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# LEGAL AND SOCIO-POLITICAL CONSTRAINTS IN COMBATING TERRORISM IN NIGERIA

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## Abstract

Terrorism is widely recognised as a violation of human rights due to its reliance on violence. Terrorism for several years has been a daunting challenge in Nigeria, with of course, devastating consequences on its security, economy, and social order. Significantly, and notwithstanding the plethoric abundance of frameworks in Nigeria for combating terrorism, the rise in terrorism continue to be recorded on daily basis. Consequently, the authors critically examined the various laws and regulatory bodies charged with checkmating terrorism such as-the Constitution of the Federal Republic of Nigeria 1999, the Terrorism Prevention Act 2011, the Terrorism (Prevention) Amendment Act 2013 and the Terrorism (Prevention and Prohibition) Act 2022. Against this backdrop, the paper therefore, aims to critically analyse the legal and socio-political constraints associated with counter-terrorism efforts in Nigeria, with a specific focus on potential violation of human rights. By exploring the intersection between counter-terrorism measures and human rights, the paper focused on the complex challenges confronted the Nigerian government in effectively combating terrorism while upholding the individual principles associated with human rights as contained in the constitution.

**Key words: terrorism, violation, individual rights, constraints, legislations**

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## 1. Introduction

Terrorism for several years, has been a daunting challenge in Nigeria, with of course, devastating consequences on the country's security, economy, and social order. In response, Nigeria has put in place several legal frameworks to combat terrorism and ensure the safety of its citizens. These frameworks extend to counter-terrorism, including prevention, detection, prosecution, and punishment of perpetrators. Terrorism is widely recognised as a violation of human rights due to its reliance on violence. Recently, Nigeria has suffered terrorist attacks due to the activities of the Fulani militia, Boko Haram and other terrorist groups.<sup>1</sup> Between the 29th of May 2015 and the 29th of May 2023, an estimated 63,111 persons were killed in a wave of senseless violence by terrorist groups, including Boko haram, Fulani Herdsmen and Bandits. Undoubtedly, these terrorist activities infringe upon the fundamental rights of Nigerians, including their rights to life, dignity, peace, and freedom, and require a proactive approach if its devastating impact is to be mitigated.

Significantly and notwithstanding the plethoric abundance of frameworks in Nigeria for combating terrorism, the rise in terrorism continue to be recorded on daily basis. Consequently, there is need to highlight the relevant laws, institutions, and measures in place to address this critical issue of menace of terrorism.<sup>2</sup> The first part of the paper is the introduction, and thereafter, the paper will examine the nature and scope of terrorism in Nigeria in the second part followed by a consideration of the subsisting legal framework on terrorism in Nigeria. To achieve this objective, the subsisting legislations, rules and regulations about combating terrorism and the available institutional regulatory agencies or mediums will be considered. An attempt shall also be made to inquire into the decisions of case laws on terrorism and human

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<sup>1</sup> Jeremiah A. Oharisi, 'Terrorism as a Violation of Human Rights under International Law: The case of the Fulani Militia, unpd. Doctoral Thesis, Igbinedion University School of Post Graduate Studies & Research, 2023.

<sup>2</sup> A K Anya & Nasiru Tijani, 'Terrorism Financing and Money Laundering in Nigeria: A Perspective of the Boko Haram Insurgency, <https://www.researchgate.net/publication/371125387> (accessed 12/10/23)

rights violations in Nigeria. The fourth part of the work will be dedicated to investigating the challenges in combating terrorism in Nigeria, followed thereafter by recommendations and finally the conclusion.

## **2. The Nature and Scope of Terrorism in Nigeria**

Terrorism began to be marked as a daunting challenge to the security apparatus in Nigeria sometime late 1990s. The impact of terrorism on the Nigerian society was dangerously felt following the Islamic sect Boko Haram attacks within the vicinity of North East Nigeria.<sup>3</sup> Other noticeable terrorist act include the Agatu massacres in Benue state, Nimbo in Enugu state, and several other Southern Kaduna killings, in which hundreds of people were killed and properties worth millions of naira were destroyed. These attacks remained and constituted glaring examples of the intricacies of herdsmen-farmers disputes in Nigeria claiming hundreds of several lives.

