

Anti-Terrorism and Protection of Human Rights in Nigeria

SAMSON AYOBAMI JOSHUA

Adekunle Ajasin University, Akungba-Akoko, Ondo State, Nigeria

Abstract. The Northern Region- particularly the north east of Nigeria has been under the siege of fundamentalist jihadist sect, otherwise known as Boko Haram since 2009 till date. The entire region has become a theatre of genocide, bloodshed and insecurity. This study attempts to evaluate this obvious challenge to security of lives and property of individual victims vis-à-vis the existing laws enacted to protect the victims. The approach of this study is premised on the argument that terrorism ordinarily amounts to a crime against human rights; and an infraction on fundamental freedoms of individuals by stigmatizing, delegitimizing and dehumanizing the victims. Though, the Nigerian government has responded to the menace of terrorism by enacting anti-terrorism laws, yet these laws have attracted severe criticisms. This study is founded on both primary and secondary data to give it a practical outlook. Consequently, the study discovered that application of some provisions of anti-terrorism laws negatively impact on the promotion and protection of human rights guaranteed under the 1999 Constitution. The study advocates measures to stem the tide of human rights abuse.

1. Introduction

Worldwide, terrorism of diverse nature is increasingly becoming a daily reality. As a result, most states are enacting new laws designed to tackle this menace of violence. However in the course of trying to check the growth of terrorism, some States overlook the constitutional guarantees of fundamental human rights.

The discourse on human rights, human rights promotion and protection, terrorism, preventive counter terrorism and anti-terrorism is fraught with complexities and competing narratives.

The approach adopted by this study is to examine, albeit, to some degree; the nature of human rights. Furthermore, the study shall highlight, within the context of Nigeria, the rights that are most likely to be affected by anti-terrorism laws enacted in Nigeria, and it shall emphasize the argument that, although it is necessary to prevent or combat the menace of terrorism, yet there is a much vital need to prevent abuse of rights guaranteed under the constitution.

2. Conceptual Analysis

2.1 Terrorism and Anti-Terrorism

2.1.1 Terrorism

The Chinese martial tactician, Sun Tzu, long before terrorism assumed an international dimension, succinctly captured the goal of terrorism when he wrote “kill one-frighten ten thousand”.

Terrorism is a hugely polemical concept, with varied and often subjective definitions. Several scholars in the fields of politics, law, sociology, philosophy and anthropology have made attempts at different times to reach a consensus on a universally acceptable definition of terrorism but these had ended by making the concept more controversial.

The fluidity of the concept is premised on the fact that it encompasses all activities of government and non-state actors to intentionally use violence, or the threat of violence against and instrumental target e.g. a person or thing with the objective of sending to a primary target a hint of future violence or threat of violence, so as to coerce the key target, through heightened fear or anxiety to succumb to a demanded political consequence.

The common objection to terrorism as a means of enforcing political (sometimes religious or cultural)

demands reached its highest crescendo in the wake of the al-Qaida attacks on the USA on September 11, 2001. The whole world became abruptly awakened to the emerging threats of transnational terrorism.

2.1.2. Anti-Terrorism

Conversely, anti-terrorism includes those defensive measures used to reduce the vulnerability of individuals and property to terrorist attacks; and also covers use of limited response and control by local military forces.

It is instructive to observe that two approaches to anti-terrorism have emerged in the international forum. First is the law enforcement approach (otherwise known as criminal justice model) and the military approach. The major distinction between the two approaches is that while the law enforcement model emphasizes the necessity to prevent terrorism through intelligence gathering or direct enforcement of the law; or where prevention fails, apprehension, prosecution and punishment of the terrorists; the military model treats the former model as ineffective and impractical. Accordingly, the military approach emphasizes the pursuit of terrorists, with the intent to kill them, except where they surrender.

It is noteworthy that the United Nations Security Council via Resolution 1373 calls on all member states to co-operate with other states in combating terrorism. The resolution went further to establish the Counter Terrorism Committee (CTC) to ensure compliance with the Resolution.

2.2. Human Rights

Human rights are understood to mean universal values and legal guarantees that aim at protecting individuals-and in some cases, groups- against actions and omissions primarily by government or its agencies which oftentimes interfere with fundamental freedoms, commitments and human dignity. In a revealing and illuminating manner, Michelin Ishay argued that human rights "...are rights held by individuals simply because they are part of human species. They are rights shared equally by everyone regardless of sex, race, nationality and economic background. They are universal in content".

