

## Terrorism and Human Rights Protection: Nigerian Perspective\*

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### Abstract

Worldwide, terrorism of all nature is increasingly taking an upper hand. The major aim of every elected leadership is to secure the lives and properties of citizens of the country. Terrorism therefore makes this mission impossible to achieve. For the nation then to achieve its aim there needs to be an all-out war against terrorism. However, should this all-out war against terrorism impede the enjoyment of the fundamental rights of the citizens of such nations? This therefore is what we are looking at in this work. This work seeks to delineate the nature of human rights and then discussed some specific human rights that face challenges in the fight against terrorism. At the end, the work suggests that though terrorism is a crime that should be eradicated, caution should be taken to ensure that human rights abuses are not recorded for when this is the issue discontent may arise giving rise to uprising or even a violation of the Constitution.

### Introduction

In most if not all parts of the world, acts of terrorism have been on the increase. Consequently, most states are enacting new laws to confront this menace of violence. In doing so, some overlook the constitutional provisions on human right in their bid to curb terrorism and other violent crimes. In this work, we shall take a look albeit slightly at the nature of human rights. From there we shall also move to those rights that are most likely to be affected by laws aimed at preventing the wide spread of terrorism. Finally, we shall draw our conclusion that despite the need to prevent terrorism, there is a much vital need to prevent the abuse of rights enshrined in the constitution for a violation of same is an invitation to anarchy in any democratic state.

### Nature of Human Rights

Human rights as we understand them are universal values and legal guarantees which aim at protecting individuals and in some cases groups against actions and omissions primarily by governments or governmental agencies which often times interfere with fundamental freedoms, entitlements and human dignity. The full analysis of human rights includes respect for, protection and in some cases fulfillment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal<sup>88</sup> or in other words, they avail naturally to all human beings. They are also interdependent and indivisible. They are "commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being."<sup>89</sup> International human rights law is reflected in a number of core international human rights treaties and in customary international law<sup>90</sup>. Human rights are therefore conceived as universal and egalitarian. These rights may exist as natural rights or as legal rights, in both national and international law. The doctrine of human rights in international practice, within international law, global and regional institutions, in the policies of states and in the activities of non-governmental organizations, has been a cornerstone of public policy around the world<sup>91</sup>. Hence Beitz observes that "if the public discourse of peacetime global society can be said to have a common moral language, it is that

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<sup>88</sup> It is said that human rights are universal but then that is just but a view. The truth is that there are various views on human rights. It is pertinent to submit that there are those who hold the naturalist view that human rights are universal. Such people include Thomas Aquinas. There are also those who argue that it is not universal and such groups are commonly referred to as the non-naturalist group of which Marx is a member. Yet there are those who are in the middle who according to Ikenga Oraegbunam "Human Rights: A Jurisprudential Analysis of Theories and Conceptions", **Sacha Journal of Human Rights**, Vol I, No 1,2011, pp102-117 are referred to as the *via medium*.

<sup>89</sup> M. Sepúlveda, et al, **Human Rights: Reference Handbook**, University of Peace Publishing, Belgium, 2004 Pg 34

<sup>90</sup> These treaties include in particular the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. Other core universal human rights treaties are the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Rights of the Child and its two Optional Protocols; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The most recent are the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities and its Optional Protocol, which were all adopted in December 2006. There is a growing body of subject-specific treaties and protocols as well as various regional treaties on the protection of human rights and fundamental freedoms.

<sup>91</sup>C.R.Beitz, **The Idea of Human Rights**, Oxford University Press, Oxford, 2009

of human rights."<sup>92</sup> Despite this, the strong claims made by the doctrine of human rights continue to provoke considerable skepticism and debates about the content, nature and justifications of human rights to this day. Indeed, the question of what is meant by a "right" is itself controversial and the subject of continued philosophical debate<sup>93</sup>. Indeed there has been a raging controversy over whether human rights are universal or not. Many are of the view that it is natural while there are yet opponents of this universality, others yet are in the middle referred to as the *via medium*.<sup>94</sup> Many of the basic ideas that animated the movement developed in the aftermath of the Second World War and the atrocities of the Holocaust, culminating in the adoption of the Universal Declaration of Human Rights in Paris by the United Nations General Assembly in 1948. The ancient world did not possess the concept of universal human rights<sup>95</sup>. Ancient societies had "elaborate systems of duties... conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights"<sup>96</sup>. The modern concept of human rights developed during the early Modern period, alongside the European secularization of Judeo-Christian ethics<sup>97</sup>. The true forerunner of human rights discourse was therefore the concept of natural rights which appeared as part of the medieval Natural law tradition that became prominent during the Enlightenment with such philosophers as John Locke, Francis Hutcheson, and Jean-Jacques Burlamaqui, and it also featured prominently in the political discourse of the American Revolution and the French Revolution. From this foundation, the modern human rights arguments emerged over the latter half of the twentieth century.

The modern sense of human rights can be traced to Renaissance Europe and the Protestant Reformation, alongside the disappearance of the feudal authoritarianism and religious conservatism that dominated the Middle Ages. Human rights were defined as a result of European scholars attempting to form a "secularized version of Judeo-Christian ethics"<sup>98</sup>. Although ideas of rights and liberty have existed in some form for much of human history, they do not resemble the modern conception of human rights.