Terrorism is an old tactics of menace and intimidation unleashed against a collectivity. Terrorist accounts existed long before the term was used. Terrorism became an international concern in 1934, when the League of Nations took the first significant step towards making terrorism completely unlawful and punishable. It drafted a treaty for the prevention and prosecution of terrorist actions in the process.<sup>4</sup> A few years later, the Stern Gang, a militant Zionist group founded by Avraham Stern, was making headlines. The group's objective was to expel the British authorities from Palestine, allow unlimited immigration of Jews, and create a Jewish state. A similar Jewish terrorist group, Irgun, operated in the British mandated territory of Palestine between 1931 and 1948. A notorious Irgun act was the bombing of the King David

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<sup>3</sup> Due to their activities, Nigeria was ranked 4th most terrorised country in the world by a global study of the London based Institute for Economics and Peace on the Global Terrorism Index for 2013. The GTI insisted that overall terrorist attacks apparently generated by this sect remained much more lethal in Nigeria than any other country. See generally, J.A. Oharisi, C. E. Anya & A. K. Anya, *Herdsmen Terrorist Activities in Nigeria and Concomitant Infractions on Human Rights*, accepted for publication in African Scholars Publication, Ireland 2023

<sup>4</sup> S. Andrew, *An Anatomy of Terror: A History of Terrorism*, (UK: Macmillan, 2003) 12

Hotel (the headquarters of the British Forces in Palestine) in Jerusalem in 1946, killing ninety-one people.<sup>5</sup> Terrorism returned to the front pages, gaining headlines in the 1970s and peaked in the mid-1980s. The average number of documented terrorist attacks climbed from 10 per week to over ten per day between 1975 and 1984.<sup>6</sup>

For instance, in Nigeria, the following groups began to be noticed: The activities of the Boko-haram sect, a Muslim terrorist group founded in the year 2002, the militant Niger Delta group, the Movement for the emancipation of the Niger Delta,<sup>7</sup> founded in 2004, the Niger Delta Avengers founded in 2016, and the Fulani herdsmen operating and acting as the Fulani Militia, this Fulani militant group in recent times has left a lot of sore stories and attendant destruction on lives and properties in their wake. Generally, the cumulative waste is manifested as loss of life, destruction of buildings as well as institutions, bombing of oil facilities and kidnapping of Nigerian citizens. The Nigerian community and government have struggled against the attacks of terrorist activities and have been reported to be the 4th largest state with impact of terrorism out of 162 countries on the Global Terrorism Index. The summary accounts for almost 2,000 innocent citizens of Baga town in Maiduguri State of Nigeria being Boko Haram. That the increase and rapid spread of terrorist act is what lead to the growth of Boko Haram in Nigeria, which is disinclined to western education and ordinarily translated to mean ‘Western Education is forbidden.’ This sectorial Islamic institution has grown and leads the most heinous terrorist group across the globe, accounting for eight lives in an attack. They live in the North-East of Nigeria. The nature of terrorism in Nigeria is dramatically different from other countries having terrorism challenge; the strategy applied by the terrorists in Nigeria is more like gang crime and

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<sup>5</sup>. Ibid, at P. 23.

<sup>6</sup>. Ibid, at P. 24

<sup>7</sup> [Hereafter, MEND]

violence, than bombings or suicide attacks. Armed assault caused 85% of Nigeria's terrorism deaths in 2013, as opposed to just 5% for bombings and explosions. Furthermore, kidnappings were combined in operations of terrorist in Nigeria. In 2013, Boko Haram was reported to have kidnapped law enforcement agencies such as police officers, members of the military as well as women and children. Sadly, in 2015 they also kidnapped over 200 Chibok schoolgirls which gained international media attention and has been a subject of discussion daily both in Nigeria and the global community.

