

Terrorism and Human Rights: The Nigerian Experience

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Abstract. Terrorism is a trend that violators worldwide have used to settle scores with nations over supposed grievances. Each act of terrorism comes with attendant human and property losses, intimidations, threats and crimes of all sorts which may sometimes be regretted after so many terrorist attacks and losses.

Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the very rights which the government seeks to protect, such as, the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have serious impacts on the enjoyment of human rights. Terrorism is therefore a global threat to democracy, rule of law, human rights and stability, and since these stand against everything the United Nations stand for, they have since the 11 September, 2001 terrorist attacks in New York and Washington made counter terrorism a way forward in fighting against unnecessary display of anger or grievances. In a bid to fight terrorist attacks by individuals, the State could also indulge in human right breaches which can amount to terrorism.

The need for a proactive approach by the state in the protection of human rights against terrorist acts as well as state counter-insurgency expedition is what this work seeks to pinpoint as human right breaches.

Keywords: Human Rights, Boko Haram, Terrorism, Terrorist Act

1. Introduction

The impact of terrorism is quite enormous, especially as it relates to the real and direct effect on human rights. It has devastating consequences on the enjoyment of the rights which nations deem to be fundamental to the very existence of man such as the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights. Nigeria has had its fair share of experience in the area of terrorism from the time of Usman Dan Fodio's jihad, the Maitasine uprising in the North, Niger Delta Militancy, to the present day Boko Haram.

These uprisings in Nigeria have been done for various reasons ranging from religious, ethnic or political reasons. After independence in 1960, the country operated a regional and quasi-parliamentary system before the civil war in 1967 which almost tore the country apart. Thereafter, crisis witnessed in the country include the Maitatsine crisis of 1981 in Borno State and Kano State, the Tiv and Jukun communal clashes in 1991, the Zango kataf and the Hausa-Fulani in the 1990s, the Kafanchan riot of 1987 where mosques and churches were burnt and lives were lost. In 1990 the city of Kano burst into sectarian violence following the visitation of the German Christian preacher Reinhard Bonnke where the Muslim community opposed the mission of the preacher owing to previous denial of Uztas Ahmed Deebat, a Muslim cleric from South Africa from coming to

the country for the same purpose. In 2001 a serious crisis broke out in Jos, Plateau State which hitherto used to be one of the most peaceful cities in the country. The Ife-Modakeke conflict of January 2000 in the Western part of the country which led to wanton destruction of properties and loss of human lives was also one of numerous crises witnessed. BEGE Ministries an NGO which specializes in Muslim/Christian community relations in West African-Sub-region estimates that, between 1976 and 2009 Nigeria lost over 100,000 of its citizens to religious crises and properties worth billions were destroyed. The Washington Post estimates that since the onslaught of Boko Haram in 2009, over 11,000 lives have been further destroyed.

Between 1980 and 2009 over fifty acute religious crises occurred, but Maitatsine and Boko Haram cases are so fanatic and magnanimous that they deserve mention as special cases resulting in economical, political and social implications. The recent blood bath in Zaria, Kaduna State tagged the Shi'ite crisis was as a result of a clash between the military and the muslim Shi'ite religious sect. While the military claims that the sect tried to assassinate its leader, by barricading the road where he was to pass to pay homage to the Emir, while carrying dangerous weapon and setting up bonfires, the Islamic movement maintains that the military merely attacked defenceless people. According to Sahara Reporters, over 100 lives were lost in the process. This is clearly an addition to cases of terrorism.

