‘Forcing the Horse to Drink or Making it Realise its Thirst’? Understanding the Enactment of Anti-Terrorism Legislation (ATL) in Nigeria

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Abstract

Attempts by the Nigerian government to enact a comprehensive anti-terrorism legislation (ATL) since 2006 had suffered several setbacks. However, the failed Christmas Day bombing of a U.S. airliner by a Nigerian, Umar Farouk Abdulmutallab, and subsequent acts of domestic terrorism have induced the National Assembly (NASS) to revive deliberation on the ATL. Adopting a historical approach, this article critically engages with the complexities surrounding renewed efforts at enacting a comprehensive ATL in Nigeria and further highlights the contentious debates on its necessity. It argues that the litany of domestic imperatives that led to a lethargic approach to counter-terrorism legislation between 2006 and late 2009 by the NASS have been overwhelmed by more serious domestic and international terrorist acts, which have made the enactment of a comprehensive ATL in Nigeria a matter of necessity rather than choice.

Introduction

For decades, terrorism has been a grave security concern to many states. However, its increasing frequency and sophistication at the dawn of the 21st century informed global efforts to develop frameworks for countering and criminalising it at the international level. [1] In particular, the devastation in human and material terms generated by the September 11, 2001 (henceforth 9/11) Al-Qaeda-led attacks on the United States (US) reinforced the need to revitalize efforts towards its criminalisation and denunciation, both nationally and internationally. Before 9/11, despite the 1998 bombings of US Embassies in Kenya and Tanzania, terrorism was considered an insignificant security threat in much of Africa. [2] Though more recently its effects have gradually permeated the borders of African states, either through the existence of Western terrorist targets (like embassies, hotels or corporate offices) within their territories or by acts of domestic insurrection; hence its re-prioritization on the list of security threats and growing attempts by African states to adopt comprehensive national legislation to criminalise it. In Nigeria, for instance, the 9/11 attacks inspired a domestic effort to criminalise terrorism, as the act was hitherto unknown to the country’s penal laws. Although attempts to enact anti-terrorism legislation (ATL) was initially met with stiff opposition from some quarters, recent international events involving Nigerians, coupled with cascading domestic acts of terror, have reinforced its necessity, if not its inevitability.
This article therefore examines the confluence of domestic and international factors that have made the enactment of a comprehensive ATL inevitable for Nigeria, in spite of earlier opposition to its adoption. The article is divided in six parts. Following this introduction, part II conceptualises the term terrorism, and part III contextualises the external influence on the criminalisation of terrorism, especially in Africa. Part IV highlights the debate surrounding Nigeria’s initial failed attempt to enact a comprehensive ATL, while part V explores recent security threats (within and outside the country) that have significantly neutralized entrenched opposition to the enactment of an ATL in Nigeria. Part VI concludes by arguing that although the effort to enact an ATL in Nigeria was initially externally-driven, the internal security dynamics in Nigeria in the last three years have accentuated its necessity.

**Conceptual Underpinnings**

Before delving into the substantive aspect of the discourse, it is important to review some definitions of terrorism and try to explain the controversy behind the enactment of ATL in most states. The word *terrorism* existed in the international security lexicon long before it became a household word in the late 20th century. As far as the study of terrorism is concerned, the subject of definition remains problematic. Terrorism can mean different things to different people, organizations or states. Jeffrey Simon [3] identified no fewer than 212 different definitions of terrorism in use, with 90 of them used by governments and other institutions. Michael Radu, for instance, defines terrorism as “any attack, or threat of attack, against unarmed targets, intended to influence, change or divert major political decisions.” [4] Similarly, Grant Wardlaw views terrorism as “the use, or threat of use of violence by an individual or a group, whether acting for or in opposition to established authority, when such action is designed to create extreme anxiety and/or fear including effects in a target group larger than immediate victims with the purpose of coercing that group into acceding to the political demands of the perpetrators.” [5] The multiplicity of definitions therefore suggests that a person described as a “terrorist” in one context may be regarded as a “freedom fighter” in another. Regardless of the multiple definitions of terrorism, some analysts contend that two main characteristics are critical for distinguishing terrorism from other forms of violence. First, terrorism is aimed at non-combatants—that is, civilians who are not engaged in any form of armed combat. Second, the use of violence is for dramatic purpose. In other words, the objective of instilling fear in the target audience is often more important than the physical result. [6]