### **3. Legal Framework on 'Combating Terrorism in Nigeria'**

The Nigerian Legal Framework for the Prevention of Acts of Terrorism is comprised of the following enactments:

- i. Terrorism Prevention Act<sup>8</sup>
- ii. Terrorism (Prevention) Amendment Act<sup>9</sup>
- iii. Terrorism (Prevention and Prohibition) Act<sup>10</sup>

The TPA 2013 (as amended) was passed to change various sections of the TPA 2011, created under the constitutional law-making powers of the National Assembly, primarily to prevent and cope with the wave of emerging acts of terrorism in Nigeria.<sup>11</sup>

Prior to the passage of these Acts, redress and trial for horrendous criminal acts were generally accommodated by the Criminal Code,<sup>12</sup> and the Penal Code.<sup>13</sup> These codes contained no specific provisions to combat terrorism. However, the codes covered and criminalised such peculiar acts

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<sup>8</sup> [Hereafter, the TPA 2011, LFN 2004]

<sup>9</sup> [Hereafter, The TPA (Amendment) Act 2013, LFN 2004]

<sup>10</sup> [Hereafter, The TPPA 2022]

<sup>11</sup> There was a considerable upsurge of terrorist activities in the country, which ordinarily required a legal approach to ascertaining the competing and contending societal values deserving of protection to ensure the common good of the society in Nigeria.

<sup>12</sup> It should be noted that the criminal code applies to the southern part of Nigeria.

<sup>13</sup> On the other hand, the Penal Code applied to the Northern part of the country, Nigeria.

of violence, including murder, homicide, rape, and rioting, which is grossly inadequate to combat terrorism.

The TPA 2011, which covers 41 sections, have far-reaching provisions ranging from the definition and prescription of punishment for crimes of terrorism to intelligence gathering, prevention, investigation and prosecution of terrorist suspects and other miscellaneous offences. From the perspective of fundamental human rights, some sections of the TPA 2011 align with constitutional provisions on fundamental rights. However, several provisions raised fundamental rights concerns as enshrined in the Constitution.<sup>14</sup> Worthy of note are sections 9, 12, 26 and 28 of the TPA 2011 that gave powers to the National Security Adviser, Inspector General of Police, and the State Security Service with little or no oversight for accountability.<sup>15</sup> Section 28, for example, states that if a person is arrested on reasonable suspicion of committing an offence under the following sections, including section 1, which prohibits all acts of terrorism,<sup>16</sup> section 2, makes for the prescription of Terrorist groups,<sup>17</sup> section 3, categorises offences against Internationally protected persons,<sup>18</sup> section 4. Prohibits terrorist meetings,<sup>19</sup> section 5. Prohibits soliciting and giving support to terrorist groups to commit terrorist acts,<sup>20</sup> section 6 prohibits harbouring a terrorist and hindering the arrest of a terrorist,<sup>21</sup> section 9 prohibits the provision of devices to terrorists,<sup>22</sup> section 10 prohibits the recruitment of persons into terrorist groups,<sup>23</sup>

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<sup>14</sup> . A. Ikenna, 'Anti-Terrorism Laws and Fundamental Rights: The Nigeria Example,' *Journal of Humanities and Social Policy*, [2017] 3(2), 23.