2. History of Boko Haram

The origin of *Boko Haram* which in Hausa language means, Western education is forbidden, is traceable to the blistering preaching of Mallam Abubakar Kilakam, an indigene of Niger Republic resident in Maiduguri, Borno State. He propagated the anti-government message under a radical Islamic agenda that led to his arrest and eventual deportation from Nigeria to Niger Republic. The Boko Haram idea or activity continued operating covertly for several years before the emergence of Mohammed Yusuf, through whom it seemed to have met a fertile ground and he capitalized on it

to spread his gospel. He was reportedly killed extra judicially while in police detention. Towards the end of 2008, Borno State Government banned the sect from preaching anti-government messages under a radical Islamic agenda. Boko Haram sect derives its message largely from the ideology of one of the world's terrorist groups Al-qaida. The agitation by Boko Haram for the imposition of Shariah Penal code in the 36 States of the federation and the Federal Capital Territory is primitive and unconstitutional as Nigeria is a secular State that guarantees freedom of religion. The sect strongly advocates for the abrogation of any form of Western education and culture generally. The group which has remained faceless, first clashed with government security forces in a sectarian violence which started up in Wadil, Maiduguri, Potiskum and Bauchi, all in the North Eastern Nigeria. No fewer than 700 lives were lost in the clash in July 2009. Muslims in Nigeria have used every opportunity to either disown or dissociate themselves from Boko Haram insurgents who have also launched attacks on them.

Boko Haram targets include prisons, police stations and military formations, government buildings, newspapers, banks, churches, mosques, politicians and schools. The sect has continued to claim responsibility for the multiple bombings and some kidnappings going on in the country, such as, the Christmas bombing of a Catholic Church in Madala, Niger State in 2011 and the bombing of the United Nations headquarters in Abuja. Other examples include, the murder of 24 secondary school students and a teacher in Yobe, attacks of military base and formations, killings in Brama, abduction of over 200 girls of Government secondary school, Chibok in Borno State, the kidnapping of French family of seven, the Shettima of Borno and a host of others too numerous to mention. All these have brought socio-economic activities almost to a halt in the region and have worsened the already weakened economy of the North. These have brought psychological trauma to the people in the region. The nefarious activities of Boko Haram have received both local and international condemnation. The mention of loss of 11,000 lives since the Boko Haram onslaught

in 2009, is far cry from the number that the media continues to declare till today. The Nigerian government, no doubt treated the cases in the past with kid's gloves as most of the culprits caught, which include high profile personalities connected to the dreadful sect were left off the hook or allowed to escape or to continue roaming the streets as though they were dealing with issues of domestic politics. In spite of the Amnesty Committee set up by government, the activities of Boko Haram continue to grow in lips and bounds from mere sectarian activism to full scale terrorism. The refusal of the faceless group to embrace dialogue with government necessitated the declaration of states of emergency in May 2013 in the three North Eastern States of Adamawa, Borno and Yobe without altering the States' democratic institutions. The emergency rule which was elongated three times under President Goodluck Jonathan's regime did not really address the situation as there are still a number of attacks and abductions now and then. Even the movement of the seat of Nigerian defence from Abuja to Maiduguri by the current administration does not seem to have solved the issue of Boko-Haram in Nigeria. In reaction to this movement of the Defence Head Quarters (DHQ), many Nigerians have asked why Nigeria should rather than protect its DHQ, carry it to a war zone.

Despite the relocation of the Defence Headquarters Abuja to Maiduguri, the presence of the forces have not made any remarkable difference. Killings, maiming and suicide bombings are still the order of the day. This unpleasant trend has sent countless human beings from various geographical locations out of their original abode, thereby, turning them to displaced persons seeking asylum not only to other parts of Nigeria but sometimes across the larger part of the globe. Human displacement has now become unprecedented across the world since most nations now seem to be plagued with one form of crisis or the other.