In the context of this article, terrorism is defined as the premeditated use or threat of use of violence by an individual or group to cause fear, destruction or death, especially against unarmed targets, property or infrastructure in a state, intended to compel those in authority to respond to the demands and expectations of the individual or group behind such violent acts. Their demands or expectations may be for a change in status quo in terms of the political, economic, ideological,
religious or social order within the affected state or for a change in the (in) actions or policies of the affected state in relation to its interaction with other group or states. [7] Viewed this way, four elements underlie terrorism or a terrorist act. First, the act is essentially but not exclusively violent; whether premeditated or instantaneous. Second, the direct targets of such attack are usually non-combatant (including physical objects), usually without a direct relation or influence on the real motive behind the act. Third, the act takes place largely in an environment of relative peace, but sometimes could involve conflict situations. Finally, the ultimate motive for resorting to violence is to cause fear (in the psyche of the public) in order to influence those in political authority to respond to the demands or expectations of the individual or group behind the attack. [8]

Notwithstanding the essential features of terrorism or terrorist acts outlined above, there is no unanimity on the definition of terrorism by all states in the international community. The lack of consensus under international law partly accounts for the marked absence of terrorism as an offence under the International Criminal Court (ICC) statutes. Yet, the reality of terrorism is appreciated by all and internationally acknowledged as a significant threat to international peace and security. Given that states may experience acts of terrorism in different ways, each case of terrorism requires an in-depth and comprehensive treatment from a perspective that is related to its environment at a given time. [9] Hence, states resort to the adoption of legislation that specify what they consider as terrorism, from the standpoint of their specific historical, political, social and legal experiences. It is the respective context that largely accounts for differences, not only in the way terrorism is interpreted but also in ways that it is countered, including the textual narrative of their anti-terrorism legislation. Consequently, acts that may not constitute terrorism in one period may be regarded as terrorist acts in another. This, for example, would occur if a state adopts a new ATL in response to changing security dynamics occurring either within or outside its territory, or both. Also, an act which may be defined as terrorism in a state’s ATL may not fit perfectly into the legal description offered in the ATL of another. Thus, at the minimum, an act becomes labelled as terrorism when it has been defined as such in the ATL of a specific state or in international instruments or legal texts it subscribes to.

It is against this conceptual backdrop that Nigeria’s recent efforts to enact an ATL can be appreciated. In spite of the post-9/11 recognition that transnational terrorism is the world’s top security threat, Nigeria did not view itself as under significant threat, particularly given that it had not suffered significant attacks in the mould of the 1998 embassy bombings in Tanzania and Kenya. As will be demonstrated in this article, the need to adopt a comprehensive ATL was borne out of the convergence of internal and external forces generated by attempted or successful acts of terror.

9/11 Terrorist Attacks and the Politics of the Anti-Terrorism Bill (ATB)
In recent years, terrorism has taken a centre stage in political exchanges about risk and human security, driven by the belief that a new form of global terrorism has emerged. [10] Although the history of terrorism dates back more than two centuries, there were warnings since the early 1990s about the emergence of a new breed of terrorists. Unlike the close-knit, disciplined groups of the 1980s, the new form of terror came from loose groupings of people with similar backgrounds and beliefs, who resorted to violent tactics as a means to strike out against their enemies. Instead of operating with unified ideological aims and delineated hierarchies, the ‘new terrorist’ groups are defined by their amorphous objectives, dispersed following and their ability to strike across different continents. [11] Noteworthy here is the emergence of religiously motivated extremist groups that aim to cause significant death and destruction around the world. Of particular prominence is Al-Qaeda, which was founded in the late 1980s and has been linked to many high-profiled attacks around the world. Analysts, contend that the 9/11 attacks represented the new face of terrorism. This is essentially due to the magnitude of destruction caused by those attacks, coupled with the aggressive counter-terrorism campaign initiated by President George W. Bush. This subsequently transformed the relations between and among states as well as how terrorism is viewed across the world.

The response of the Bush administration to 9/11 had two main dimensions: internal and external. While the internal dimension captured the enactment of a more stringent anti-terrorism legislation and the restructuring of the country’s internal security architecture, the external dimension manifested itself principally through the ‘global war on terror’ (GWOT). 9/11 also saw the redoubling of the United Nations’ (UN) efforts at combating terrorism. For instance, UN Security Council Resolutions (UNSCR) 1368, 1373, and 1377—all passed in 2001—demonstrated the UN’s commitment to combating and interdicting terrorists. These resolutions called upon states to fight terrorism, including the perpetrators, organizers and sponsors. UNSCR 1373, in particular, urged all Member States to criminalize terrorism by legislation. More importantly, the U.S.-led GWOT gave terrorism a prime place in the catalogue of international security threats and introduced far-reaching counter-measures which were characterised by restrictions on immigration and international travel, derogation of basic rights, limitations on access to cash, invasion of privacy, and the imposition of conditions of emergency in law enforcement - among many other reprehensible methods. [12] Thus U.S. foreign policy on counter-terrorism (CT) sought to commonize terrorism as a global security challenge requiring common but serious counter-measures.