<sup>15</sup> Ibid

<sup>16</sup> Section 1 of the TPA, 2011

<sup>17</sup> Section 2 of the TPA, 2011

<sup>18</sup> Section 3 of the TPA, 2011

<sup>19</sup> Section 4 of the TPA, 2011

<sup>20</sup> Section 5 of the TPA, 2011

<sup>21</sup> Section 6 of the TPA, 2011

<sup>22</sup> Section 9 of the TPA, 2011

<sup>23</sup> Section 10 of the TPA, 2011

section 11 prohibits the incitement, promotion or solicitation of property to facilitate the commission of terrorism,<sup>24</sup> section 13 prohibits terrorism financing,<sup>25</sup> section 14, dealing in terrorist properties.<sup>26</sup> The individual in charge of national security or the inspector general of police, or a designated officer of at least the rank of superintendent of police or its equivalent, is authorised, in accordance with the provisions outlined in these sections, to issue a directive for the detention of an arrested person for a maximum duration of 24 hours from the time of arrest. During this period, the detained individual is not permitted to have contact with anyone other than their personal physician and legal counsel from the detaining agency.<sup>27</sup> The expression 'without having access to any person other than his medical doctor and legal counsel of the detaining agency' contradicts the provision in section 35 (2) of the Nigeria Constitution, which affirms that 'any person who is arrested shall have the right to remain silent or decline to answer any question until they have consulted with a legal practitioner or any other person of their choosing.'<sup>28</sup> Similarly, the provision outlined in section 32 (1) of the aforementioned legislation, which designates exclusive jurisdiction to the Federal High Court for the trial and imposition of penalties for offences specified in this Act, conflicts with the provisions of the Child's Rights Acts of 2003. The Child's Rights Acts stipulates that individuals below the age of 18, defined as children, should be tried in a family court. According to Amnesty International's assessment, the provisions outlined in the Acts are deemed to be incongruous with the nation's commitments pertaining to Human Rights.<sup>29</sup> The organisation additionally contends that the provisions of the Acts employ terminology that is excessively broad in its scope, thereby contravening the "legality" prerequisite for criminal offences and potentially infringing upon various rights.

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<sup>24</sup> Section 11 of the TPA, 2011

<sup>25</sup> Section 13 of the TPA, 2011

<sup>26</sup> Section 14 of the TPA, 2011

<sup>27</sup> Section 28, of the TPA, 2011

<sup>28</sup> A. Ikenna, 'Anti-Terrorism Laws and Fundamental Rights, 20.

<sup>29</sup> Ibid, at 24

The violation of rights encompasses fundamental freedoms such as the freedom of thought, conscience, and religion; the freedom of opinion and expression; the freedom of association; and the freedom of assembly. These breaches demonstrate a lack of adherence to the principle of proportionality and fail to align with established provisions regarding investigation and detention within human rights laws. Additionally, certain administrative measures lack provisions for meaningful access to effective legal remedies and procedural safeguards, thereby encroaching upon the right to due process and fair hearing. It is worth noting that on the 21st of February, 2013, the TPA was amended by the Terrorism Prevention Amendment Act 2013. The Amendment Act implemented several modifications and effectively tackled certain Human Rights concerns pertaining to the TPA. For example, the extensive authorities previously held by the National Security Adviser, the Inspector General of Police, and the State Security Service under the Terrorism Prevention Act (TPA) are now delegated to the Attorney General of the Federation, or as specified by the Act. The Attorney General shall serve as the designated authority responsible for the efficient implementation and administration of this Act. Furthermore, the Attorney General is tasked with reinforcing and improving the current legal framework to guarantee that Nigeria's counter-terrorism laws and policies align with international standards and United Nations Conventions on terrorism. Additionally, the office of the National Security Adviser assumes the role of the central coordinating entity for security and enforcement agencies. The line "without having access to any person other than his medical Doctor and legal counsel of the detaining agency" has been revised to "a medical officer of the applicable law enforcement or security agency or his counsel." In addition, the death penalty provisions of the Act do not align with the global fight for the abolition or elimination of the death penalty as propagated by the second optional protocol to the International Covenant on



Civil and Political Rights and similar initiatives as found under the European Human Rights Law.<sup>30</sup>

Furthermore, an additional significant obstacle pertaining to the matter of fundamental rights in the TPA arises from the inclusion of the new section 28 (1). This provision states that when an individual is apprehended based on reasonable suspicion of having committed an offence or security breach, an officer has the authority to order the detention of the arrested person for a maximum duration of forty-eight hours. This provision has the potential to violate section 35(4), which stipulates that:

(4) Any person who is arrested or detained under subsection (1) (c) of this section shall be brought before a court of law within a reasonable time. If he is not tried within a period of - (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

Section 35 (5) of the 1999 Constitution states;<sup>31</sup>

In subsection (4) of this section, the term "a reasonable time" is defined as follows: (a) for arrests or detentions in locations within a forty-kilometer radius of a court with appropriate jurisdiction, a duration of one day; and (b) for all other cases, a duration of two days or a longer period that the court deems reasonable based on the particulars of the case.

