in place a series of treaties aimed at containing the ogre of terrorism.<sup>3</sup>

The international consensus against terrorism is motivated by the necessity apprehended by most States to ensure stability and regularity in international intercourse. A situation which encourages forceful change of government or succumbs to the wiles of forces inimical to government by law is, quite simply, untenable in today’s world. The end of the Cold War seems to have encouraged a high level of agreement within the international community regarding the need to wage a global war against terrorism. If during the Cold War it was easy to play one power bloc against the other, that situation no longer exists, more so as the widespread nature of terrorism has confirmed that no country is immune to the deleterious effects of what has, to all intents and purposes, become an international crime, if not indeed a crime against humanity.

The ubiquity of terrorist acts coupled with heightened feelings of self-doubt and insecurity across the world, especially after the attack on the World Trade Center twin towers in New York on September 11, 2001 has forged the anti-terrorism consciousness prevalent among the ordinary people, tourists, traders, students, not to talk of diplomats, government officials and high net worth individuals that seem, more often than not, to be the intended targets of the nefarious actions of terrorist groups. Indeed, the higher the profile of victims of terrorist attacks, the greater the propaganda value of such terrorist action. To recall the observation of Margaret Thatcher, terrorists thrive in the oxygen of publicity and deprivation of publicity would go a long way in incapacitating them.

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<sup>1</sup> See Art. 53, Vienna Convention on the Law of Treaties, 1969.

<sup>2</sup> Art. 26, *ibid.*

<sup>3</sup> *E.g.*, the Convention on the Suppression of Terrorist Bombing, 1997 and the Convention on the Suppression of the Financing of Terrorism, 1999.

The global spread of acts of terrorism, from Dar es Salaam to Nairobi, Bali, Mogadishu, Moscow, London and Kandahar has stirred the human conscience everywhere so much so, that the war against terrorism has now become a universal one and not the concern of any one nation or people. The hydra-headed nature of terrorism has compelled the international community to join hands in arresting the clear and present danger to global peace and social well-being. It is a matter beyond the capability of any one State or group of States, however powerful. Individual state anti-terrorist moves can only result in clipping the local tentacles of what is, to all intents and purposes, a global octopus. The increasing collaboration among law enforcement agencies and security outfits of the States of the world is, therefore, indicative of the growing success of the international community in the effort to arrest this most grievous threat of our time. Notwithstanding, it is apposite to interrogate and evaluate what is being done at the local level to put a halt to the ferocity of terrorist actions through the instrumentality of law in order to have a complete picture of the war against terrorism.

It is instructive that in Nigeria, after a long period of incapacitation and self-doubt, efforts are now being exerted to streamline intelligence-gathering, sever the nexus between crimes like robbery and drug trafficking and terrorism and step up counter-terrorism action by the country's security agencies and bring terrorists to justice by closing whatever lacunae exist in the law pertaining to terrorism. However, it seems apposite to now examine the spectre of terrorism as manifested by the Boko Haram.

### **The Boko Haram Phenomenon<sup>4</sup>**

The *Jammatul Ahlis Sunnah lid Daawa wal Jihad*, otherwise known as Boko Haram emerged on the Nigerian landscape in 2002 when a group of young Islamic fundamentalists denounced the city of Maiduguri in North-east Nigeria as irredeemably corrupt and then moved to Kanama, a village in the neighbouring Yobe state, not too far from Niger, where they set up a separatist community based on rigid Islamic principles. From there, they started canvassing "true" Islamic law, anti-establishment ideologies, under its leader, Mohammed Ali who was later killed in a shootout with the military in December, 2003.

They soon regrouped under a new leader, Mohammed Yusuf who recruited more members, largely from scions of the Northern elite and jobless youths and refugees from Chad. They returned to Maiduguri and started building new structures, offering food, medicine and other benefits to the poor just like the Muslim Brotherhood in Egypt and other parts of the Middle East. The group had, more or less, become a state within a state with its own mosques, cabinet, religious police and farms. They now became known as "the Nigerian Taliban" and reportedly received financial support from *Salafist* elements in Saudi Arabia as well as wealthy

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<sup>4</sup> Cf. A. Walker, What is Boko Haram? Special Report 308, US Institute for Peace, June 2012.

northern Nigerians. In addition, some of their members were known to have had military training in Al Qaeda training camps in Mauritania, Algeria, Mali and Somalia.<sup>5</sup>

From its base in Maiduguri, the Boko Haram quickly spread its tentacles to Bauchi, Niger and other parts of Northern Nigeria and succeeded in infiltrating the ranks of the Borno State Government, having been able to nominate some of its commissioners. Besides, it maintained harsh discipline among its members, frequently rounding up and publicly beheading errant ones and executing daring bank robberies and assault on police stations. All this led to a confrontation with the security forces which resulted in the arrest of Yusuf in July, 2009 and his brutal execution by the Police thereafter which effectively set the Boko Haram on an all-out revenge mission against the Nigerian State.