Although the GWOT enjoyed UN endorsement in principle, its modus operandi differed significantly from those of the UN. Widespread concerns for human rights in the pursuit of CT were consistently raised by Member States. Notably, in June 2004, the UN High Commissioner for Human Rights appointed an Independent Expert on the “Protection of Human Rights and Fundamental Freedoms while Countering Terrorism,” with a mandate to evolve a credible guide
for compliance with human rights norms by states in their CT efforts. The UN High Commissioner on Human Rights’ Special rapporteur on Torture, Mr. Theo Van Boven, also drew the attention of the UN General Assembly (UNGA) to the prevalence of torture and cruel, inhuman or degrading treatment and punishment in the process of countering terrorism. [13] These outcries led the UNGA to task the High Commissioner for Human Rights to examine the question of human rights protection and fundamental freedoms while countering terrorism, and ask him to make recommendations concerning the obligation of states to protect human rights in that endeavour. [14] Consequently, the Office of the High Commissioner on Human Rights published the Digest on the Protection of Human Rights while Countering Terrorism, in 2003. [15] The digest outlined some non-derogable rights under the UN and regional systems and addressed the core principles of necessity and proportionality which were thought fundamental to lawful counter-terrorism measures. [16]

Secondly, the GWOT privileged military force and strategy as the fulcrum of its operations, an approach that was criticized by some members of the UN as ineffective. [17] Most importantly however, the US policy on CT had a coercive character that did not tolerate indifference or abstinence; a closed choice that put many states in a dilemma. The coercive nature of the GWOT therefore evoked skepticism from some African leaders about the sincerity of the U.S. approach to combating terrorism at the global level. Consequently, most African countries—especially those with large Muslim populations—preferred a coalition against terrorism led by the UN rather than the U.S. [18] In spite of the divergence between the UN and the US approaches to CT, the UNSC (although largely inspired by the U.S.) demanded that states across the world adopt national legislation against terrorism. It was thought that since terrorism was not criminalized by many states, the prosecution and punishment of perpetrators of terrorism would be ineffective in the event that such crimes were committed on the territories of states without legal prohibition. African countries were therefore brought under pressure by the UNSC and the U.S. to enact or amend their existing criminal laws to punish acts of terrorism. [19] To ensure that all Member States of the UN complied with resolution 1373, a Counter-Terrorism Committee (CTC) was established by the UNSC to monitor its implementation. Enticed by the carrot of U.S. aid and complying with the UNSC’s demand, some African states like Egypt, the Gambia, Nigeria, and South Africa began legislative efforts at criminalising terrorism. [20]

Although African legislative responses to terrorism pre-date 9/11’s reactionary furore, [21] efforts by these states to enact ATL in the aftermath of 9/11 attracted a fair share of critical criticism. Critics argued that terrorism is not Africa’s prime security challenge, demanding such prioritized and comprehensive legislative response. Instead, they contended that poverty, human rights violations, persistent conflict, bad governance, corruption, a concentration of power and wealth in the hands of elites, and many other issues are more pressing concerns for the well-being and security of African states and people. [22] The new wave of CT legislation in Africa was thus criticised as a ploy by African leaders to attract foreign aid with the tendency to undermine
genuine democracy and personal liberty. [23] It was also feared that a strong counter-terrorism legislative campaign that reinforces repressive regimes in Africa could fuel radicalism where it did not exist. [24] These scepticisms notwithstanding, some African countries—including Nigeria—started the process of enacting a comprehensive ATL after 9/11, in response to increasing pressure mainly from the US and, to some extent, the UNSC.

Nigeria’s Attempt at Enacting an Anti-Terrorism Legislation: the Debate

Although Nigeria has a history of violent acts that could have been labelled as terrorism, it is only after 9/11 that it launched any serious attempt to enact some form of ATL. In this regard, Nigeria’s initial response to UNSCR 1373 was at best incomprehensive. Rather than enact new legislation on terrorism, the National Assembly (NASS) squeezed in provisions in the Economic and Financial Crimes Commission (EFCC) Establishment Act 2004 that define, prohibit and prescribe punishment for terrorism. [25] This aspect of the EFCC Establishment Act was, however, criticised for being incomprehensive and inadequate to address all the ramifications of terrorism contemplated by UNSCR 1373. [26]

By 2006, a private member bill, the “Prevention of Terrorism Act (PTA)”, [27] was proposed by Senator Ben Obi to the NASS as a comprehensive national legislation on terrorism. However, debate on the 2006 PTA was short-lived (it was defeated in the Senate in September 2006), as it did not attract widespread support, leaving section 15 of the EFCC Establishment Act 2004 as the subsisting legal framework on terrorism in the country. [28] In 2007, another attempt to propose a “Prevention of Terrorism Act (PTA)” emerged and attracted more debate from legislators as well as interest from the public. Such newfound support can be attributed to the changing domestic situation where in the north radical Islamic movements increased their activities and in the south ethnic militants in the Niger Delta violently campaigned against prolonged marginalisation of the oil-rich region. In addition, Nigeria’s particular experience with military rule characterised by gross human rights violations added more fervor to the controversy over the PTA.