Similarly, the new section 28 of the TPAA states that;

‘if an accused person under the Act is released on bail by a court within the 90-day incarceration period stipulated by the Act, ‘the individual may, with the nod of the Head of the appropriate law enforcement agency, be placed under a house arrest,’ and shall be supervised by its officers, such a person shall have no

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<sup>30</sup> Ibid

<sup>31</sup> Section 35 (5) of the 1999 Constitution of Nigeria (As Amended).

access to cellphones or communication devices and speak only to his lawyer until the investigation is complete.’

It is obvious that house arrest, without a valid order in these circumstances, is illegal, undermines the court's authority and runs contrary to the tenets of the fundamental principle of the Constitution and the rule of law. Where the Nigeria Anti-Terrorism Laws clamp down on the court's power, it is implied that the law has opened a gateway for the abuse of fundamental rights, and it is little wonder that serious human rights violations are prevalent in Nigeria.<sup>32</sup>

Furthermore, the law that places a person on house arrest strictly contravenes the person's fundamental right to liberty and movement as contained in the Constitution. Similarly, counter-terrorism laws such as ours that deprive one access to phone or communication gadgets but allow him to speak only to his counsel until the conclusion of the investigation is antihuman and completely violate the person's right to privacy, family life and freedom of expression as enshrined in the Constitution.<sup>33</sup> According to Lord Hoffmann, the primary concern for the stability and security of a nation does not stem from acts of terrorism, but rather from legislations similar to the ones being discussed. This argument seems to hold validity when considering the existing Anti-Terrorism legislation in Nigeria and the instances of human rights infringements exemplified by the TPA (Terrorism Prevention Act) and TPAA (Terrorism Prevention Amendment Act). The issue at hand presents a disconcerting and consequential challenge to the employability prospects of young individuals in Nigeria, as they find themselves subject to the very legislation intended to safeguard their interests.<sup>34</sup>

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<sup>32</sup> A. Ikenna, ‘Anti-Terrorism Laws and Fundamental Rights, 27.

<sup>33</sup> Ibid.

<sup>34</sup> A.A. Adebayo, ‘Youths’ Unemployment and Crime in Nigeria: A Nexus and Implications for National Development,’ [2013], 5(8), *International Journal of Sociology and Anthropology*, 350.

These concerns led to a further amendment of the TPAA 2013 to a new terrorism law termed the Terrorism Prevention and Prohibition Act 2022 (TPPA 2022). The enactment of the TPPA 2022 aims to establish a robust and all-encompassing legal, regulatory, and institutional structure that enables the identification, prevention, prohibition, prosecution, and sanctioning of acts related to terrorism, terrorism financing, proliferation, and financing of weapons of mass destruction within Nigeria.<sup>35</sup> The TPPA 2022 created terrorism offences but is silent on the mode of prosecution. However, only the Attorney General of the Federation has the legal authority to prosecute terrorism cases.<sup>36</sup> There is also no clear-cut definition of terrorism in the TPPA 2022.<sup>37</sup>

The objectives of the TPPA 2022, as set out in Section 1, are lofty and far-reaching, and it has expanded the legislative framework in the fight against terrorism. The document incorporates provisions pertaining to the proliferation of weapons of mass destruction in accordance with the mandates outlined in United Nations Security Council Resolutions addressing this issue. Additionally, it includes measures aimed at enhancing compliance, implementation, and enforcement of regional and international conventions related to counter-terrorism.<sup>38</sup>

The TPPA 2022 also created the National Counter Terrorism Centre as the coordinating body for counter-terrorism and terrorism financing in Nigeria, with the mandate to coordinate counter-terrorism policies, strategies, and plans. This is an essential addition to the fight against terror in Nigeria. Coordination of intelligence and operational activities of the various arms

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<sup>35</sup> C. Odenyi, “An Expository of the Novel Provisions of the Terrorism (Prevention and Prohibition) Act, 2022”, Available at: <https://www.nfiu.gov.ng> (accessed 23/09/2023).