Human rights may be classified in a number of different ways. At an international level the most common categorization of human rights has been to split them into civil and political rights, and economic, social and cultural rights. Civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in articles 6 to 27 of the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in articles 6 to 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UDHR included both economic, social and cultural rights and civil and political rights because it was based on the principle that the different rights could only successfully exist in combination. In Nigeria, there is a codification of the Human rights provision<sup>99</sup> comprising 14 sections which deals with both life, economic, social, cultural and libertarian provisions. It is noteworthy that the history of human rights in Nigeria started with the 1960 Independent Constitution. In 1979, the rights were guaranteed in the Constitution and since then it occupies a pride of place in our Jurisprudence. With increasingly activist Judges on the bench, human rights have become sacrosanct and a *no go area* for violent, dictatorial and illegal administrations.

### **Specific Human Rights Challenges in the Context of Terrorism and Counter Terrorism in Nigeria**

Terrorism and counter-terrorism affect the enjoyment of human rights. In this section therefore we shall discuss a selection of current and emerging human rights challenges as it affects our Country Nigeria in this era of incidents of terrorism.

#### **1 The Right to Life**

Both international and regional human rights law recognize the right and duty of States/Governments to protect human beings subject to their jurisdiction. Particularly in Nigeria, the first section in Chapter IV deals with the right to life<sup>100</sup>. In practice, however, some of the measures that some States/Governments have adopted to protect individuals from acts of terrorism have themselves posed grave challenges to the right to life. They include "deliberate" or "targeted killings" to eliminate specific individuals as an alternative to arresting them and bringing

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<sup>92</sup> *ibid*

<sup>93</sup> M. Shaw, *International Law* (6th ed.), Cambridge University Press, Leiden, 2008

<sup>94</sup> Oraegbunam, Ikenga K.E, "Human Rights: A Jurisprudential Analysis of Theories and Conceptions", *Sacha Journal of Human Rights*, Vol I, No 1, 2011, pp102-117

<sup>95</sup> M. Freeman, *Human rights : an interdisciplinary approach*, Polity Press, Cambridge, 2011

<sup>96</sup> J. Donnelly, *Universal human rights in theory and practice* (2nd ed.), Cornell University Press, Ithaca, 2003.

<sup>97</sup> M.R. Ishay, *The history of human rights: from ancient times to the globalization era*. University of California Press, Berkeley, 2004.

<sup>98</sup> *ibid*

<sup>99</sup> This is contained in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended

<sup>100</sup> Section 33 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

them to justice<sup>101</sup> and in some cases the “shoot at sight” order often handed down by our security chiefs to their subordinates in some cases of terrorism or other violent crime. Still in some countries, there are such orders as “shoot first and ask questions later”<sup>102</sup>. These orders form the gravest danger to the lives of individuals in any state where they exist. These are used to imply a new approach and to suggest that it is futile to operate inside the law in the face of terrorism. The Human Rights Committee has stated that targeted killings should not be used as a deterrent or punishment and that the utmost consideration should be given to the principle of proportionality<sup>103</sup>. It is expected that State/Governmental policies should be spelt out clearly in guidelines to military commanders, and complaints about the disproportionate use of force should be investigated promptly by an independent body. Before any contemplation of resort to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted<sup>104</sup>.

In the context of counterterrorism, the High Commissioner for Human Rights<sup>105</sup> has emphasized the importance of ensuring that the entire law enforcement machinery, from police officers to prosecutors and officers operating detention and prison facilities, operates within the law. She has cautioned that, in the fight against terrorism, extreme vigilance should be applied by those in a position of authority against all forms of abuse of power, and that they should instill a culture of respect for the law above all by those entrusted with its application<sup>106</sup>. As noted by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, “the rhetoric of shoot-to-kill and its equivalents poses a deep and enduring threat to human rights-based law enforcement approaches<sup>107</sup>. However, the Constitution and indeed the Criminal Code in operation in Nigeria<sup>108</sup> already permit the use of lethal force when doing so is strictly necessary to save human life or to prevent the escape of a felon. The directive of “shoot-to-kill” serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that are posed by the relevant threat. This is observable from the mode and manner our law enforcement and security agents invoke accidental killing or “fire for fire” attack that led to the death of the victim or alleged perpetrator of the crime.<sup>109</sup> The Special Rapporteur has further suggested that States that adopt shoot-to-kill policies for dealing with, for example, suicide bombers “must develop legal frameworks to properly incorporate intelligence information and analysis into both the operational planning and post-incident accountability phases of State responsibility.”<sup>110</sup> The Security agents must further ensure that “only such solid information, combined with the adoption of appropriate procedural safeguards, will lead to the use of lethal force.”<sup>111</sup>”

Under international and regional human rights law, the protection against arbitrary deprivation of life is

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<sup>101</sup> This was part of the reason given by the Islamic Militants Boko Haram for increased attacks on Security agencies when they alleged that their leader was extra judicially eliminated. We have also seen cases of death resulting from such indiscriminate killings. One of such was that of an accountant in the office of the Kaduna State Governor who was killed for allegedly driving like a terrorist. See Midat Joseph, Pastor shot at Kaduna Government House dies at 52, *The Leadership Newspaper* of 19 February, 2012 available online at [www.allafrica.com](http://www.allafrica.com) accessed on 26/8/2012

<sup>102</sup> In fact, the General Officer Commanding (GOC) 2 Division, Ibadan, Major General Mohammed Abubakar, told soldiers deployed in the state for the poll to shoot troublemakers if they resisted arrest. See *News Nigeria* available on [www.nigerianewsblog.blogspot.cz](http://www.nigerianewsblog.blogspot.cz) accessed on 23/11/2012

<sup>103</sup> See Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin” (A/HRC/4/26, paras. 74–78).

<sup>104</sup> See A/58/40 (vol. I), para. 85 (15). 52

<sup>105</sup> See “Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, Philip Alston” (E/CN.4/2006/53, paras. 44–54) and “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin” (A/HRC/4/26, paras. 74–78).