The above view was re-echoed by Aduba thus: "Fundamental Human Rights which are guaranteed in the Constitution are not privileges in the sense that they could be withdrawn at the whims and caprices of the government of the day. They are rights and freedoms which the executive, the legislature and judiciary are all enjoined to preserve and protect. Any violation by anybody, even the government, is liable to be called to order; where the violation has resulted

to injury which could be compensated in financial terms, courts are duty bound to make orders or reparation in monetary terms"

2.2.1 Human Rights as Legal or Moral Obligations

There are diverse theories and theorisations about human rights. The major philosophical postulations revolve around the tendentious division between the natural law scholars and the legal positivists. Legal positivists consider human rights as products of laws duly posited or enacted by an authority empowered to do so, commanding people to obey upon the threat of sanctions. Invariably, legal positivism is devoid of any moral or religious elements. Conversely, the natural law scholars maintain that human rights accrue to persons because they are humans; to them, human rights are inherent, fundamental, inalienable, universal, eternal and unalterable moral truths that attach to all human beings by virtue of their humanity. This position appears the most commonly accepted and is reflected in the contents of international human rights conventions.

As an instance, the Office of the United Nations' High Commission for Human Rights (OHCHR) describes human rights as "inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language or any other status. We are all equally entitled to our human rights without discrimination. These rights are all inter-related, interdependent and indivisible. The foregoing assertion captures the entire gamut of the theoretical, idealistic and practical nature of human rights.

Having examined the essential meanings and import of the concept of human rights, it is apposite at this juncture to examine how it relates to terrorism and anti-terrorism, with particular reference to Nigeria, given the context of this study.

3. Terrorism in Nigeria: A Close Analysis

Since the return of Nigeria to democracy on 29 May 1999, there has been an increase in insecurity, particularly the threat of terrorism. The northern states, particularly the north-eastern parts of the country have witnessed unprecedented spate of terrorist attacks in recent years. It has been argued that relative poverty and economic disparity, disenfranchisement, unemployment, marginalization and radical Islam accounted for the upsurge in terrorism in those parts of Nigeria. However, the link between these aforementioned factors and terrorism remain disputable.

There are two distinctive issues regarding terrorism in Nigeria: Firstly, it significantly consists of radical Islam and secondly, it is happening during a democratic dispensation. A precursor to the current terrorist activities was recorded, as the first instance of terrorism in Nigeria, in December 1980 when an extremist Islamic sect called the Maitasine” Movement took up arms against the Nigeria Police in Kano State. This was directly linked to the return to the democratic rule on 1st October 1979. The same pattern is repeating itself in the ongoing democratic dispensation.

3.1. Human Rights Protection in Nigeria and Anti-Terrorism Strategies

3.1.1. Human Rights in Nigeria

Nigeria is a constitutional democracy with a constitution that guarantees the promotion and protection of different species of human rights. Besides, the country has acceded or ratified diverse international treaties or conventions that emphasise the promotion and protection of the citizens’ fundamental human rights. As the celebrated scholar Claude Ake had once stated: The idea of human right is quite simple. It is that human beings have certain rights simply by virtue of being human. These rights are a necessary condition for the good life. Because of their singular importance, individuals are entitled to, indeed, required to claim them and society is enjoined to allow them. Otherwise, the quality of life is seriously compromised”.

In the context of Nigeria, human rights are categorized into two; under the extant Constitution of Nigeria, 1999 (as amended). These are: (i) socio-economic rights and (ii) civil and political rights. The economic, social and cultural (socio-economic) rights are spelt out in Chapter II of the 1999 Constitution, which highlights the Fundamental Objectives and Directive Principles of State Policy. The Constitution, by virtue of its section 6(6) (c) provides that these rights are not enforceable against the State. Conversely, the civil and political rights which are guaranteed under Chapter IV of the same Constitution are made enforceable against the State and citizens in the event of their breach. Some of the rights provided for under Chapter IV of the 1999 Constitution are: right to life, right to liberty, right to fair hearing and right to human dignity, among others.