According to the United Nations' Statistics on displaced persons, over sixty million people are currently refugees seeking asylum in one part of the world or the other. For example from Africa

to Middle East, Europe and America. Not since the world war II has there been a history of such migration. The adventure of such migrants through the Sahara desert or across the Mediterranean Sea have often led them to another death net thereby turning the whole thing to a race from frying pan to fire. This adventure challenge to security is quite alarming and seems to defy both local and international efforts to stem the tides. Although the 1999 Constitution of the Federal Republic of Nigeria guarantees freedom of movement in Nigeria, the new trend is for some states within Nigeria to get rid of people they term to be 'strangers' from their midst. For example, Lagos State gave a matching deportation order to the Ibos, while Edo State sought to evacuate certain internally displaced persons (IDP) to Kano and Jigawa in about 40 buses but for the intervention of their Governor. Even in the northern states of Kaduna and Kano where the culture of begging had been accepted as an Almajiri custom founded on religion, they now seek to evacuate the beggars from their streets to unknown destinations. This is not a good trend for a country that has through its amalgamation of 1914 purportedly agreed to live as one indissoluble country. If this trend is allowed to persist, very soon some States will require persons to possess some form of Visa or Pass to enter into their territory.

Security of the individual is a basic human right and the protection of individuals is, accordingly, a fundamental obligation of Government. States therefore have the obligation to ensure the human rights of their nationals and others living within its territory, by taking positive measures to protect them against the threats of terrorist acts and bringing the perpetrators of such acts to justice.

The human cost of terrorism has been felt in virtually every corner of the globe especially among the member States of the United Nations which Nigeria is one of. The festivals of violent terrorist acts have also been meted out on the United Nations itself which has suffered tragic human losses as a result of these acts. The attack on its office in Baghdad on 19th August 2003 claimed the lives of the Special Representative of the Secretary-General, Sergio Vieira de Mello, and 21 other men and women, and injured over 150 others, some very seriously.

3. Definition of Key Terms:

3.1 Human rights

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involve respect for, and protection and fulfillment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal – in other words, they belong inherently to all human beings – and are interdependent and indivisible. These are moral principles or norms, that describe certain standards of human behavior, and are regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable fundamental rights “to which a person is inherently entitled simply because she or he is a human being. The rights are inherent in all human beings regardless of their nation, location, language, religion, ethnic origin, gender or any other status. They are universal and are therefore applicable everywhere and at every time, and are egalitarian in the sense that they are the same for everyone. They require empathy and the rule of law and impose an obligation on persons to respect the human rights of others. A person cannot be seen to trample on another person’s human right because he seeks to enforce his own rights. They should not be taken away except as a result of due process based on specific circumstances permitted by law. For example, human rights include freedom from unlawful imprisonment, torture, and execution.

The doctrine of human right has been highly influential within international law, global and regional institutions. Actions by states and non-governmental organizations form a basis of public policy worldwide. The basic human rights that cannot be violated under any circumstances are set forth in international human rights documents such as the Universal Declaration of Human Rights, the International Covenant on Economics, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. These documents have established economic, social, cultural, political and civil rights.

In Nigeria, such rights are termed Fundamental Human Rights and are covered by sections 33-42 of the Constitution of the Federal Republic of Nigeria and they protect the right to life, liberty, speech, dignity, free assembly, religion, gender among others. The idea of human rights suggests that “if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights.” 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.

3.2 What is terrorism?

The term terrorism acquired its name from the French word *terrorisme* derived from the Latin word ‘*terrere*’ which both mean great fear, or *terreo* meaning I frighten. The term terrorism is very difficult to define because one man’s terrorism can be another man’s freedom struggle. It was estimated that between 1936 and 1985 at least 115 different definitions were given of the word, “Terrorism”. According to Webster’s dictionary,

Terrorism is the use of violent acts to frighten the people in an area as a way of trying to achieve a political goal.

It is also defined as

The act or practice of terrorizing especially by violence for political purposes by a Government seeking to intimidate a population or by revolutionary seeking to overthrow government or compel the release of prisoners etc.

It has also been defined as

The use of violence against random civilian targets in order to intimate or create generalized pervasive fear for the purpose of achieving political goals.

Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims. In legal terms, although the international community has yet to adopt a comprehensive definition of terrorism, existing declarations, resolutions and universal sectoral treaties relating to specific aspects of it define certain acts and core elements. In 1994, the General Assembly’s Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60 that terrorism includes

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes.

and that such acts

are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.