<sup>36</sup> N, Tijani, 'The Effective Prosecution of the Crime of Terrorism and Terrorism-Related Offences in Nigeria: Challenges and Prospects', [2023] *Beijing Law Review* 14, 300-323.

<sup>37</sup> Ibid.

<sup>38</sup> C. Odenyi, “An Expository of the Novel Provisions of the Terrorism (Prevention and Prohibition) Act, 2022”.

involved in the fight has always been a problem. This provision will make harmonising available intelligence and using the same for operational plans more effective.<sup>39</sup>

The TPPA 2022 made provisions under Section 9 for the Nigeria Sanctions Committee (NSC) operation. The NSC was previously established under the Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations of 2013, under the powers of the Attorney General under the TPA 2011 (as amended).<sup>40</sup>

Section 58 prohibits the proliferation of weapons of mass destruction, while Section 59 prohibits proliferation financing. Sections 60 and 61 make provisions for implementing UNSCR relating to proliferation and freezing obligations concerning proliferation financing.<sup>41</sup>

The TPPA 2022 has established, in Section 91, a Victims Trust Fund in the Office of the Attorney General of the Federation. The purpose of the funds is to be allocated towards the payment of compensation, restitution, and damages to individuals affected by acts of terrorism. Additionally, the monies will be used to support programmes aimed at preventing terrorism, as well as any other objectives related to the Act. Section 91 of TPAA provides that “A Trust Fund Committee shall be established to receive all monies, aids, grants, gifts, bequests, endowments, donations, or assistance accruing to the Trust fund; determine victims of acts of terrorism who are entitled to benefit from the Trust fund and approve the disbursements.”<sup>42</sup>

The TPPA of 2022 include provisions that address the actions of individuals who, without legal authorization, engage in the utilisation or distribution of radioactive or nuclear materials, or employ a device with the intent to cause death, severe physical harm, significant property

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

damage, or environmental harm. Furthermore, these provisions encompass situations where such materials are deployed to coerce individuals, international organisations, or states into performing or abstaining from certain actions. A death penalty awaits the person on conviction, where death results or imprisonment for not less than 20 years, where death does not result. Would a someone who utilises or causes harm to a nuclear plant, or disrupts its functioning in a way that results in the release or potential release of radioactive substances, with the intention of causing fatalities, severe physical harm, or damage to property or the environment, be held accountable? The TPPA 2022 generally provides for stricter sanctions of not less than 20 years, depending on the offence. Such provisions can be found in Sections 11, 13, 14, 15, 17, 18, 19, 21, 22, 23, and 25 as a prohibitive stance towards terrorism in Nigeria.

#### **4. Legal and Socio-Political Challenges in Checking Violation and Degradation of Rights in the Fight against Terrorism in Nigeria**

There are several challenges militating against the sustenance and enforcement of human rights as guaranteed by the courts in Nigeria. The identified challenges will be hereunder.

##### **A. Problem of Disobedience to Court Orders on Human Rights**

Disobedience of court orders is a perennial problem in Nigeria, and it poses the biggest challenge to the legal system of the Nigerian state. A court may order a remedy during a legal proceeding, but it is another thing entirely for the successful party to receive the benefits of the ruling. This is because court orders and judgments are not diligently enforced, and when enforced, maybe in fractions. The judiciary does not have enforcement mechanisms. This means the judiciary must rely on the executive to enforce decisions from the courts and other judicial panels. Regarding

human rights abuse, the executive branch stands out as the worst offender. In most cases, the executive arm of government remains the 'predator.'