The categorization of human rights into two distinct classes as found in the Nigerian constitution follows the pattern of the United Nations’ international instruments on human rights; specifically, the International Covenant on Civil and Political Rights

(ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which were adopted in 1966. The former is called first generation rights, while the latter is referred to as second generation rights by human rights scholars. The first generation rights; otherwise known as fundamental human rights include right to life, right to liberty, right to fair hearing, right to privacy, right to freedom of thought, conscience and religion and right to freedom from discrimination, among others. The second generation rights include right to education, social security, and safe and healthy environment, among others

The above summarizes the position of human rights in the context of Nigeria. It is logical, taking into consideration the topic of this study, to analyse the extant law and strategies adopted by Nigerian government to tackle the menace of terrorism and how they relate to the promotion and protection of the citizens’ rights.

3.1.2. Anti-Terrorism and Human Rights in Nigeria

The principal law, among other laws, designed to combat terrorism in Nigeria is the Terrorism and Prevention (Amendment) Act, 2013.

Here, this study shall examine, against the background of the constitutionally enshrined rights of citizens of Nigeria, how this law purposely enacted to tackle the scourge of terrorism, and other strategies adopted towards that end impinge on the enjoyment of human rights by the citizens.

Some of these inherently negative effects are examined hereunder:

(a) Right to Life

The constitution of Nigeria, 1999 expressly guarantees to the citizens, the enjoyment of right to life. The provisions, in compatibility with international and regional human right laws recognize the right and duty of the State/Government to protect the lives of human beings subject to their jurisdiction. In practice however, the strategies adopted by the Nigerian government through the agency of its law enforcement personnel include *deliberate* or *targeted killings* to eliminate specific suspects of terrorism, as an alternative to arresting them and bringing them to justice. This method directly contradicts the direction, in the context of anti-terrorism, of the Office of the Commissioner for Human Rights (OHCHR) that emphasise the importance of ensuring that the entire law enforcement machinery operates within the law.

Accordingly, it is expected that in the course of fighting terrorism, extreme vigilance should be applied by State authorities against all forms of abuse of power and violation of citizens' rights- including suspects of terrorism.

(b) Right to Liberty

Section 35 of the Nigerian Constitution, 1999 provides for the personal liberty of every citizen and enumerates the circumstances when such liberty could be lawfully curtailed. In that context, section 28 of the Terrorism and Prevention (Amendment) Act, 2013 contravenes the provisions of section 35 (2) of the 1999 Constitution by depriving a suspect of terrorism of the right to being interrogated in the presence of a legal practitioner of his own choice; who could also defend him in court on the allegation of terrorism.

Furthermore, by prescribing detention of a suspect of terrorism for a period not exceeding forty-eight hours, the law equally contravenes the provisions of section 35 (4) and (5) of the 1999 Constitution.

Furthermore, section 27 (1) of the amended law which provides inter-alia that "the court may pursuant to an ex parte application, grant an order for the detention of a suspect under this Act for a period not exceeding 90 days subject to renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with" clearly violates the intendment and purpose of the drafters of the 1999 Constitution, precisely section 35 thereof, on the right of every citizen to personal liberty. Sub-sections 4 and 5 of section 35 clarify the meaning and scope of *a reasonable time* within which a suspect should be arraigned before a court of law; whereas section 27 (1) of the Terrorism and Prevention (Amendment) Act, 2013 simply left the definition of that *reasonable time* and the liberty of a suspect to the discretion of security personnel that deal with the offences of terrorism

(c) Right to Dignity of Human Person

The right to dignity of human absolutely outlaws every form of torture, cruel treatment and other types of inhuman or degrading treatment or punishment under both the Nigerian Constitution, 1999 and international law; yet in practice, States, in the course of fighting terrorism often violate this invaluable tenet of human rights. In Nigeria, the use of torture, the abuse of human dignity and human rights of citizens by law enforcement personnel in their anti-terrorist operations is the norm rather than exception.

Apart from the violation of rights highlighted above, the Nigerian security agents also, oftentimes violate the right to privacy, right to freedom of association, right to freedom from discrimination and other rights of the suspects arrested on allegations of terrorism

(d) Right to a Fair Trial

Individual arrested on account of terrorist activities are expected, subsequent to thorough investigation, to be prosecuted in a manner that accords with due process. This would guarantee an effective framework for anti-terrorism laws and also give a boost to the enforcement of the rule of law. By law, every individual charged with a criminal offence (which also includes terrorist activity) has the right to be presumed innocent, right to a fair hearing within a reasonable time by a competent, independent and properly constituted court of law or tribunal. The implication of this is that due process and fair trial must not be sacrificed on the altar of undue zeal, on the part of the state, to stamp out terrorism.