Ten years later, the Security Council, in its resolution 1566 (2004), referred to terrorism as *Criminal acts, including those against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act.*

Later that year, the Secretary-General's High-level Panel on Threats, Challenges and Change, described terrorism as

Any action that is "intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

States have failed to frame any agreed and exhaustive definition of terrorism, although the term has been used at various occasions governing international law since 1937.

After September 11, 2001, UN Security Council passed various resolutions regarding terrorism, and it was agreed that States shall prevent and suppress the financing of terrorist acts, and shall take necessary steps to prevent the commission of terrorist acts.

But the term has not been defined either in this resolution or in any other document of the Security Council. Some of the acts have been included in terrorism by some of these documents. For instance Article 2(1) of the Draft of the United Nations on a Comprehensive Convention on International Terrorism provides that:

"Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

- (a) Death or serious bodily injury to any person; or*
- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or*
- (c) Damage to property, places, facilities, or systems referred to in paragraph*

By Article 1(b) of this document, terrorism is any act resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population or to compel a Government or an international organization to do or abstain from doing an act.

3.3 What is a terrorist act?

A terrorist act has been defined in the following terms:

- (i) A person is said to commit a terrorist act if;
- (ii) the effect of his actions will be, to strike terror or create a sense of fear and insecurity in the people, or any section of the people; does any act or thing by using bombs, dynamite or other explosive or inflammable substances; or uses such fire-arms or other lethal weapons as may be notified; or poisons using noxious gases or chemicals, in such a manner as to cause, or be likely to cause, the death of, or injury to, any person or persons, or the people; or cause damage to, or destruction of, property on a large scale, or a widespread disruption of supplies or services essential to the life of the community; or threatens with the use of force public servants in order to prevent them from discharging their lawful duties; or
- (iii) commits a scheduled offence, the effect of which will be, or likely to be, to strike terror, or create a sense of fear and insecurity in the people,

- or any section of the people, or to adversely affect harmony among different sections of the people; or
- (iv) commits an act of gang rape, child molestation, or robbery coupled with rape as specified in the Schedule to this Act; or
- (v) commits an act of civil commotion as specified in section 7A.

4. Nigerian Legal Framework for Combating Terrorism

In response to global terrorism, Nigeria has enacted its own legislation to curb terrorism. The Principal legislation is the Terrorism (Prevention) Act, 2011. Section 1(1) provides for what constitutes terrorism. It provides that terrorism occurs when;

A person who knowingly:

- (a) *does, attempts, or threatens to do an act preparatory to, or in furtherance of an act of terrorism;*
- (b) *commits to do anything that is reasonably necessary to promote an act of terrorism; or*
- (c) *assists or facilitates the activities of persons engaged in an act of terrorism;*
- (d) *commits an offence under this Act.*

The Terrorism (Prevention) Act, 2011 (As amended) prescribes various degree of punishment for terrorist act ranging from death sentence to life imprisonment. Other degrees of punishments range from 20 years.

Section 15(1) (2) and (3) of the Economic and Financial Crimes Commission, Establishment Act, 2004 provides as follows:

- (i) A person who willfully provides or collects by any means, directly or indirectly, any money from any person with intent or knowledge that the money shall be used for any act of terrorism, commits an offence under this Act and is liable on conviction to imprisonment for life.
- (ii) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act,

commits an offence under this Act and is liable on conviction to imprisonment for life.

- (iii) Any person who makes funds or financial assets available for use of a terrorist, commits an offence.

The Nigerian Criminal Code treats acts of terrorism as treasonable felony under section 40. Other Acts which deal with acts of terrorism include the Penal Code and the Administration of Justice Act.

It is important to state that there is dearth of cases by Nigerian courts on the issue of terrorism. The three (3) cases that were decided by the Federal High Court, from November 2012 to July 2013 were in respect of EFCC Act 2004 and Criminal Code respectively. The Terrorism Prevention Act 2011 (As amended), is yet to have any decision arising from the Act, though some high profile trials are at the advanced stage at the Federal High Court.