<sup>106</sup> *ibid*

<sup>107</sup> “Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, Philip Alston” (E/CN.4/2006/53, paras. 44–54)

<sup>108</sup> Section 33(2) of the 1999 Constitution of the Federal Republic of Nigeria as amended and Sections 281 and 282 of the Criminal Code Act Cap C38, LFN, 2004

<sup>109</sup> Recently, *Punch Newspaper* reported of how a team of Nigerian Policemen descended on them shooting indiscriminately while responding to a distress call. The paper reported that the robbers had long gone before the police responded to their call and without asking any question started shooting them leading to their hospitalization. The victim according to the paper said they were saved by the DPO who ordered them to stop. The essence of this story is that were the victims to have died, the Police would have churned out a report that they engaged daredevil robbers in a shoot-out and killed two of them while others escaped. That would have ended a very dirty story. See *Punch Newspaper* of November 12, 2012.

<sup>110</sup> *ibid*. In Nigeria, when a suicide bomber loses his life before his act could be perpetrated, we do not know whether there could have been another way of disarming him and if probable get further information on the main perpetrator of the act for indeed it is the pay master not the suicide bomber that is utmost importance

<sup>111</sup> See address by High Commissioner for Human Rights, Louise Arbour, “A human rights framework for fighting terrorism”, Moscow State University/University of International Relations, 11 February 2005.

non-derogable even in a state of emergency threatening the life of the nation<sup>1</sup>. Unfortunately the Nigerian Constitution provided a leeway for the security agencies to embark upon wanton killings all in the name of public safety.<sup>2</sup> To comply with international human rights law, any governmental policy that allows the use of lethal force must, therefore, fall within those narrow cases in which the deprivation of life cannot be considered arbitrary. In order to be considered lawful, the use of lethal force must always comply with the principle of necessity and must be used in a situation in which it is necessary for self-defence or for the defence of another's life<sup>3</sup>. It must always comply with the principle of proportionality, and non-lethal tactics for capture or prevention must always be attempted if feasible. In most circumstances, law enforcement officers must give suspects the opportunity to surrender and employ a graduated resort to force. "The State's legal framework must 'strictly control and limit the circumstances' in which law enforcement officers may resort to lethal force<sup>4</sup>."

## 2 Right to Dignity of Human Person

The right to dignity of human person prohibits all forms of cruel treatment, torture and other inhuman or degrading treatment or punishment absolutely under the domestic laws of Nigeria<sup>5</sup> and under international law. It is a peremptory norm—or a norm of *jus cogens*—and is non-derogable even in states of emergency threatening the life of the nation under international and regional human rights treaties<sup>6</sup>. It is imperative to state that the prohibition of torture and other cruel, inhuman or degrading treatment does not yield to the threat posed by terrorism or to the alleged danger posed by an individual to the security of a State<sup>7</sup>. In practice, however, States have often adopted policies and methods to confront terrorism that, in effect, circumvent and undermine this absolute prohibition<sup>8</sup>. In Nigeria, although the use of torture and other cruel, inhuman or degrading treatment to

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<sup>1</sup> Both the International Covenant on Civil and Political Rights (art. 6) and the American Convention on Human Rights (art. 4) prohibit the arbitrary deprivation of life, whereas article 2 of the European Convention states that no one shall be deprived of life intentionally and that the use of force which is no more than absolutely necessary may be used in defence of any person from unlawful violence. See also Human Rights Committee, views on communication N° 146/1983, **Baboeram v. Suriname**, 4 April 1985: "The right enshrined in this article is the supreme right of the human being. It follows that the deprivation of life by the authorities of the State is a matter of the utmost gravity. This follows from the article as a whole and in particular is the reason why paragraph 2 of the article lays down that the death penalty may be imposed only for the most serious crimes. The requirements that the right shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State" (A/40/40, annex X, para. 14.3).

<sup>2</sup> See Section 45 of the 1999 Constitution of the Federal Republic of Nigeria as amended. This section provides for the restriction on and derogation from fundamental rights. It therefore made right to life derogable provided it is taken in the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons. It is therefore clear that when an action which has all the elements of murder takes place, it can be rationalized on the ground that such action was taken for the purposes contained in the said Section 45 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

<sup>3</sup> This is also part of the defence of self defence in our Criminal Code under Sections 283 -285. See also Sections 285 of the Criminal Code Act, Cap C38 Laws of the Federation of Nigeria, 2004. This defence can only be invoked in accordance with the provisions of the Code which classified it into two versions, that for the initial aggressor and that for the victim.

<sup>4</sup> See E/CN.4/2006/53, para. 48. On the strict requirements regarding the use of force under the European Convention on Human Rights, see, *inter alia*, European Court of Human Rights, **McCann v. United Kingdom**, No 18984/91, Judgement of 27 September 1995.

<sup>5</sup> Section 34 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

<sup>6</sup> See articles 7 and 4 (2) of the International Covenant on Civil and Political Rights, articles 3 and 15 (2) of the European Convention on Human Rights, articles 5 and 27 (2) of the American Convention on Human Rights, article 5 of the African Charter on Human and Peoples' Rights, and common article 3 of the four Geneva Conventions. See also Inter- American Commission on Human Rights, "Report on the situation of human rights of asylum seekers within the Canadian refugee determination system" (OEA/Ser.L/V/II.106, Doc. 40 rev., para. 118).