Needless to say, both proponents and opponents of the PTA have their points to share. Supporters, for instance, argued that apart from Nigeria’s vulnerability to transnational terrorism through its association with Western targets, several internal factors could predispose it to high magnitude terrorist attacks. [29] The contention here was that the absence of an ATL would embarrass the Nigerian state in the event of such an attack. Similarly, it was thought that the void in legislation could also serve as an incentive for domestic terrorists to operate. [30] Indeed, the proliferation of militant groups in northern Nigeria and in the Niger Delta, [31] the rising wave and sophistication of their attacks on civilians, security forces and infrastructures as well as their alleged association with international terrorists groups [32], were all highlighted as justifications
for the enactment of an ATL. Some observers had argued that these groups’ possible association with international terrorist cells could potentially expose the country to terrorist attacks of serious magnitudes, hence the imminent need for a law that could criminalise their activities and prescribe serious punitive measures. The possibility of a Nigerian permanent membership of the proposed reformed UNSC was also advanced as a potential gain to be derived from the enactment of an ATL. Analysts argued that the enactment of an ATL would put Nigeria in an advantageous position, while refusal to do so could be detrimental, given the U.S.’s influence in international politics. [33] According to a Senator who seemed convinced with this contention, “the bill if enacted into law would boost the image of the country and enhance Nigeria’s chances for a seat in the United Nations Security Council.” [34] Given that South Africa and Egypt, top contenders for the anticipated permanent seat at the proposed expanded UNSC, have all enacted anti-terrorism legislation, this argument appeared to be a persuasive incentive. [35] Related to the above is the contention that Nigeria’s dominant role in continental and sub-regional politics would be diminished if it failed to enact an ATL. [36] It was argued that Nigeria’s inability to enact an ATL had the effect of stimulating regional apathy on legislative measures and the U.S.-led war on terrorism more generally. Under this belief, the argument was put forward that the U.S. could prop a sister state to take over Nigeria’s regional and sub-regional dominant political role, thereby rendering her long history of championing regional peace and security inconsequential.

In stark contrast to these arguments, opponents of the PTA argued its prematurity and stated that its narrative disregarded Nigeria’s political and legal history, especially the effects of prolonged years of military rule that was characterised by repression and state violence. Sadly, the return of civil rule in May 1999 brought little change as illustrated in the continued treatment of political opponents as ‘enemies’ by those in power or with access to state power. Thus it is the apprehension generated by this political culture that reinforced opposition to the Western-styled ATL. A primary fear was that the law could be exploited by those in power to unjustly persecute their opponents, whether they were critics, activists, politicians or others. This anxiety informed Senator Nkechi Nworgu cautioned statement to the NASS:

... We [legislators] do not go back to draconian ways where freedom of expression will be hampered by the bill. We need to revisit the bill to propound a national security bill that will capture our culture, tradition and political development. We cannot jump into it because developed nations are doing it. It must be in tandem with our socio-economic and political development. [37]

In particular, differing perceptions and interpretations of lingering militancy in the Niger Delta region (south) and Islamic extremism (north) presented the main challenge to Nigeria’s endeavour to enact comprehensive terrorism legislation. [38] People from the Niger Delta and
some members of the Muslim community had denounced the draft PTA for what they described as an open-ended definition of terrorism, with the potential of subsuming the activities of the Niger-Delta and Islamic militants under its definition. On the one hand, the Niger Delta people steadfastly opposed the PTA, which they interpreted as an attempt to criminalise their struggle for equity in the distribution of oil resources produced from the region. [39] This apprehension is understandable given that the sustained attacks on oil installations by the Niger Delta militants, abduction of oil workers (particularly expatriates) and many other forms of sabotage against oil installations had been described as oil terrorism. [40] On the other hand, the manifestation of militant Islamism in northern Nigeria presented another challenge to the criminalisation of terrorism. For example, some Islamic clerics had criticised the proposed PTA as targeting Muslims.

Consequently, some analysts urged the NASS to abandon the bill in view of the volatility of these regions and the general sensitivity of the issues involved. More so, analysts argued that the existing criminal codes already prohibited some acts defined by the bill as terrorist acts. Rather than risk the controversy that the enactment of a comprehensive ATL portended, it was argued that it would be safer to amend the provisions of the existing criminal codes in order to accommodate elements of terrorism not hitherto covered by the codes. [41] Against this backdrop, it appeared that the NASS was persuaded more by the opponents of the ATL than the supporters, leading to its relegation to the background by the end of 2007. The efforts to enact a comprehensive ATL remained unsuccessful at worst and lethargic at best, until the infamous attempt by a Nigerian, Umar Farouk Abdulmutallab, to detonate an explosive onboard a U.S.-bound Northwest Airlines flight on December 25, 2009.