There are two major other convictions to wit: ***Federal Republic of Nigeria v. Charles Tombra Okah and three others.*** Edmond Ebiware the third accused person was convicted pursuant to Section 40(b) of the Criminal Code for failure to disclose an act of treasonable felony in respect of October 1st 2010 bombing, while the trial of other three persons is ongoing as they have an interlocutory appeal is pending at the Court of Appeal.

Another landmark decision that centered on terrorism was ***Federal Republic of Nigeria v. Shuaibu Abubakar and five others.*** Five were convicted pursuant to Section 15(2) of EFCC Act 2004. First to fourth accused convicts were sentenced to life imprisonment; the fifth was discharged and acquitted for want of evidence linking him to any of the charges while the sixth convict was sentenced to ten (10) years imprisonment. The judgement reads thus:

I take into consideration all the evidence that were presented against the 1st to 4th and 6th convicts. These convicts were using explosive devices meant for blasting of rocks for mining on their fellow human beings who have done nothing them. Human life, of any human is sacred. There is no one human life that is more

sacred than the other. These convicts have shown utmost disregard for the human in the most cruel manner. They deserve to be removed from the public if only to save one or two lives. Therefore I sentence the 1st – 4th convicts to life imprisonment. On the 6th convict, Umar Ibrahim, I sentenced him to just 10 years imprisonment for knowingly aiding his brothers for the terrorist activities.

5. The Impact of Terrorism on Human Rights

There is no doubt that terrorism is a great violation and threat to human rights. It violates all the provisions of the international human rights instruments. Most importantly it directly deprives a person of the right of enjoyment of fundamental human rights, especially the right to life, which is the supreme human right as defined in the international convention on civil and political rights and other human rights instruments, relating to freedom, and rule of law. Moreover it destabilizes the states and could cause anarchy and spread of chaos in the society. All the states are therefore obliged to protect these human rights of the individuals from every danger and acts of terrorism by taking appropriate measures in this regard. In addressing the problem of terrorism states are enjoined to distinguish between acts of terrorism and general criminal acts without which it is difficult to address the problem of terrorism. To this end, Nigeria has in addition to the Criminal Code, the Penal Code and the Administration of Justice Act, also enacted the Terrorism (Prevention) Act of 2011.

Every human being is entitled on the basis of being so, to enjoy human rights and concepts recognized under the framework of international law in the shape of major human rights law instruments.

There are ten core international human rights instruments, nine of which are in the form of treaties while one is an optional protocol consisting of other protocols. There is also the Charter of the United Nations and the Universal Declaration of Human Rights. Terrorism is a great threat and a veritable ground for the violation of human rights.

The sole aim of terrorism is the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments as they relate to respect for human rights, the rule of law, rules governing armed conflict and the protection of civilians, tolerance among people and nations, and the peaceful resolution of conflict.

The direct, negative impact of terrorism is its infringement on the enjoyment of a number of human rights, as they relate to the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

The impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the Commission on Human Rights and the new Human Rights Council. Specifically, Member States have set out that terrorism affects human rights in the following ways:

- (a) Threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights;
- (b) Has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic basis of society, and destabilizes legitimately constituted Governments;
- (c) Has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery;

- (d) Has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations or cooperation among States, including cooperation for development; and
- (e) Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security.

International and regional human rights law accordingly makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States' obligations to ensure respect for the right to life and the right to security.