Consequently, there is no guarantee that any directive issued against the executive arm of government will be carried out. What has happened is that the executive consistently ignores valid court orders, which is a sad and regrettable reality. The government often decides what and which judicial orders people must follow. It has been observed that the government obey orders in line with its executive interests and aspirations and, on the other hand, disobeys those that run counter to its interests, regardless of the intended and unintended consequences on the people whose rights it violates.<sup>43</sup> Disobedience to court orders in Nigeria has taxed the minds of academics and elicited justified criticism from the media. The Nigerian Bar Association, an organisation representing lawyers in the country, urged its members to stage a nationwide two-day boycott of courts because of the dire circumstances on the judicial arm of government and overall adherence to the separation of powers.<sup>44</sup>

### **B. The problem of *Locus Standi***

The doctrine of locus standi too often inhibits *the promotion and protection of Human rights in Nigeria*. '*Locus standi*' means legal standing or capacity based on sufficient interest in the subject matter to institute legal proceedings to secure redress. It refers to a party's right to an action to be heard in litigation before a court of law or tribunal or the legal capacity of instituting, initiating, or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance.<sup>45</sup> There has always been the judicial insistence that a

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<sup>43</sup> Dada, 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal, 11.

<sup>44</sup> Ibid, 12.

<sup>45</sup> Ibid

person without locus standi is an intruding meddlesome interloper and that a suit brought at his instance is incompetent and unsustainable. As a result, the question of jurisdiction is intrinsically linked to the concept of locus standi. No court has jurisdiction over a matter where it lacks locus standi.<sup>46</sup> In the case of *Attorney General of Kaduna State v. Hassan*, Oputa J.S.C., the doctrine of standing or locus was concisely explained as follows: "The legal principle of standing or locus is based on the premise that a court is not obligated to grant a remedy for a claim in which the applicant has a distant, speculative, or nonexistent interest."<sup>47</sup>

The matter of locus standi or sufficient interest holds great significance in the majority of human rights actions. Hence, it is imperative to establish one's status as a "person interested," referring to an individual whose rights have been, are currently being, or are at immediate risk of being violated or infringed upon, in order to initiate the legal proceedings aimed at effectively addressing and remedying human rights violations. In cases where there has been a public injury or a violation of a fundamental right that has affected an unknown number of people, a plaintiff must be able to demonstrate that he has suffered more than the multitude of individuals who have collectively been wronged in order to be competent to sue. Thus, it is to be applauded that the strict, restrictive, and limiting interpretation requirement of the locus standi doctrine is now being loosened.<sup>48</sup> Numerous human rights cases have been dismissed in Nigeria based on insufficient interest, making this doctrine a formidable obstacle to justice. The requirement of locus standi serves as a deterrent for public-spirited individuals who wish to initiate legal proceedings on behalf of impoverished victims of human rights abuses.

### **C. Constitutional Derogations**

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<sup>46</sup> (1985)2 NWLR (pt 8) 483.

<sup>47</sup> Aliyu Bello v AG, Oyo State (1986) 5 NWLR (Pt. 45) 828 at 889-890.

<sup>48</sup> EA Taiwo, 'Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for a More Liberal Provision', [2009] 2 *African Human Rights Law Journal*, 550.

The presence of diverse constitutional constraints and qualifications hinders the full realisation and enjoyment of human rights. Section 45(1) of 1999 makes for a veritable plank upon which any law invalidating fundamental rights may be justified. Section 45(1) provides that: Nothing in sections 37, 38, 39, 40 and 41 of [this] Constitution shall invalidate any law that is reasonably justifiable in a democratic society:

(a) In the interest of defence, public safety, public order, public morality, or public health.

(b) to protect the rights and freedom of other persons.

The preceding provision may be lawfully used to limit or restrict individuals' rights to a private and family life, freedom of expression and the press, freedom of thought and religion, freedom of movement, and freedom of peaceful assembly and association. Furthermore, it should be noted that some human rights, which are constitutionally protected, are not considered inviolable or unrestricted, but rather subject to explicit and precise limitations. It must be acknowledged that the existence of an absolute right, without any qualifications, may be questionable. However, the constitutional provisions that impose limitations on the guaranteed rights are excessively expansive, ambiguous, and lacking in clarity. The concept and specific articulation of a law that is reasonably justifiable in a democratic society remains elusive. Undoubtedly, this presents a significant threat to the full attainment of human rights. The potential risks associated with the judgement rendered by the Supreme Court in the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Emewulu & Anor* are readily evident.<sup>49</sup> where the court held that all freedoms are limited by state policy or overriding public interest.