<sup>7</sup> See Committee against Torture, views on communication N° 39/1996, **Tapia Páez v. Sweden**, 28 April 1997: "[T]he test of article 3 of the Convention is absolute. Whenever substantial grounds exist for believing that an individual would be in danger of being subjected to torture upon expulsion to another State, the State party is under obligation not to return the person concerned to that State. The nature of the activities in which the person concerned engaged cannot be a material consideration when making a determination under article 3 of the Convention" (A/52/44, annex V). See also, Human Rights Committee: "The State party should recognize the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment, which in no circumstances can be derogated from. Such treatments can never be justified on the basis of a balance to be found between society's interest and the individual's rights under article 7 of the Covenant. No person, without any exception, even those suspected of presenting a danger to national security or the safety of any person, and even during a state of emergency, may be deported to a country where he/she runs the risk of being subjected to torture or cruel, inhuman or degrading treatment" (A/61/40 (vol. I), para. 76 (15)).

<sup>8</sup> For instance, Section 28 of the Terrorism Prevention Act made provisions for detention without allowing the person detained access to Family members within the first 24 hours.

elicit information from terrorist suspects is absolutely prohibited<sup>1</sup>, yet the use of torture, the abuse of human dignity and the right of persons by security agencies in their fight against terrorism is the norm rather than the exception. It is not in doubt that many persons right to dignity of their persons have been flagrantly and wantonly violated all in the concerted efforts to eradicate the menace of terrorism<sup>2</sup>. The provisions of our statute books seek to ensure adequate protection for this right but in reality the reverse is the case. Complaints have not ceased to flood in, in relation to the ways and manners members of the Joint Task Force operating in the Northern Part of the Country have so abused this particular provision<sup>3</sup>. In most cases, people are directed to hands up whenever they are passing by check points manned by such officers. Any violation of this arbitrary rule will result in the individual being violently molested<sup>4</sup>. Further, it is on record that motorists plying such routes are violently treated including beating up and roughly manhandled<sup>5</sup>. Apart from the abuse to the dignity of the persons when not under any legal arrest, such abuses abound also even when the individual is under a legitimate arrest<sup>6</sup>. Most of the information obtained by our security agencies are information obtained by way of torture and coercion contrary to laid down procedures of interrogation.<sup>7</sup> The rights enshrined in the International Covenant on Civil and Political Rights apply to all persons who may be within a State party's territory and to all persons subject to its jurisdiction<sup>8</sup>. The implication is that a State party must respect and ensure the rights laid down in the Covenant—including the absolute prohibition of torture—to anyone within its power or effective control, even if not situated within its territory. The Constitutional provision is explicit and it goes further to prevent holding in slavery or servitude.<sup>9</sup>

The Nation must ensure that the full range of legal and practical safeguards to prevent torture is available, including guarantees related to the right to personal liberty and security, and to due process rights.<sup>10</sup> These are, for instance, the right for anyone arrested or detained on criminal charges to be brought promptly before a judge and to be tried within a reasonable amount of time or to be released<sup>11</sup>. They also include the right promptly to challenge the lawfulness of one's detention before a court<sup>12</sup>.

The international human rights legal framework as well as the Nigeria National Legal Framework requires that any deprivation of liberty should be based on grounds and procedures established by law, that detainees should be informed of the reasons for their detention and promptly notified of the charges against them, and that they should be provided with access to legal counsel.<sup>13</sup> In addition, prompt and effective oversight of detention by a judicial officer must be ensured to verify the legality of the detention and to protect other fundamental rights of the detainee. Even in a state of emergency, minimum access to legal counsel and prescribed reasonable limits on the length of preventive detention remain mandatory<sup>14</sup>. Moreover, national authorities have an obligation to prevent human rights abuses and to actively investigate and prosecute any allegation of practices which may involve the transfer or detention of individuals in a manner inconsistent with their obligations under international law. It is not in doubt that in this era of terrorism, a charge of terrorism albeit at the security agencies' office automatically precludes the suspect from enjoying any right in the Constitution<sup>15</sup>. In some cases, the security agents

<sup>1</sup> Section 34 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

<sup>2</sup> Amnesty International Annual Report for 2012 available online at [www.amnesty.org/en/region/nigeria/report-2012#section-15-4](http://www.amnesty.org/en/region/nigeria/report-2012#section-15-4)

<sup>3</sup> Amnesty International Annual Report for 2012 available online at [www.amnesty.org/en/region/nigeria/report-2012#section-15-5](http://www.amnesty.org/en/region/nigeria/report-2012#section-15-5)

<sup>4</sup> *ibid*

<sup>5</sup> *ibid*

<sup>6</sup> Amnesty International Annual Report for 2012 available online at [www.amnesty.org/en/region/nigeria/report-2012#section-15-3](http://www.amnesty.org/en/region/nigeria/report-2012#section-15-3)

<sup>7</sup> *ibid*

<sup>8</sup> Art 2(1) International Covenant on Civil and Political Rights

<sup>9</sup> Section 34 1999 Constitution of the Federal Republic of Nigeria as amended; See also *Uzoukwu & ors v Ezeonu II & ors*(1991) 6 NWLR Pt. 200@ 78

<sup>10</sup> See Sections 35 and 36 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

<sup>11</sup> Section 36 the 1999 Constitution as amended

<sup>12</sup> *ibid*

<sup>13</sup> See also Section 35 1999 Constitution as amended

<sup>14</sup> A state of emergency has been defined as a governmental declaration that may suspend some normal functions of the executive, legislative and judicial powers, alert citizens to change their normal behaviors, or order government agencies to implement emergency preparedness plans. It can also be used as a rationale for suspending rights and freedoms, even if guaranteed under the constitution. Such declarations usually come during a time of natural or man made disaster, during periods of civil unrest, or following a declaration of war or situation of international or internal armed conflict. It is noteworthy still that a declaration of emergency can only be made in accordance with the constitution and any such declaration which offends the provisions of the constitution will be null and void subject to the extent of its inconsistency with the constitution.