The very sacrosanct right to life, which is protected under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as "the supreme right" because, without its effective guarantee, all other human rights will be without meaning. As such, there is an onus on the part of the State to protect the right to life of every person within its territory and no derogation from this right is permitted, even in times of public emergency. The protection of the right to life includes an obligation on States to take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction. As part of this obligation, States must put in place effective criminal justice and law enforcement systems, such as measures to deter the commission of offences and investigate violations where they occur; ensure that those suspected of criminal acts are prosecuted; provide victims with effective remedies; and take other necessary steps to prevent a recurrence of violations. In addition, international and regional human rights

law has recognized that, in specific circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose lives are known or suspected to be at risk from the criminal acts of another individual, which certainly includes terrorists. Also important to highlight is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist. This, of course, includes terrorist threats.

In a bid to perform their obligations under human rights law to protect the life and security of individuals under their jurisdiction, States have a right and a duty to take effective counter-terrorism measures, to prevent and deter future terrorist attacks and to prosecute those that are responsible for carrying out such acts. Nigeria seems to have failed in its bid to offer such protection in the face of abduction of 276 school girls from Chibok in the North East by Boko Haram, who are yet to be found after almost two years, the kidnappings of nationals, bomb blasts at Madala in Niger State, the Nyanya and Kuje blasts of FCT, Abuja, UN building to mention a few. Some of the victims have ended up being used as wives, converts, suicide bombers and so on. At the same time, the countering of terrorism poses grave challenges to the protection and promotion of human rights of violators. As part of States' duty to protect individuals within their jurisdiction, all measures taken to combat terrorism must themselves also comply with States' obligations under international law, in particular, international human rights, refugee and humanitarian laws.

6. The Relationship between Terrorism and International Humanitarian Law vis-à-vis Human Rights.

International humanitarian law contains a set of rules on the protection of persons in "armed conflict", as that term is understood in the relevant treaties, as well as on the conduct of hostilities. These rules are reflected in a number of treaties, including the four Geneva Conventions and their two Additional Protocols, as well as a number of other international

instruments aimed at reducing human suffering in armed conflict. Many of their provisions are now also recognized as customary international law.

There is no explicit definition of “terrorism” as such in international humanitarian law. However, international humanitarian law prohibits many acts committed in armed conflict which would be considered terrorist acts if they were committed in times of peace. For example, deliberate acts of violence against civilians and civilian objects constitute war crimes under international law, for which individuals may be prosecuted. This rule derives from the fundamental principle of international humanitarian law related to the protection of civilians in armed conflict, namely the principle of distinction. According to this principle, all parties to a conflict must at all times distinguish between civilians and combatants. In essence, this means that attacks may be directed only at military objectives, that is, those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances applicable at the time, offer a definite military advantage. Civilians lose their protection as civilians for such time as they participate directly in the hostilities.

Furthermore, indiscriminate attacks are strictly prohibited according to international humanitarian law. This includes:

- (i) where attacks are not directed at a specific military objective;
- (ii) where you employ a method or means of combat which cannot be directed at a specific military objective, or
- (iii) where you employ a method or means of combat, the effects of which cannot be limited as required by international humanitarian law, and consequently,
- (iv) where attacks are of a nature to strike military objectives and civilians or civilian objects without distinction.

Indiscriminate attacks include disproportionate attacks, which are also prohibited.

International humanitarian law also specifically prohibits “measures of terrorism” or “acts of terrorism.” These prohibitions aim to highlight individual criminal accountability and protect against collective punishment and “all measures of intimidation or terrorism.” Furthermore, “acts or threats of violence, the primary purpose of which is to spread terror among the civilian population” are also strictly prohibited under international humanitarian law. According to the International Committee of the Red Cross, while even a lawful attack on a military objective may spread fear among civilians, these provisions, related to the conduct of hostilities, seek to prohibit “attacks that specifically aim to terrorize civilians, for example campaigns of shelling or sniping of civilians in urban areas.”

7. Some Human Rights Challenges in the Context of Terrorism and Counter-Terrorism

Both terrorism and counter-terrorism affect the enjoyment of human rights. While it is not possible to provide an in-depth analysis of all human rights concerns in the context of terrorism and counter-terrorism measures, a quick identification of some selected human rights challenges will suffice.