**International and Domestic Acts of Terror and the Enactment of an ATL in Nigeria**

Since November 2007, following a series of arrests of suspected terrorists believed to have links with the Al-Qaeda network, concerns over Nigeria’s vulnerability to terrorism has been a subject of debate. [42] The vulnerability bar was further raised in March 2008 when the Inspector General of Police, Mike Okiro, warned during the inauguration of the police anti-terrorism squad, that the Al-Qaeda terrorist network was planning to bomb some parts of Nigeria. [43] In spite of such a warning, Nigeria had not recorded any serious Al-Qaeda-related terrorist incidents on its soil; however, the growing audacity of northern-based Islamic militants and southern-based ethnic militants in the Niger Delta region have increasingly been sources of serious concern to the Nigerian government and the international community. Hitherto, the activities of militants operating in the Niger Delta region, particularly the Movement for the Emancipation of Niger Delta (MEND), were termed as militancy, in spite of the destruction of lives and property associated with their activities. [44] Similarly, the violence in the northern parts of the country...
unleashed by militant Islamists (especially the Boko Haram), though deplorable, was also largely interpreted as sectarian. [45]

The concern over Nigeria’s vulnerability to terrorism assumed a worrisome international dimension in December 2009 when one of its citizens, Abdulmutallab who had been trained in Yemen, attempted to detonate an explosive device hidden in his underwear while on board Northwest Airlines Flight 253 (carrying 279 passengers and 11 crew members) en route to Detroit’s Metropolitan Airport in the US. The passengers and crew managed to put out the small fire caused by the partial detonation of the device. Like the 9/11 incident, the response of the U.S. to the failed ‘Christmas Day’ bombing had two main dimensions: internal and external. The internal dimension encapsulates actions within the U.S. to further enhance aviation security, including among others, 100 percent checking of passengers travelling within the U.S. and its territories against terrorist watchlists using the Secure Flight program, increased “threat-based” screening of suspicious passengers, and a review of the possible loopholes in the terror watch lists system. Some of these were contained in the new security directives issued on January 3, 2010 by the U.S. Transportation Security Administration (TSA).

The external dimension found its strongest expression when the TSA issued its new security measures, which included blacklisting Nigeria by classifying it as a ‘Country of Interest’ on the US Terror Watch list. This blacklist includes four countries the United States considers to be “State Sponsors of Terrorism”—Cuba, Iran, Sudan, and Syria—and another ten described as ‘Countries of Interest’: Afghanistan, Algeria, Iraq, Lebanon, Libya, Nigeria, Pakistan, Saudi Arabia, Somalia, and Yemen. The implication of blacklisting a country is that citizens of the designated and affected countries will be subjected to enhanced screening techniques, such as body scans, pat-downs and a thorough search of carry-on luggage for traces of explosives - no matter where they are travelling from. Despite the historically cordial relations between the two countries, the blacklisting of Nigeria sparked a diplomatic row with the US and the Nigerian government strongly criticized the decision. For instance, Nigeria’s Minister of Information, Professor Dora Akunyili, described the move as “unfair” and discriminatory against the roughly 150 million Nigerians. Foreign Affairs Minister, Chief Ojo Maduekwe, while conveying to the U.S. the official reaction of the Nigerian government, stated that “the new security measures by the US targeted at Nigerians is an unacceptable new year gift to a friendly country like Nigeria on its jubilee anniversary year.” In a press conference in Abuja on January 5, 2010, the spokesman of the Senate, Ayogu Eze, echoed this sentiment when he said:

“I am speaking on behalf of the Senate and on behalf of the Senate President to state categorically that we are very unhappy about the development and when we resume, we are going to take this matter up seriously, if America has not taken Nigeria off that list. We also want to advise America that it is in their own best interest to conduct this matter very well in a manner that will
not result into diplomatic row between America and Nigeria because the American president had himself clearly admitted that this was a failure of the system and manpower of Americans.” [46]

The blacklisting of Nigeria equally attracted reactions from analysts. Some informed observers opined that Nigeria’s diplomatic ties with the U.S. began to weaken before the failed Christmas Day attack and may have contributed to the quick decision for blacklisting. Palpable indicators of weakened diplomatic ties include the near breakdown of high-level diplomatic contact between Aso Rock and the White House due to the temporary absence of President Yar’adua during his illness, the absence of a substantive Nigerian ambassador to the US as well as Nigeria’s lack of a strong lobbying group in the US. [47] As a result of these bilateral deficits on the part of Nigeria, there was no high-level channel of communication (e.g. between President Obama and his Nigerian counterpart) to diplomatically resolve issues generated by the unfortunate incident.