<sup>15</sup> In one instance, this author went to a police station for purposes of securing a person alleged to have been involved in a bombing incident. This author was told by the security agent to leave the office in his own best interest as the suspect is accused of terrorism and that they, the security agents have powers to deal with the person as much as they wish.

will also prevent the suspect from having access to his lawyer, doctor or even family members.<sup>1</sup> This is another form of torture as same may likely lead the suspect to agree to make a confessional statement just to leave the detention ground. At the end of the day, such a suspect comes to the court to deny such confessional statements<sup>2</sup>. In such circumstance, the court conducts a trial within trial and if same is found not to be voluntary, then the suspect may be discharged for want of credible evidence implicating him in the crime as most crimes are decided on the strength of confessional evidence<sup>3</sup>. At the end it amounts to a total waste of money, time and resources.

### 3 Freedom from Discrimination

In recent times in Nigeria, there is almost this generalization that all Hausa/Fulani Muslims are members of *Boko Haram*. Yet this is far from being the truth. The Nigerian Constitution<sup>4</sup> made it very clear that nobody shall be discriminated against by reason of sex, origin, disability, religion, political opinion etc. Yet, many have reacted adversely in the presence of any Hausa- Fulani Muslim or any one from the Northern part of the Country<sup>5</sup>. In Nigeria, there is now this *Hausaphobia* hence the moment an Hausa man is seen there is an immediate perception that he has a bomb planted somewhere on him. This has led security agents to clamp down on some classes of person. Indeed in Nigeria, particularly in Borno State there have been series of allegations against the Special Joint Task Force that most of the corpses of alleged terrorists they have been parading are actually innocent people whose only crimes are that they are Hausa- Fulani Muslims people<sup>6</sup>. This also applies in the Niger Delta where a majority of their youths are labeled militants and summarily executed by the Joint Task Force Team<sup>7</sup>. It is therefore a burden for all those who belong to a certain class of people to be labeled terrorists just because elements of their population participate in such<sup>8</sup>. It is therefore pertinent that the government should ensure that such discrimination is not practiced against its citizens as the Constitution has protected every citizen from discrimination on whatsoever ground. It is here that due process and judicial scrutiny is required. It is also part of the International Law provisions that no person shall be discriminated against. It is therefore very surprising when security operatives swoop on a group of people and violently and wantonly abuse their rights to freedom from discrimination or even the right to life solely because they belong to a particular religion, sex or tribe. Yet still, the attitude of our security agencies regarding cases of terrorism is a clear pointer to the fact that there exists a great deal of discrimination against them on the ground of their tribe and religion. The Law frowns at it and we should not because we want to win the fight against terrorism discriminate against the citizens who ordinarily have their rights protected. Adequate measures should be put in place to ensure that such acts of discriminations do not affect the general psyche of the society.

### 4. Freedom from abuse of the Liberty and Security of the person

All persons are protected against the unlawful or arbitrary interference with their liberty<sup>9</sup>. This protection is applicable in the context of criminal proceedings, as well as other areas in which the government might affect the liberty of persons. In practice, as part of their efforts to counter terrorism, governments have adopted measures

<sup>1</sup> Suspects awaiting trials in Nigeria's detention for all terrorism related offences were thrown into more confusion with the IGP's pontification that there is no existing Law under which to try them. This goes to show the trauma such people go through even in the existence of constitutionally guaranteed rights to fair and speedy trial. See M. Bashir and R. Mutum, "Why We Have Not Taken Boko Haram Suspects to Court – IGP", Daily Trust of 20 November 2012

<sup>2</sup> "Boko Haram: SSS Denies Extracting Statement From Suspect Through Torture", Leadership of February 8, 2012 available online at [www.leadership.ng](http://www.leadership.ng) accessed on 26/11/12. See also Section 29 of the Evidence Act, 2011 which states that a confessional statement will not be admissible if it offends subsection 2 (a) and (b). Note also that subsection 5 thereof defines oppression as including torture, inhuman or degrading treatment and the use of threat or violence whether or not amounting to torture.

<sup>3</sup> See Section 28(2B) and (3) of the Evidence Act, 2011

<sup>4</sup> Section 42 of the 1999 Constitution of the Federal Republic of Nigeria as amended

<sup>5</sup> The killings perpetrated in Jos Plateau State has been placed at the door step of people from the Hausa/Fulani origin.

<sup>6</sup> Senator Ibrahim, "Boko Haram: 'Security agencies killed 5,000 in one day' The Sun of November 9, 2012 available online at [www.sunnewsonline.com](http://www.sunnewsonline.com) accessed on 11/11/2012

<sup>7</sup> "AGGE SIX: Puzzle, fury over JTF killing of suspected Sea Pirates", The Nation of July 5 2012 available online at [www.thenationonline.net](http://www.thenationonline.net) accessed on 23/11/2012

<sup>8</sup> Bala Abdullahi of the Civil Society Forum in Kano says, "We have seen an unprecedented rise in rights violations this year. It seems to continue with impunity. We are trying to draw political leaders' attention to this but they refuse to meet us." Anyone thought rude is made to do painful exercises known as "frog-jumps". Others are forced to roll in the gutter. "I'd rather live under Boko Haram if this is how it goes," says a university teacher. Curfews are imposed without warning and shops are then broken into, often—it is thought—by soldiers. People forced to abandon motorbikes at the scene of an explosion are often arrested as suspects when they return to pick them up. Following an Easter Sunday bombing in Kaduna, when 38 people were killed, the survivors, nearly all of them motorbike drivers, had to pay hefty bribes to retrieve their bikes. See The Economist of September, 29, 2012 available online at [www.economists.com](http://www.economists.com) accessed on 23/11/2012.