7.1 The right to life

Both international and regional human right laws recognize the right and duty of States to protect those individuals subject to their jurisdiction. In practice, however, some of the measures that States 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 them to justice. The Human Rights Committee has stated that targeted killings should not be used as a deterrence or punishment and that the utmost consideration should be given to the principle of proportionality. State 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. In other cases, States have adopted “shoot-to-kill” law enforcement policies in response to perceived terrorist threats. In the context of counterterrorism, the High Commissioner for Human Rights has emphasized the importance of ensuring that the entire law enforcement machinery, from police officers to prosecutors and officers operating detention and prison facilities, operate 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.

As noted by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the rhetoric of “shoot-to-kill” and its equivalents pose a deep and enduring threat to human rights-based law enforcement approaches. Despite the atrocities of the Boko Haram, Amnesty International could not resist the temptation of asking Nigeria to treat the terrorists with dignity and decency. They published a damning report against the Nigerian Military and its fight against the Boko Haram which has left Nigerians with mixed reactions. Among the charges laid against the Nigerian military are: Torture and ill-treatment of detainees; failure to investigate allegations of torture, denying the National Human Rights Commission (NHRC) access to military detention facilities, extra judicial executions of hundreds of detainees, death of hundreds of detainees through starvation, suffocation and sundry ill treatment.

7.2 Challenges to the absolute prohibition against torture

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute 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.

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. In practice, however, States have often adopted policies and methods to confront terrorism that, in effect, circumvent and undermine this absolute prohibition. For example, the use of torture and other cruel, inhuman or degrading treatment to elicit information from terrorist suspects is absolutely prohibited. In the same way, the use in legal proceedings of evidence obtained by torture, whether at home or abroad, and of “secret evidence” put forward by prosecuting other authorities in judicial proceedings, in violation of the principle of non-admissibility of evidence extracted by torture, is prohibited as contained *inter alia* in Article 15 of the Convention against Torture.

7.3 Transfer of individuals suspected of terrorist activity

States have an obligation to conduct any transfer of detainees in a manner which is transparent and consistent with human rights and the rule of law, including the right to respect for a person’s inherent dignity, the right of everyone to recognition before the law and the right to due process. The international human rights 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. 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. 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. Section 35(3) of the Constitution of the Federal

Republic of Nigeria provides that, any person whose liberty is curtailed shall be told within 24 hours, the reason for his arrest or detention and shall be taken before a court within a reasonable time which is assessed by subsection 4 to be two months from date of arrest where the person is not entitled to bail or 3 months where the person has been released on bail.

7.4 Liberty and security of the person

All persons are protected against the unlawful or arbitrary interference with their liberty. This protection is applicable in the context of criminal proceedings, as well as other areas in which the State might affect the liberty of persons. In practice, as part of their efforts to counter terrorism, States have adopted measures 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); 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, including the detention of a person awaiting determination of immigration or refugee status); and compulsory hearings (detention and compulsory questioning of a terrorist suspect, or non-suspect, to gather intelligence about terrorist activities).

7.5 Due process and the 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 tribunal, and the right to have a conviction and sentence

reviewed by a higher tribunal satisfying the same standards. International humanitarian law provides for substantially similar protections for the trial of persons in the context of armed conflicts. Nigeria guarantees the right to fair hearing under section 36 of the Constitution. This presupposes the right to be informed of the charge against him within a reasonable time and be afforded the opportunity to defend himself personally or through a legal practitioner of his own choice. While all these are going on, he is presumed by section 36(5) to be innocent until he is proven guilty. It will therefore amount to an extra-judicial treatment for any person to be tortured or killed before he is adjudged guilty by a court of law in Nigeria. With all these rules in place, one begins to wonder why a place like Uganda would choose to act in flagrant disobedience and violation of human rights to dignity by resorting to degrading treatments such as stripping a woman leader, Zaina Fatuma, naked as a prelude for her arrest. It was reported that Uganda's State security forces had routinely stripped naked, women involved in peaceful protests against President Yoweri Museveni's increasingly intolerant approach to dissenting voices after 30 years of oppressive reign.