In June, 2011, the Boko Haram successfully launched a suicide attack against the national Police Headquarters in Abuja. Soon after, in August, 2011, another suicide bomber drove into the UN compound in Abuja, killing 23 persons and wounding many more. The Christmas Day bombing of a church in Suleija, near Abuja heralded new period of fear, insecurity and uncertainty across the country. Since then, almost on a weekly basis, churches, schools, bars and hotels in various parts of Northern Nigeria have been subjected to suicide bombings, armed attacks and all manner of mayhem, so much so that the Boko Haram scourge has now assumed the proportions of a low-intensity armed insurrection, with all the consequences arising therefrom.

Although the security forces have scored some successes in the bid to put a lid on the excesses of the Boko Haram, the day for their being “on top of the situation” still lies further afield. Now, the terrorist group has caught the attention of the international community as the US government only a couple of weeks ago, stopped short of declaring the Boko Haram a Foreign Terrorist Organization (FTO) while the Nigerian government itself has been seeking help from whoever and wherever it can get it. Both ECOWAS, the regional economic community and the African Union (AU), not to forget the UN too, have all been expressing concern on the deteriorating security situation in Africa’s most populous nation. In short, The Boko Haram is, today, a festering sore which is threatening the very survival of Nigeria.

While there is a raging debate within the country on how to cage the Boko Haram, the legal response to the threat posed by the organization warrants re-assessment. There are suggestions at high levels of government, for the creation of special courts for terrorism, declaration of a nation-wide state of war against the Boko Haram and numerous other novel ideas. However, it seems apposite to examine the extant effort to harness the law in the task of confronting the threat of terrorism as represented by the Boko Haram.

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<sup>5</sup> *Id.*

## **An Overview of the Terrorism (Prevention) Act, 2011**

Like other members of the international community, Nigeria has felt obliged to put in place laws that would assist in curtailing the incidence of terrorism. One of such is the Terrorism (Prevention) Act, 2011. It should be stated immediately that one of the motivations for the enactment of the statute was the necessity to implement Nigeria's treaty obligations on terrorism and matters related thereto. The relevant counter-terrorism Conventions include the following:

- (a) Convention on Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973;
- (b) International Convention against the Taking of Hostages, 1979 ;
- (c) Convention for the Suppression of Terrorist Bombing, 1997;
- (d) Convention for the Suppression of the Financing of Terrorism, 1999;
- (e) Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1970;
- (f) Convention for the Suppression the Unlawful Seizure of Aircraft, 1970;
- (g) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971;
- (h) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988;
- (i) Convention on the Making of Plastic Explosives for the Purpose of Identification, 1991;
- (j) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988;
- (k) Protocol for the Suppression of Unlawful Acts against Fixed Platforms Located on the Continental Shelf, 1988;
- (l) Convention on the Physical Protection of Nuclear Material, 1980.

Furthermore, the Act seeks to provide for measures for the prevention, prohibition and combating of acts of terrorism, the financing of terrorism in Nigeria and prescribes penalties for violating any of its provisions. Accordingly, the Act contains 41 sections, arranged into Eight Parts with a Schedule, listing relevant statutes. Part I defines acts of terrorism and related offences while Part II contains provisions relating to terrorist funds and property. Part III is on mutual assistance and extradition and Part IV is on information sharing on criminal matters. Parts V and VI set out investigative and prosecution processes, respectively while Part VII deals with charities and the last Part contains miscellaneous provisions.