<sup>9</sup> Section 35 of the 1999 Constitution as amended.

which have an impact on the liberty of persons, such as: pretrial procedures for terrorism offences, including provisions concerning bail and the remand of persons in custody awaiting trial; pretrial detention (detention before laying a criminal charge against a person for the purpose of further investigating whether that person was involved in the commission, or assisted in the commission, of a terrorist offence)<sup>1</sup>; administrative detention (detention to prevent a person from committing, or assisting in the commission of a terrorist offence); control orders (imposing conditions on a person, short of detention, to prevent that person from committing, or assisting in the commission of a terrorist offence, and compulsory hearings (detention and compulsory questioning of a terrorist suspect, or non-suspect, to gather intelligence about terrorist activities)<sup>2</sup>.

In its efforts to counter terrorism, a State may lawfully detain persons suspected of terrorist activity, as with any other crime<sup>3</sup>. It is however suggested that if a measure involves the deprivation of an individual's liberty, strict compliance with national and international and/or regional human rights law relating to the liberty and security of persons, the right to recognition before the law and the right to due process is essential. Any such measures must, at the very least, provide for judicial scrutiny and the ability of detained persons to have the lawfulness of their detention determined by a judicial authority. Adherence to due process and the right to a fair hearing are essential for the proper safeguarding of a person's liberty and security.

## 5 Right to a Fair Trial

Guaranteeing due process rights, including for individuals suspected of terrorist activity, is critical for ensuring that anti-terrorism measures are effective and respect the rule of law. The human rights protections for all persons charged with criminal offences, including terrorism-related crimes, include the right to be presumed innocent, the right to a hearing with due guarantees and within a reasonable time, by a competent, independent and impartial court of law or tribunal, and the right to have a conviction and sentence reviewed by a higher tribunal satisfying the same standards<sup>4</sup>. It should be noted that fair hearing within a fair trial connotes trial and investigations conducted according to all rules formulated to ensure justice.<sup>5</sup> Fair trial therefore connotes all the provisions as contained in Section 36(6) of the Constitution<sup>6</sup>. International humanitarian law provides for substantially similar protections for the trial of persons in the context of armed conflicts.<sup>7</sup> Article 14 of the Covenant<sup>8</sup> aims at ensuring the proper administration of justice and to this end guarantees a series of specific rights, including that all persons should be equal before the courts and tribunals, that in criminal or civil cases everyone has a right to a fair and public hearing by a competent, independent and impartial tribunal, that everyone charged with a criminal offence should have the right to be presumed innocent until proved guilty according to law, and that everyone convicted of a crime should have the right to have his or her conviction and sentence reviewed by a higher tribunal according to law. It is therefore an aberration that the security agents shall constitute themselves into courts and try suspects and even execute them on grounds that they are terrorists.<sup>9</sup> The use of military and special tribunals or courts to try terrorist suspects may also have a serious impact on due process rights, depending on the nature of the tribunal or court and any restrictions placed on a person facing charges before it<sup>10</sup>. In particular, the circumstances are rare in which a military court will be the appropriate venue to try a civilian. In Nigeria recently, there has been this agitation for establishment of a Special Court to try terrorist offences<sup>11</sup>. In as much as we are not opposed to the

<sup>1</sup> Section 25(3 and 4) of the Terrorism Prevention Act 2011.

<sup>2</sup> Sections 27 and 28 of the Terrorism Prevention Act of 2011

<sup>3</sup> Section 35(a - f) of the 1999 Constitution of the Federal Republic of Nigeria as amended.

<sup>4</sup> Section 36 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

<sup>5</sup> *Ikeanyi v B.C.A. Company Limited*, (2007) 19 WRN, 89, *Ajayi v N.U.R.T.W.*, (2008) 8 NWLR Pt. 1144;429

<sup>6</sup> *Iwuoha v Okoroike* (1996) 2 NWLR Pt. 429 at 234

<sup>7</sup> In July 2007, the Human Rights Committee adopted general comment No 32, revising its general comment on article 14 of the International Covenant on Civil and Political Rights on the right to a fair trial and equality before the courts and tribunals. The revised general comment notes that the right to a fair trial and to equality before the courts and tribunals is a key element of human rights protection and serves to safeguard the rule of law by procedural means.

<sup>8</sup> International Covenant on Civil and Political Rights, See also Section 36 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

<sup>9</sup> This was actually what happened to the Founder of the Boko Haram set when he was openly executed as evidenced by still images of that dastardly act.

<sup>10</sup> See, for example, African Commission on Human and Peoples' Rights, *Media Rights Agenda v. Nigeria*, Communication No 224/98 (paras. 59–62) and Inter-American Court of Human Rights, *Castillo Petruzzi et al. v. Peru*, Judgment of 30 May 1999 (paras. 128–131, 172).

<sup>11</sup> Nigeria President calls for establishment of special court to try terrorism cases, this was the content of the President's message on 16/7/2012 during the swearing in of the present Chief Justice of Nigeria available online at [www.radiionigeriaibadan.com](http://www.radiionigeriaibadan.com) accessed on 16/11/2012. However earlier while responding to its Senate Committee on Police, the Nigerian Senate had earlier rejected such courts. J. Ameh and O Josiah, "Senate rejects special courts to try terrorism" *The Punch Newspaper* of February 22, 2012. Also the present Chief Justice of Nigeria had also lent her voice to those opposed to the establishment of this special court. See M. Onuorah and L. Ughegbe, "Muhktar takes oath, rejects special courts for terrorism" *The Guardian Newspaper* of

establishment of such courts, we wish to warn that such courts should not under any circumstance do away with the constitutional provisions pertaining to fair trial. We say so because the moment we begin to erode our constitutional basis we are constructing a highway to anarchy in a democratic state.