4. Conclusion and Recommendations

The human rights analyses of the consequences of anti-terrorism laws and strategies have on the citizens merit consideration at all times and should not only be limited to this particular study. It has taken mankind centuries of unsteady and often painful struggles to reach a level of civilized and modern human existence as we have it today. Despite the fact that a sizeable proportion of today's world still remains largely enmeshed in uncivilized and barbaric practices which regrettably include human rights' violation, especially by Government/ State agencies; yet the fact that a fraction of humanity (as typified by the Western world and other developed countries where human rights and dignity are respected and protected) have outgrown and have stamped out inhuman practices is an assurance that respect for human rights could be achieved globally.

It is suggested that developed nations of the world should take it as a duty to ensure that human rights are promoted and protected, even in the face of increasing threats of terrorism.

Furthermore, citizens should imbibe the culture of unflinching vigilance and constantly resist every form of attempt to undermine their rights by the State and its agencies. In that context, the civil society and the legal profession have a vital role to play. The former, by speaking out and publicizing every single instance of violation of human rights by the State; whilst the latter should endeavor at all times to plead the cause

of victims of human rights abuse, even if it means taking up pro bono cases.

It is our belief that human rights and dignity should not be sacrificed on the altar of anti-terrorism.

References

- Ewulum, B.E. (2015) "Terrorism and Human Rights Protection". *Nigeria Perspective* 37(1) International Affairs and Global Strategy, p.64
- Chutterbuck, R (1994) 'Terrorism in an Unstable World', Routledge; New York, p.1
- Ajala O and Eghosa E (2017) Anti Terrorism Law and the Protection of Human Rights in Nigeria: A Needless Conundrum? 1, *Uniport Law review*, p. 102
- Gwaza, P.A (2014). "Anti-Terrorism and Human Rights Protection in Africa" Available at <https://ssrn.com/Anti-TerrorismAndHumanRightsProtectionInAfrica=2470747> Accessed on 30-11-2018
- Ishay, M (2008) "The History of Human Rights from Ancient Times to the Globalisation Era" University of California Press, Berkeley,p.3
- Aduba, N.J (1991) "The Impact of Poverty on the Realisation of Fundamental Human Rights in Nigeria" in Osinbajo, Y and Kalu, A (eds) *Democracy and the Law*, Federal Ministry of Justice, Lagos, pp.201-203
- Donnelly, J (2013) "Universality of Human Rights: Theory and Practice, 3rd edn;
- Shestack, J.I (1998) "The Philosophic Foundation of Human Rights. *Human Rights Quarterly*,p.210;
- Fenwick, H (2007)"Civil Liberties and Human Rights", pp.6-39
- Macdonald, M (1984) "Natural Rights" in Waldron, J(ed) *Theories of Rights*, pp.1-4
- Office of the High Commissioner for Human Rights "What are Human Rights?" <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx> Accessed on 20-11-2018
- Ake, C (1987)"The African Context of Human Rights" 34(1-2), *Africa Today*, pp.4-5
- Sections 31-44 of the Constitution of the Federal Republic of Nigeria, 1999
- Smith, R.K.M (2012) "Textbook on International Human Rights", Oxford University Press (OUP), Oxford, p.12
- Section 33 of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
- The United Nations Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966.
- African Charter on Human and People's Rights, 1987.
- The Leadership Newspaper (2012), February 19th, "Pastor shot at Kaduna Government House dies at 52"
- Extra Judicial Summary or Arbitrary Executions: Report of the Special Rapporteur, Philip Alston" (E/CN-4/2006/53) paras 44-45 Accessed on 29-11-2018
- New section 28 in the amended law of 2013 (i.e Terrorism and Prevention (Amendment) Act, 2013)
- Section 28 of the old law (i.e Terrorism and (Prevention) Act, 2011.
- Section 35 (2) of the Constitution of Nigeria, 1999
- The Terrorism and Prevention (Amendment) Act, 2013
- Section 36 of the 1999 Constitution of the Federal Republic of Nigeria.