The Nigerian government, however, reinvigorated its diplomatic response to the blacklisting by increasing its engagement with the US government. The strategic and economic importance of Nigeria, in view of its enormous oil endowment as well as its huge (Muslim) population, explained Washington’s understandable disposition to reach a diplomatic resolution of the crisis. Ensuing constructive engagement between top U.S. and Nigeria officials provided the avenue for the US to staunchly demand that Nigeria fulfil her international obligations in combating terrorism. In particular, the U.S. gave four conditions Nigeria would need to meet before it could be delisted, namely: public condemnation of any form of terrorism anywhere in the world; improvement of security in the nation’s airports; deployment of air marshals on board aircraft and passing legislation geared towards combating terrorism in the country. [48]

Given that the Nigerian government had earlier and repeatedly condemned all forms of terrorism even before the Abdulmutallab case, it was expected that Nigeria would pass outstanding legislation geared towards combating terrorism as well as tighten aviation security. The Nigerian government immediately redoubled efforts at meeting these outstanding conditionalities. In relation to comprehensive measures at combating terrorism, two important pieces of legislation had been lying before the NASS since 2008: (i) a Money Laundering (Amendment) Bill and (ii) the Prevention of Terrorism Act. In this light, the US continued its pressure on Nigeria to pass these bills. In April 2010, the Senate debated the general principles (second reading) of the PTA and consequently referred the Bill to a joint Committee of Judiciary, Human Rights and Legal Matters, Foreign Affairs, and National Security and Intelligence for further legislative action. [49] Soon thereafter, Acting President, Goodluck Jonathan wrote to the House of Representatives (HoR), urging the parliamentarians to pass the Anti-Terrorism and Money Laundering Bills before the end of June 2010. [50]
As a result of growing pressure from the US, the Nigerian government expedited actions to improve airport security. This included introducing explosive detection equipment, installing ten full-body scanners at its four international airports, training of local staff to handle the full body scanners, and allowing Air Marshals from the US to guard US - Nigeria bound flights. [51] Following persistent protests over the blacklisting by some US allies, including Nigeria, the Department of Homeland Security announced in April 2010 that it was adopting new security measures to replace mandatory screening of air travellers from 14 countries short-listed as either “sponsors of state terrorism” or “countries of interest.” [52] By this act, the U.S. had aborted the list but remained actively engaged with its allies, including Nigeria, on the understanding that the “terrorist threat to global aviation is a shared challenge and ensuring aviation security is a shared responsibility.” [53]

From International Pressure to Domestic Incidents

While U.S. pressure on the Nigerian government continued, cascading domestic acts of terror in the country guaranteed additional pressure from within to address strategic deficiencies in Nigeria’s commitment to combating domestic and international terrorism. For instance, on March 30, 2010, there was a failed attempt by a cab driver to ram into an aircraft at Margaret Ekpo airport, Calabar, Cross-River State. The cab driver crashed through two gates of the airport, and headed to the tarmac to collide with a boarded Abuja-bound Boeing 737 aircraft. [54] It was alleged that the attack on the airline might have been targeting five Americans and some top politicians who were aboard the plane. [55] Although no casualties were recorded, the driver of the car sustained minor injuries. A more serious, sustained threat, however, comes from the Boko Haram sect in northern Nigeria. In July 2009, for instance, members of the sect staged spectacular attacks on government institutions. In response, a state-sanctioned aggressive crackdown led to the killing of over 700 members of the group including their leader Muhammed Yusuf. [56] Roughly a year later, in September 2010, Boko Haram carried out another attack that involved a jail-break in Bauchi Prison that freed over 700 inmates, including members that had been detained since the July 2009 revolt. In addition, over five people including a soldier, a policeman, two prison wardens and a civilian were killed during the attack. [57] The attacks by this extremist sect have increased in tempo in recent times.

Particularly worrisome is the spate of bombings during the last two years. The October 2010 celebration of Nigeria’s 50th Independence anniversary, for example, was disrupted by two bomb blasts near the venue in Abuja, killing at least 12 people and injuring several dozen others. The MEND claimed responsibility for the blasts. This attack took place after a similar type of vehicle bombing in March 2010 in Warri, Delta state, Niger Delta. In fact, both attacks were not aimed at energy assets (uncharacteristic of MEND) and took place at public gathering venues where civilians were present. President Jonathan later described it as an act of a small group of
terrorists, based outside the country, who use “the name of MEND to camouflage criminality and terrorism.” However, subsequent investigations revealed that the South Africa-based MEND leader, Henry Okah, amongst others, were involved in the attack. [58]