At a minimum, the standards required to ensure fair and clear procedures must include the contents of Section 36 of the Constitution<sup>1</sup> which in our mind ensures the maintenance of the old saying that it is better to free nine thieves than to wrongly convict one innocent man<sup>2</sup>. A situation where the innocent are made to die because the state is fighting terrorism will simply create more terrorists from the population of the injured and disgruntled persons.

## 6 Freedom of Association

The right to freedom of association<sup>3</sup>, like the right to freedom of expression<sup>4</sup>, is a platform for the exercise and defence of other rights, such as political participation rights and cultural rights. Human rights defenders often use this right as a legal basis for their action<sup>5</sup>. It is central to a democratic society. As we have seen in the International scene and other areas such rights are often limited by States in their response to a real or perceived terrorist threat. While the right to freedom of association may be subject to derogations and limitations under most human rights treaties and provisions, clear safeguards must exist to ensure that they are not used to curb the rights of political opposition parties, trade unions or human rights defenders. Indeed, it is on record that the Courts in Nigeria have struck down some offensive paragraphs of the Public Order Act<sup>6</sup> on the ground that they offend the constitutional provisions for freedom of association<sup>7</sup>. It is not doubtful that in a short while the nation may witness a barrage of proscription of certain societies and associations in the name of fighting terrorism<sup>8</sup>. It is therefore very essential that before a society should be proscribed there must be a legislation which will be subject to judicial opinion on the issue where a challenge is raised. As such, the onus must be on the State to show that the measures taken fall within the permissible aims under the national and international human rights law. This implies that States must not claim that the rights-limiting measures taken to preserve national security when they are in fact taken to effectively stifle all opposition or to repress its population. Apart from this, care should be taken to ensure that the principles of necessity and proportionality are respected in all cases; specific safeguards are required to ensure that the limitations to the right to freedom of association are construed narrowly<sup>9</sup>. These measures include ensuring that the principle of legality is respected in the definition of terrorism, terrorist acts and terrorist groups. The courts shall ensure that such definitions are not too wide or vague as such definitions may lead to the criminalization of groups whose aim is to peacefully protect, *inter alia*, labour, minority or human rights. Any decision to proscribe a group or association needs to be taken case by case, treated on their individual merits or otherwise and no two cases shall be given the same treatment. To do so, there shall be need to ensure that the assessment is based on factual evidence of the group's activities, which implies that the government may not make the determination before registration has taken place and before the group has started to exercise its activities<sup>10</sup>. The assessment must be made by an independent judicial body, with full notice to the affected group as well as the possibility of appealing the decision.

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July 17, 2012

<sup>1</sup> 1999 Constitution of the Federal Republic of Nigeria as amended

<sup>2</sup> Genesis 18:23-32, Good News Bible, Swapna Printing Works Ltd, Kolkata, (2004). Better that ten guilty persons escape than that one innocent suffer, says English jurist William Blackstone in Commentaries on the Laws of England (1765-1769) available online at [www.lonang.com/exlibris/blackstone/](http://www.lonang.com/exlibris/blackstone/) accessed on 16/11/2012.

<sup>3</sup> Section 40 of the 1999 Constitution of the Federal Republic of Nigeria as amended. In *Abubakar v A.G Federation*, (2007), 3 NWLR Pt 1022 at 46, the Court was of the view that by virtue of Section 40 of the 1999 Constitution of Nigeria, that every person has a right to assemble freely and associate with other persons and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests and the right cannot be tampered with.

<sup>4</sup> Section 39 of the 1999 Constitution of the Federal Republic of Nigeria as amended

<sup>5</sup> This is because Freedom of association form part of the social rights in a state and when it is sought to be muzzled then democracy in such a state suffers. See also *Abubakar v A.G Federation*, (2007), 3 NWLR Pt 1022 at 46

<sup>6</sup> Cap P42 Laws of the Federation of Nigeria, 2004.

<sup>7</sup> *Inspector-General of Police v All Nigeria People's Party and Others* (2007) AHRLR 179, (CA 2007)

<sup>8</sup> This is because of the avalanche of organizations in existence agitating for religious autonomy especially in the Northern part of the country

<sup>9</sup> Where such constructions are made open and wide, societies may be proscribed solely because they are based in a certain part of the country.

<sup>10</sup> See, for example, *Sidiropoulos and Others v. Greece*, No 26695/95, European Court of Human Rights, Judgment of 10 July 1998: "the Court does not rule out that, once founded, the association might, under cover of the aims mentioned in its memorandum of association, have engaged in activities incompatible with those aims. Such a possibility, which the national courts saw as a certainty, could hardly have been belied by any practical action as, having never existed, the association did not have time to take any action" (para. 46).



## 7 Right to Privacy

Article 17 of the International Covenant on Civil and Political Rights and Section 37<sup>1</sup> prohibits governmental parties from interfering with the privacy of those within their jurisdiction and requires them to protect those persons by law against arbitrary or unlawful interference with their privacy. Privacy includes information about an individual's identity, as well as the private life of the person<sup>2</sup>.