### **C. Effects of Ouster Clauses on Powers of Court**

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<sup>49</sup> (2001) 3 SCNJ 106.



The ouster clause restricts the jurisdiction of courts to examine the legitimacy of any exercised power and to provide suitable remedies. During the period of military governance, numerous decrees were enacted that removed the jurisdiction of the courts. Unfortunately, the establishment of democratic governance did not render ouster clauses obsolete. Regarding the requirements of Chapter II of the Constitution, which relates to socio-economic and social rights, no court has jurisdiction per Section 6 (6) of the 1999 Constitution. The lack of justiciability in this particular chapter has resulted in socio-economic and cultural rights being perceived as a marginalised category of rights within the Nigerian context.<sup>50</sup> The author, in response to the implications of the outer clauses, expressed a lamentation on the reduction of the scope of human rights to a point of disappearance. The persistent utilisation of expulsion clauses as a means to deprive individuals of their ability to access the judicial system serves as a solid basis for the establishment of authoritarian rule and societal disorder.<sup>51</sup>

#### **D. Absence of True Judicial Independence**

The concept of judicial independence is a notable and enduring characteristic of the common law system. The significance of this concept is so profound that it has not only been firmly established in the English court system but also in the majority of judicial systems worldwide. According to the principles of judicial independence, no judge or other member of the judiciary should feel any pressure from the government, a business, or any other entity to reach a predetermined outcome in a case. Regardless of his position, he should be able to issue legally binding orders that everyone must follow. Judicial independence in Nigeria is still an ideal rather than a reality, as evidenced by the fact that these hallmarks of truly independent courts are still elusive.<sup>52</sup> The executive arm exercises authority over the nomination and dismissal of judges,

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<sup>50</sup> Dada, 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal', 11.

<sup>51</sup> Dada, 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal,' 13.

<sup>52</sup> Ibid

which results in a lack of insulation from political and other external factors. Consequently, this phenomenon renders judicial decisions vulnerable to political interests and manipulations. Again, although the Constitution guarantees financial autonomy to the judiciary, the relevant provision has yet to be implemented in most States of the Federation, for implementation at the national level is partial.<sup>53</sup>

## **5. Conclusion**

The fight against terrorism in Nigeria is a complex one. It has been demonstrated that it goes beyond mere legal and judicial adjudication. It involves, notwithstanding legal but socio-political aspect.

A holistic approach aimed at combating terrorism should involve judicial-legal as well as socio-political approaches.

Enforcement of human rights as a matter of fact, both for the victims of terrorism as well as the allegedly arrested terrorists, arraigned terrorists and during the process of prosecution in Nigerian courts require due process of law. However, arraignment and prosecution in the Nigerian courts are usually laden with constraints which occasionally may lead to miscarriage of justice, at times largely due to court technicalities and other prosecutorial challenges. From available evidence, the infringements of these rights are yet to be remedied due to enforcement constraints in the judicial process. In the same vein, no successful conviction has been recorded against terrorists in Nigeria, hence depriving victims of terrorism of any form of justice.

It has also been examined the avalanche of legislations incidental to checking terrorism as well as safeguarding the well-being of likely victims of terrorism. It is necessary to ensure that these

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<sup>53</sup> Ibid, 14

measures are helpful in addressing the threat of terrorism, and of course essential to ensure that they are implemented in a way that upholds human rights.

It is crucial to balance the need for security as well as protecting the individual rights and freedoms in Nigeria. Nigeria must work to ensure that its counter-terrorism measures do not violate human rights and that perpetrators are prosecuted fairly and justly. Further more, the legal constraints in combating terrorism in Nigeria must be examined from a human rights perspective to ensure that the country's efforts to combat terrorism are practical and just.

Flowing from the above, it is therefore recommended that the Nigerian government be intentional about preserving human rights-by guaranteeing the independence of the judiciary to enable it to function efficiently. It is further recommended that the Nigerian government improve on combating terrorism on the one hand, and ensure that infringements on human rights are minimized, by deploying resources to strengthen her security structure and defence mechanism.

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