## **Some Critical Aspects of the Terrorism (Prevention) Act**

- *Definition of Terrorism*

In defining terrorism, the Act attempts to create a dragnet encompassing sundry acts that are captured. Accordingly, an "act of terrorism" means "an act which is deliberately done with

malice, aforethought and which may seriously harm or damage a country or an international organization” [or] “is intended or can reasonably be regarded as having been intended to unduly compel a government or international organization to perform or abstain from performing any act, seriously intimidate a population, seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization, or otherwise influence such government or international organization by intimidation or coercion...”<sup>6</sup>

More pointedly, an act of terrorism “involves or causes...an attack upon a person’s life which may cause serious bodily harm or death; kidnapping of a person; 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; the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation...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; the release of dangerous substance[s] or causing of fire, explosions or floods the effect of which is to endanger human life; interference with or distribution of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life...”<sup>7</sup> It is instructive that an act or omission in or outside Nigeria which constitutes an offence within the scope of counter-terrorism Protocols or Conventions duly ratified by Nigeria also comes under the ambit of the Act.

Interestingly, disruption of a service when done in the course of a protest does not constitute a terrorist act, provided such an act does not embody any terrorist intention.<sup>8</sup> Whereas associating with others in an organization which engages in participating or collaborating in an act of terrorism, promoting, encouraging or exhorting others to commit an act of terrorism or setting up or pursuing acts of terrorism makes a person liable under the Act, provided such an organization has been duly declared a proscribed organization.<sup>9</sup> However, for the avoidance of doubt, political parties are not to be regarded as proscribed organizations and no-one is to be treated as having committed terrorist acts merely because of his political beliefs.<sup>10</sup> A further safeguard of civil liberties is contained in the provision exculpating any persons for acts committed by such an organization antedating his membership or non-participation in the acts of the organization subsequent to its declaration as a proscribed organization.<sup>11</sup>

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<sup>6</sup> See s. 1(2), (a), (b).

<sup>7</sup> *Id.* (c).

<sup>8</sup> *Id.* (3).

<sup>9</sup> S. 2.

<sup>10</sup> *Id.* (3),(ii).

<sup>11</sup> *Id.* (4).

Furthermore, any person who arranges, manages or assists in arranging or participates in a meeting or an activity which he knows is connected with an act of terrorism; or provides logistics, equipment or facilities for a meeting or an activity which he knows is connected with an act of terrorism; or attends a meeting which he knows is to support a proscribed organization or to further the objectives of a proscribed organization is liable under the Act.<sup>12</sup> Similarly, any person who knowingly, in any manner, solicits or renders support for an act of terrorism or a proscribed organization or an internationally suspected terrorist group is deemed to have committed an offence under the Act.<sup>13</sup> Support here includes incitement to commit a terrorist act; 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.<sup>14</sup>

Also, harbouring or concealment of persons known to have committed or convicted of an act of terrorism or against whom has been issued a warrant of arrest or imprisonment for such an act by any person, whether or not in the armed forces constitutes an offence punishable under the Act.<sup>15</sup>

Another offence under the Act is provision knowingly of training or instruction in the making or use of any explosive or other lethal device or in carrying out a terrorist act to a member of a terrorist group or a person engaging in the commission of a terrorist act.<sup>16</sup> Besides, failure by a person to disclose to a law enforcement officer any information which he knows or believes to be of material assistance in preventing the commission by another person or an organization of an act of terrorism or securing the apprehension, prosecution or conviction of such person for an offence under the Act renders such person liable.<sup>17</sup> However, a person charged for the offence shall not be liable if he can prove that he has reasonable excuse for not making the disclosure.<sup>18</sup> A notable case in point is the lawyer-client privilege.<sup>19</sup>

Obstruction of terrorism investigations through disclosure to another anything that is likely to prejudice a terrorist investigation or interference with material which is likely to be relevant to a terrorist investigation is an offence under the Act.<sup>20</sup> However, it shall be a defence for anyone charged for this offence to prove that he did not know and had no reasonable cause to

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<sup>12</sup> S. 3.

<sup>13</sup> S. 4.

<sup>14</sup> S. 4(3).

<sup>15</sup> S. 5.

<sup>16</sup> S. 6.

<sup>17</sup> S. 7.

<sup>18</sup> *Id.* (2).

<sup>19</sup> *Id.* (3), (4).