Since 9/11<sup>3</sup>, most States have stepped up security at airports and other places of transit, for instance by collecting biometric data from passengers (such as eye scans and fingerprints), photographs, passport details and the like<sup>4</sup>. States have for a long time provided their security and intelligence services with powers of surveillance, including wiretapping and the use of tracking devices<sup>5</sup>. Some States have significantly extended these surveillance powers in recent years. All of these practices involve the collection of information about a person<sup>6</sup>. They therefore limit the privacy of such persons, as well as raising questions about how the data are to be protected. Interference with privacy also arises in the security screening and searching of persons at airports. Any act which has an impact on a person's privacy must be lawful, i.e., it must be prescribed by law<sup>7</sup>. The implication of this is that any search, surveillance or collection of data about a person must be authorized by law. The extent to which this occurs must not be arbitrary, which in turn requires that the legislation must not be unjust, unpredictable or unreasonable. The law authorizing interference with privacy must specify in detail the precise circumstances in which the interference is permitted and must not be implemented in a discriminatory manner. This does not mean, however, that States enjoy an unlimited discretion to interfere with privacy, since any limitation on rights must be necessary to achieve legitimate purposes and be proportionate to those purposes. Regard must also be had to the obligation of States to protect against the arbitrary exercise of such authorizations. Thus, in *Klass v. Germany*, the European Court of Human Rights stated that it must be satisfied that any system of secret surveillance conducted by the State must be accompanied by adequate and effective guarantees against abuse<sup>8</sup>. Where personal information is collected; the data must be protected against unlawful or arbitrary access, disclosure or use<sup>9</sup>. It is clear in Nigeria that several agencies have now been empowered to collect data; however what is not certain is the privacy of such collected data. It is not uncommon in Nigeria now to see websites selling gsm numbers of private individuals to the public for value even when the owner of such GSM number has no knowledge of who is in possession of his phone number that remains unlisted<sup>10</sup>. It is therefore imperative that such collected data should align itself with the right to the privacy of the individual who owns such particulars.

## Conclusion and Recommendation

We have seen from the above that the fight against terrorism (or counter terrorism measures) in some states affects the constitutionally entrenched rights of individuals. A human rights analysis of the impact of these counter-terrorism measures merits particular consideration in the light of the serious consequences they may have for the individual, as well as for his or her family and community. The question to ask therefore is whether we shall forfeit the human rights provisions and fight terrorism? The answer is a definite no. This is so because suspending the human rights provision amounts to suspending the Constitution and preventing the individuals from enjoying their

<sup>1</sup> Of the 1999 Constitution of Nigeria as amended.

<sup>2</sup> See, for example, Human Rights Committee, Views on Communication No 453/1991, *Coeriel et al. v. the Netherlands*, 31 October 1994 (A/50/40 (vol. II), annex X, sect. D). As to the meaning and extent of "private life" see, for example, *Amann v. Switzerland*, No 27798/95, European Court of Human Rights, Judgment of 16 February 2000, and *Rotaru v. Romania*, No 28341/95, European Court of Human Rights Judgment of 4 May 2000.

<sup>3</sup> September 11<sup>th</sup> of 2001 when Terrorists led by Osama Bin Laden attacked the World Trade Centre in the United States of America. This was the biggest single terrorists attack on the American soil with casualty of over 3000 lives.

<sup>4</sup> See article 17 (1) of the International Covenant on Civil and Political Rights, article 8 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>5</sup> Example the Terrorist Surveillance Program in America used to gather information secretly against suspected terrorists. However United States Court of Appeals for the Sixth Circuit in *American Civil Liberties Union et al., v. National Security Agency / Central et al.*, 493 F.3d 644 (6th Cir. 2007) presided by District Court Judge Anna Diggs Taylor granted summary judgment for the plaintiffs, ruling that the TSP specifically involving "international telephone and internet communications of numerous persons and organizations" within the United States of America, was unconstitutional and illegal, and ordered that it be halted immediately

<sup>6</sup> S24 of the Terrorism Prevention Act

<sup>7</sup> See article 17 (1) of the International Covenant on Civil and Political Rights, article 8 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 11 (2) of the American Convention on Human Rights.

<sup>8</sup> *Klass v. Germany*, N° 5029/71, European Court of Human Rights, Judgment of 6 September 1978, para. 50

<sup>9</sup> Compare this with the FRSC and GSM providers registration of users and as well as the NIMC data collection. We also have the Police BCMR data collection of all vehicle owners. Are these information collected not a breach of the right to privacy especially when the person submitting the information has no control over who sees such data?

<sup>10</sup> For example, these websites offer gsm phone numbers for sale to the public, [www.ozbulksms.com](http://www.ozbulksms.com), [www.nairaland.com](http://www.nairaland.com), [www.globalreachout.com](http://www.globalreachout.com)

rights. It should be noted that the Constitution is supreme and remains so to the provisions of any other law and since such is the case, no law can validly suspend the provisions of the Constitution as we have them now. It therefore becomes clear that the violations we have are unconstitutional. Such violations therefore will likely create a back lash with a larger number of the society being bitter and angry which said anger will be turned against the state thereby creating a more violent terrorist activity that may completely destroy the country.

It is therefore our suggestion that no matter what, the entrenched rights should be respected in spite of the fight against terrorism. To achieve this, the Law needs to have an upper hand instead of the security agencies having the upper hand. The Laws should be made to matter and the courts must at all times not fall prey to the intimidating ploy of the security agencies that such people are better dead and therefore has no iota of rights. The Courts shall remain resolute on the maxim or law that an accused person is presumed innocent in every trial until convicted and must also respect and enforce the constitutional provisions relating to human rights. It is our belief that if such is done, we can still protect the rights of our citizens and at the same time fight terrorism to a standstill using the instrument of Law.