On Christmas Eve, December 2010, triple bomb blasts rocked the northern city of Jos, killing over 80 people and wounding several dozen others. In a statement published on what is thought to be its website, http://mansoorah.ne, the radical Islamic sect Boko Haram claimed responsibility for the attack. [59] There was no independent confirmation of this claim, as the bombing in central Jos was believed by many to be beyond the sect’s usual area of operation. The claim was also dismissed by Nigerian security agencies; nonetheless, these acts were manifestations of the terror threat faced by all Nigerians.Shortly afterwards, on New Year’s Eve, another bomb explosion occurred at the Mammy market near the Mogadishu Barracks in Abuja, claiming more than 30 lives and wounding several others. It was reported that the bomb was planted in a piece of luggage near Mogadishu Cantonment, a popular local hangout and tourist attraction. [60] No individual or group claimed responsibility for the attacks, though SMS messages circulated shortly after the attacks suggested the involvement of the MEND. [61] A statement by MEND issued two days later, however, said the group was not responsible for the New Year’s Eve blast. The New Year’s Eve bombing was followed by another explosion on 3 March 2011 during a Peoples Democratic Party (PDP) rally in Suleja, Niger State. More than 13 persons were killed and many more injured. In all, during the last two years explosions, largely targeting civilians, have rocked places in Warri and Asaba in Delta State, Atlas Cove in Lagos, and Government House in Yenagoa, Bayelsa State, among others.

These and other related incidents point to Nigeria’s growing vulnerability to extremism and terrorism, and further reinforce the urgency for an ATL in Nigeria. It is thus noteworthy that on January 26, 2011, President Jonathan appointed former director-general of Nigeria Intelligence Agency (NIA), Ambassador Zakari Ibrahim, as an Adviser on Terrorism. [62] Also, between January 2010 and February 2011, the President wrote the NASS thrice, urging it to expedite action on the PTA in order to restore the confidence of the international community in the country’s commitment to the global fight against terrorism. By February 2011, the Senate passed the “Prevention of Terrorism Act 2011” and sent to the HoR for concurrence and onward assent by the President. The PTA, now known as the “Terrorism (Prevention) Act (TPA) 2011”, and the Money Laundering (Prohibition) Act (MLPA) were both signed into law on 3 June 2011.

**Concluding Remarks**

With the passage of the TPA and MLPA, Nigeria now has comprehensive legislation criminalising terrorism. There is no doubt that the provisions of the legislation demonstrate serious commitment on the part of the Nigerian government to combat domestic and international terrorism. By promulgating the TPA 2011, Nigeria has formally joined countries
like Australia, Belgium, Canada, Ethiopia, France, India, Indonesia, Italy, New Zealand, Pakistan, Peru, Philippines, South Africa, Turkey, Uganda, United Kingdom, and the United States, among others, in the fight against terrorism. Consequently, on July 24, 2011, the U.S. government delisted Nigeria from the list of countries that harbour or sponsor terrorism thereby effectively bringing to an end, the enduring diplomatic tension between the two countries following the ill-fated failed Christmas Day bombing.[63]

The 41-section TPA establishes measures for the prevention, prohibition and combating of acts of terrorism and the financing of terrorism in the country. It equally provides for the effective implementation of the Convention on the Prevention and Combating of Terrorism as well as the Convention on the Suppression of the Financing of Terrorism, and prescribes appropriate penalties. Similarly, the MLPA makes comprehensive provisions to prohibit the financing of terrorism, and the laundering of the proceeds of crime. It also expands the scope of supervisory and regulatory authorities so as to address the challenges faced in the implementation of the anti-money laundering regime in Nigeria.

Section 2(c) of the TPA defines an ‘act of terrorism’ as an act which is deliberately done with malice, aforethought and which has the capacity to seriously harm a country or an international organisation; and which is intended to unduly compel a government or international organisation to do or abstain from doing any act, intimidate a population, destabilise the fundamental, political, constitutional, economic or social structures of a country or an international organisation, and otherwise influence such government or international organisation by intimidation or coercion. In the light of this definition, elements that constitute ‘acts of terrorism’ include an attack upon a person’s life which may cause serious bodily harm or death; kidnapping of a person; destruction to a government or public facility, transport system, and infrastructural facility including an information system, a fixed platform located on the continental shelf, public place or private property likely to endanger human life or result in major economic loss. It prohibits the seizure of aircraft, ship or other means of public or goods transport and the use of such means of transportation for illegal purposes. They also include the possession and manufacture of weapons and explosives and the dissemination of views aimed at destabilising the polity; the release of dangerous substance or causing of fire, explosions or floods, with the intention to endanger human life; and any act which disrupts a service but is committed in pursuance of a protest. [64]