<sup>20</sup> S. 8.

suspect that the disclosure was likely to affect a terrorist investigation; or had a reasonable excuse for the disclosure or interference.<sup>21</sup>

In view of the international dimensions of terrorism, it is quite apt that the Act made ample provision for declaring a person a suspected international terrorist by the President on the recommendation of either the National Security Adviser or Inspector General of Police, if he reasonably suspects that the person is or has been involved in the commission, preparation or instigation of acts of international terrorism or is a member of, or belongs to an international terrorist group or recognized as such in conformity with provisions of the Act or he has a link with an international terrorist group and he believes that the person is a risk to national security.<sup>22</sup> It should also be emphasized that a group may be declared an international terrorist group if the group is subject to the control or influence of persons outside Nigeria and the group is reasonably suspected to have been involved in the commission, preparation or instigation of acts of international terrorism or it is listed among groups or entities involved in terrorist acts in any resolution of the UN Security Council or any instrument of the African Union and ECOWAS or considered as such by the competent authority of a foreign State.<sup>23</sup>

In a further bid to squelch terrorism, the Act has provided that any person who, directly or indirectly, provides or collects funds with the intention or knowledge that they will be used, in full or in part, in order to commit an offence in breach of an enactment specified in the Schedule to the Act; or do any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a group of people or to compel a government or an international organization to do or abstain from doing any act is deemed to have committed an offence.<sup>24</sup>

Finally, hostage-taking is an offence under the Act. Thus, any person who knowingly seizes, detains or attempts to seize or detain; or threatens to kill, injure or detain another person in order to compel a third party to do, abstain from doing any act or gives an explicit or implicit condition for the release of the hostage, commits an offence and is liable under the Act.<sup>25</sup>

- *General Penalties for Acts of Terrorism under the Act*

On account of the seriousness of the crime of terrorism, severe penalties have been prescribed for different offences under the Act. The sanctions range from imprisonment between 5 and 20

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<sup>21</sup> *Id.* (2).

<sup>22</sup> S. 9(1).

<sup>23</sup> *Id.* (4).

<sup>24</sup> S. 10.

<sup>25</sup> S. 11.

years and death penalty where terrorist acts result in loss of life. For example, a person who belongs to a proscribed organization or renders support for an act of terrorism or to a proscribed organization shall be liable on conviction to imprisonment for a maximum term of 20 years<sup>26</sup> while participating in a meeting of a proscribed organization or provides or collects funds to be used for terrorist activities or knowingly seizes or detains another or threatens to kill another, all carry a penalty of imprisonment for a maximum of 10 years<sup>27</sup> while anyone who contravenes any regulation made pursuant to freezing of his funds, prevention of his entry into or transit in Nigeria or prohibition of the direct or indirect supply, sale and transfer of arms, weapons, ammunition, military vehicles, etc. is liable to imprisonment for a maximum term of 5 years.<sup>28</sup> However, as earlier stated, the death penalty is envisaged for terrorist acts leading to the death of the victim(s).<sup>29</sup>

It is noteworthy that where a person declared as a suspected international terrorist is a Nigerian citizen other than by birth, such a person may be deprived of his Nigerian citizenship.<sup>30</sup>

- *Penalties Relating to Terrorist Funds and Property*

The Act contains provisions enabling both the National Security Adviser and the Inspector General of Police with the approval of the President to seize any cash where he has reasonable grounds to suspect that the cash is intended to be used for the purpose of terrorism or belongs to, or is held in trust for a proscribed organization or represents property obtained through acts of terrorism.<sup>31</sup> If the cash in question is discovered during a search or arrest, safeguards have been provided in furtherance of due process by way of order of a judge in chambers pursuant thereto.<sup>32</sup> Furthermore, anyone who knowingly solicits, receives, provides or possesses monetary or other property or enters into or becomes involved in an arrangement as a result of which money or other property is made available, or is to be made available, for the purpose of terrorism or for a proscribed organization is liable on conviction to imprisonment for up to 10 years imprisonment.<sup>33</sup>

Financial institutions are obliged to notify the Financial Intelligence Unit within 72 hours of any suspicious transactions relating to terrorism with the confidentiality of such report strictly maintained at the pain of a minimum fine of N5m or imprisonment for 5 years.<sup>34</sup> Besides, any inadvertent breach of this obligation warrants administrative sanction while continuing breach

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<sup>26</sup> Ss. 2(3), 4(1).

<sup>27</sup> Ss. 3,5,6,7,8(1),10 and 11.

<sup>28</sup> S. 9(6).

<sup>29</sup> S. 4(2).

<sup>30</sup> *Id.* (3).

<sup>31</sup> S. 12.

<sup>32</sup> *Id.* (4), (5), (6) and (7).

<sup>33</sup> S. 13.