The women's movement, civil associations and women leagues and other citizens have condemned this trend which the government continues to adopt despite warnings from other world leaders like Barack Obama that he should resist clinging to power and stop degrading repressions. It is expected that in their forthcoming election on 28th February, 2016, he would still be seeking to reinstall himself. One wonders why he does not also undress men. This barbaric culture must stop.

8. Terrorism and Care for Victims of Human Rights Violation.

Looking at it from a human rights angle, support for victims in the context of terrorism is a paramount concern. While efforts immediately following the events of 11 September 2001 largely failed to give due consideration to the human rights of victims, there is increasing recognition of the need for the international community to take into account the human rights

of all victims of terrorism. In the 2005 World Summit Outcome, for example, Member States stressed the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief.

Similarly, the United Nations Global Counter-Terrorism Strategy reflects the pledge by Member States to

promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation.

In addressing the needs of victims of terrorism, consideration must be given to the distinction between victims of crime, on the one hand, and victims of human rights violations, on the other. While this distinction is not always clear-cut, it is important to note that, in most cases, terrorist-related acts will be addressed as criminal offences committed by individuals and a State will not, in principle, be responsible for the illegal conduct itself. Acts constituting human rights violations are committed primarily by organs or persons in the name of, or on behalf of, the State. In some circumstances, however, the State may be responsible for the acts of private individuals that may constitute a violation of international human rights law. International and regional standards with regard to victims of crime and victims of gross violations of international human rights law and serious violations of international humanitarian law may be instructive in addressing the needs of victims of terrorism. Certain provisions of the universal treaties relating to specific aspects of terrorism are also relevant to addressing the situations of victims of terrorism.

According to the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, victims include *persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.*

Importantly, the Declaration notes that an individual may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim”. The term *victim* may include “the immediate family or dependants of the direct victim, as well as persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

The Declaration further outlines the minimum standards for the treatment of these victims according to several basic principles of justice. These require that victims should:

- (i) Be treated with compassion and respect for their dignity;
- (ii) Be informed about, and have their views and concerns presented at, legal proceedings;
- (iii) Be entitled to proper assistance throughout the legal process;
- (iv) Be protected against intimidation and retaliation;
- (v) Have their privacy protected;
- (vi) Be offered the opportunity to participate in informal mechanisms for the resolution of disputes, including mediation;
- (vii) Enjoy restitution and compensation, as appropriate; and
- (viii) Receive the necessary material, medical, psychological and social assistance.

9. Conclusion

While urging adherence to existing human rights and humanitarian standards in the fight against terrorism and raising the alarm about how the “war on terrorism” is being waged, one should not ignore the challenges posed by transnational networks of persons willing to engage in acts of mass destruction. Nor is it suggested that any adjustment of the existing normative structure is inappropriate. There are opportunities for cooperative, multilateral approaches to this challenge. For example, expanding the jurisdiction of the International Criminal Court to cover a broader range of attacks on civilians

would be a positive development and one fully consistent with the rule of law. Of utmost concern is the fundamental challenge to the rule of law and to the relevance of international human rights and humanitarian law standards posed by the “war of terrorism” as it has been waged to date. The “war on terrorism” need not be conducted a way that would stampede human rights or humanitarian law. Existing standards can accommodate the appropriate balance between liberty, dignity and security, taking into account new realities without abandoning core human rights principle.

Beyond terrorism, Nigeria should provide adequate medical and mental health services to all victims of abduction and other violations. They must provide adequate security and respond spontaneously to issues of abuses. They must also observe the rule of law while dealing with terrorist suspects or detainees. The constitution guarantees that they are innocent until proven guilty. There is no rationale for such detainees to be tortured or killed extra judicially before they exercise their constitutional right to be heard.

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