In all, the TPA provides the requisite legal framework for the prevention and punishment of terrorism in Nigeria, including conditions for the extradition of person(s) suspected of involvement in the commission or sponsorship of terrorist acts. Under its provisions, many organised crimes in Nigeria such as oil bunkering, hostage-taking, kidnapping and use of explosive devices for the expression of grievances, which were hitherto prohibited under Nigeria’s Criminal and Penal Codes are now consolidated as ‘acts of terrorism’, thereby
attracting stiffer penalties. In terms of its provisional tenor, the TPA is more comprehensive than the subsisting EFCC (Establishment) Act 2004, which merely established, defined, and prescribed punishment for acts of terrorism. However, a key deficit of the TPA is its failure to repeal the relevant sections of the EFCC Establishment Act and even similar provisions in the Criminal and Penal Codes. The consequence of this oversight is that persons suspected of terrorism could be charged under either or all of the legislation. Whereas a conviction for attempting to injure with explosive substances may attract life imprisonment under sections 1 (2) (IV & VI) and 33 (1) (a) of the TPA and 46 of the EFCC (Establishment) Act, the same act(s) are punishable by 10 years imprisonment under sections 336 of the Penal and Criminal Codes.

Furthermore, it appears that the minor criticisms against the definition of terrorism that trailed the EFCC (Establishment) Act and the failed PTB 2006 still subsist in the TPA. The TPA has defined terrorism in such a manner that tending to subsume almost all violent organized crimes under its definitional tenor, which, though prohibited, may not necessarily harbour terrorist intents. For example, acts of kidnapping which have assumed a worrisome dimension in the last few years in Nigeria may be treated as terrorism under the TPA. If tried and convicted for kidnapping under the Criminal Code, it attracts maximum of 10 years imprisonment; however, if convicted under the TPA, it attracts a penalty of life imprisonment.

Undoubtedly, the tremendous pressure from Washington on Abuja in the aftermath of the failed Christmas Day bombing, coupled with cascading incidents of domestic acts of terror made the enactment of an ATL in Nigeria a matter of necessity rather than choice. However, the enactment of a comprehensive ATL in Nigeria may not significantly address Nigeria’s growing vulnerability to terrorism and violent extremism unless some of the governance and security deficits – poverty, youth unemployment, corruption, porous borders, small arms proliferation, and ineffectual national security agencies – bedevilling the country are addressed in a comprehensive and sustainable manner. Therefore, Nigeria’s counter-terrorism efforts can only be effective in addressing violent extremism and other acts of terror, if there is a robust combination of legislative interventions with governance reforms that address some of the acute human security challenges confronting a vast majority of her population. Otherwise Nigeria is poised to witness more acts of terror even in the face of a comprehensive ATL.

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**Notes**


[8] Ibid.


[16] For a comprehensive reading on the efforts of the UN to halt the practice of human rights violation while countering terrorism, see Sepulveda op cit, note 7 above, 434 – 437.


[21] Prior to 9/11, the Organization of African Unity (OAU), recognizing the scope and seriousness of terrorism and the dangers it poses to the stability and security of African states, took the initiative of developing a comprehensive regional legislative framework which was envisaged to form the bedrock of African-States’ policy and legislative pivot on terrorism. This initiative gave birth to the OAU Convention on the Prevention
and Combating of Terrorism 1999, adopted at Algiers on 14 July 1999. Article 29 of the Algiers convention had earlier called on state parties of the OAU (now AU) to review their national laws and establish criminal offences for terrorist acts as defined by the convention as well as consider as a matter of priority the signing and ratification of international instruments listed in the annex to the convention.


[27] At the time of presentation, this proposed legislation was titled “Prevention of Terrorism Act”. Technically it should read “Prevention of Terrorism Bill,” since it had not been passed by the NASS let alone assented to by the President.


[31] The militant groups in the North are radical Islamic groups with divergent religious ideologies; they include: the Hishbah, the Zamfara State Vigilante Service (ZSVS), Al-Sunnah Wal Jama'a a.k.a “the Nigerian Taliban” and the Kala-Kato, the Boko Haram among others, while the Niger Delta militant groups include the Niger Delta Peoples Volunteer Force, Movement for the Emancipation of the Niger Delta (MEND), the Coalition for Militant Action in the Niger Delta (COMA), and the Martyrs Brigade etc. Their apparent aim is to force the Nigerian State to concede the control of oil resources in the area to the locals (resource control).


[35] Whereas South Africa has enacted “Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004”, Egypt relies on several laws in dealing with terrorism.

[36] Ibid.

[37] Aziken, Emmanuel and Inalegwu, Shuaibu (2008); op. cit. note 34 above.


[39] For a detailed analysis of why Niger Delta militants, particularly MEND, should be considered terrorists, please see the article by Ihaba S. Ibaba in this issue of Perspectives on Terrorism.


[44] However, a divergent view has been offered by Ihaba S. Ibaba in his article in this issue of Perspectives on Terrorism.


[53] Ibid.


[64] See section 1 (2) (a-d) & (3) of the Terrorism (Prevention) Act, 2011.