<sup>34</sup> S. 14.

carries a fine of N5m or 5 years imprisonment for the principal officers of the institution or the defaulting officer.<sup>35</sup>

Dealing in terrorist property by way of concealment, removal from jurisdiction or transfer to another person is punishable with up to 10 years imprisonment<sup>36</sup> while all monies accruing from the property and the property itself may be subject to attachment.<sup>37</sup> Indeed the property may fall into receivership within the pendency of an investigation.<sup>38</sup>

Communication service providers, operators of conveyance such as aircraft, trains, vehicles or vessels are obliged to carry out all directions necessary and proper for the purposes of the prevention or detection of offences or prosecution of terrorists or be liable to a fine of up to N1m or 5 years imprisonment.<sup>39</sup>

### **Enforcement of the Act**

On account of the omnibus nature of the Terrorism (Prevention) Act, its efficacy becomes a matter of paramount importance if its objectives are to be fully realized. Trials of a number of cases involving terrorism have not disclosed full regard for procedural safeguards such as presumption of innocence, right to counsel, fair hearing, etc which are the hallmarks of modern criminal jurisprudence. There is considerable misgiving in certain quarters regarding treatment meted out to detainees accused of terrorist acts, some of whom have since died in incarceration. Admittedly, the situation of awaiting trial detainees in Nigeria is generally less than salubrious; yet, things need not deteriorate to the extent that it would seem the country has abandoned its adversarial prosecution for the inquisitorial or else, the state itself might stand accused of terrorist tactics!

What is most needed in the counter-terrorism crusade is a much improved intelligence gathering capability by the various security outfits in order to outsmart and overwhelm those forces that do not wish the country well. This calls for intensified training, especially in terms of human intelligence, forensic science, data storage and retrieval and general information management. There is an urgent need to review the massive publicity that local media give to spokespersons of terrorist groups under the guise of freedom of information. A lot of work needs to be done to sensitize the media to the security needs and interests of the nation. If a total blackout on terrorist escapades is not feasible, our editors need to exercise greater discretion regarding the undue publicity granted these modern-day enemies of humanity.

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<sup>35</sup> *Id.* (5) and (6).

<sup>36</sup> S. 15.

<sup>37</sup> *Id.*, s. 16.

<sup>38</sup> S16 (3).

<sup>39</sup> S. 27.

In the final analysis, the law cannot be a cure-all for all acts of malfeasance. True, humankind is yet to invent a better or more optimal instrument of social control but then, the limits of law must be fully grasped. Law without effective enforcement agencies amount very much to an oxymoron. A lot of resources need to be channeled to the security agencies in the form of helicopters, cruisers, hi-tech security cameras set up at strategic locations, eavesdropping equipment, close circuit TV in public buildings, etc. It is only after requisite materials are in place that the law can have reasonable prospects of achieving its goal of enhancing human interaction in an atmosphere of social equilibrium, peace and national security.

## **Conclusion**

The enactment of the Terrorism (Prevention) Act, 2011 is a veritable watershed in law-making in this country. Nigeria has not had such a comprehensive law aimed at clipping the wings of one of the gravest threats to national survival. Just as the customs house is yet to be built that can prevent the export of good examples, occurrences in far-flung corners of the Earth sooner than later develop their own momentum and become reproduced elsewhere, with some mutation but, more often than not, engendering fatal consequences.

Terrorism is one such reality of our time and Nigeria seems to be rising up to the threat. The anti-terrorism legislation recently enacted is very much a step in the right direction. Despite its somewhat convoluted drafting, it stands a good chance of bringing terrorists to heel and ensure that the people live in peace and freedom, without let or hindrance.

Nevertheless, a lot still needs to be done. It seems necessary to reconsider the sanctions prescribed for terrorist activities in the country such as those being carried out by the Boko Haram. While there is considerable revulsion in the country and elsewhere against the death penalty in view of its harshness, inhumanity and failure as a deterrence, it must be admitted that there is also a body of opinion in Nigeria and elsewhere in favour of the view that a drastic disease warrants a drastic remedy. The argument is that since Boko Haram operatives kill without batting an eye-lid, they are themselves undeserving of mercy which they always refuse to show their fellow human beings during their despicable and inhuman actions. Accordingly, the death penalty prescribed for terrorist activities which entail loss of life would seem quite understandable.

The idea of creating special courts to try terrorist suspects in order to obviate the infelicities of Nigeria's notoriously slow grinding judicial process-a sort of military tribunals dressed in civilian garb-might not go down well with many on account of the inevitable curtailing of civil liberties by the fast-track judicial process envisaged in these new-fangled special courts. However, perhaps, critics might just have to understand the predicament of a

country caught in a dilemma between necessity and fidelity to fair hearing and other accustomed procedural safeguards.

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