

In Defence of the Homeland: Unclogging the Legal Regime Governing Counterterrorism in Nigeria through Paradigms from the United States

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Abstract

Terrorism is perhaps the greatest global security challenge post-World War II and, like several countries, Nigeria is also grappling with this scourge. The remarkable thing is that following pressure from the United States (US) and Western nations, Nigeria took a major step towards counterterrorism with the enactment of the Terrorism (Prevention) Act, 2011. The Act was later replaced by the Terrorism Prevention (Amendment) Act, 2013. Certainly, so far, this legislation remains the nation's boldest effort in combatting terrorism. However, the Nigerian counterterrorism legal regime still falls short in some material respect, given the absence of a robust strategy and complementary institutional support system. This is not the same case in a country such as the US, where the principal counterterrorism legislation, the Patriot Act, is well complemented by the US National Counterterrorism Strategy and the Department of Homeland Security.

Against this background, this Article examines the legal regime governing counterterrorism in Nigeria and the US, with the view of highlighting areas where Nigeria could gain useful insights from the US experience. The expectation is that given the robustness of the US counterterrorism regime, the experience to be gained cannot but further enrich the existing counterterrorism legal regime in Nigeria.

Key Words: Counterterrorism, Boko Haram, Terrorism Prevention (Amendment) Act and Patriot Act

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I. Introduction

Nigerians are largely a peace-loving people, and generally known to love life. Despite undulating social and economic challenges, the people in their easy-going nature have demonstrated a kind of resilience not known in many other parts of the world. Also, notwithstanding past experiences of violence in several forms,¹ any keen observer would have regarded Nigeria as perhaps the last place for an evil such as terrorism. However, terrorism is today seen as the country's biggest security challenge.² This turn of events happened with the emergence of Boko Haram. Therefore, in the country's contemporary literature, terrorism has become synonymous with this group, which is described as the Nigerian Taliban.³

While the ideology, organisation, and affiliations of the group remain a matter of controversy, Hillary Matfess' outstanding work on the group, titled '*Boko Haram: History and Context*', helps to catalogue its history.⁴ She traces the origin of the group to the complex power struggle and religious identity that characterised the politics of the northern part of Nigeria, from the return to democratic rule in 1999.⁵ The politics of that era provided the federating states with an opportunity to exert their influence within Nigeria's uneven federal structure and, for states in the northern part of the country, contentions began to develop on the idea of adopting Sharia law.⁶

The ensuing contest of wills saw the pursuit of power by Northern politicians and the ambition of resurgent Islamic groups in the region finding a common ground.⁷ While on the one hand, the politicians sought the support of the people by promising to implement Sharia law once voted into office, the Islamic groups, on the other hand, saw an opportunity to reassert themselves as willing partners to these politicians.⁸ Notable examples include Ahmed Yerima

¹ A key example is the Nigeria-Biafra Civil War that lasted from 1967 to 1970. After that ugly war, other instances of violence have had to do with ethno-religious/sectarian uprisings in the northern part of the country.

² Eji E, 'Rethinking Nigeria's counter-terrorism strategy' 18 (3), *The International Journal of Intelligence, Security, and Public Affairs*, 2016, 198 – 220.

³ Imhonopi D and Urim UM, 'The spectre of terrorism and Nigeria's development: a multi-stakeholder imperative' 9 (1) *African Journal of Criminology and Justice Studies*, 2016, 26.

⁴ Matfess H, *Boko Haram: History and context*, Oxford Research Encyclopaedia – African History, 2017, 1 – 24.

⁵ Matfess H, *Boko Haram: History and context*, 1 - 24.

⁶ Matfess H, *Boko Haram: History and context*, 1 - 24.

⁷ Matfess H, *Boko Haram: History and context*, 1 - 24.

⁸ Matfess H, *Boko Haram: History and context*, 1 - 24.

of Zamfara State, who campaigned on the implementation of Sharia law to win election as Governor and Ali Modu Sheriff of Borno State, who was also elected as Governor on the basis of Sharia law.⁹

This was the state of affairs that pervaded the region, one that fuelled the growth of radical groups. The influence of these groups would also appear to have been heightened when the eventual election of these pro-sharia politicians did not translate into meaningful life for the people.¹⁰ With time, frustration boiled over and it was in the midst of the ensuing social dislocation that Boko Haram emerged.¹¹ For one, it has been noted that the emergence of the group cannot be dissociated from the collapse of religious leadership in the northern part of the country.¹²

The expression *Boko Haram*, which means ‘*Western education is forbidden*’, refers to a radical Salafist fundamentalist group, largely operational in the North-East region of Nigeria. Two major aspects of the group’s terrorism are its claim of utter disdain for Western civilisation, and its morbid ambition to establish a state within the Nigerian Federation.

For a group that was largely unknown when it emerged around 2002 in the city of Maiduguri,¹³ it has spent the last ten years wreaking havoc predominantly in the northern part of the country. Specifically, since 2009, it has waged a vicious insurgency against the Nigerian state.¹⁴ One key aspect of its acts of terror has been the use of suicide bombing in systematic perpetration of violence.

⁹ Matfess H, *Boko Haram: History and context*, 1 - 24.

¹⁰ Matfess H, *Boko Haram: History and context*, 1 - 24.

¹¹ Matfess H, *Boko Haram: History and context*, 1 - 24.

¹² Abubakar D, ‘From sectarianism to terrorism in Northern Nigeria: A closer look at Boko Haram’, in Varin, C and Abubakar D, (eds.) *Violent non-state actors in Africa*, Palgrave Macmillan, 2017, 17 – 47.

¹³ Bamidele O, ‘Boko Haram catastrophic terrorism: An albatross to national peace, security, and sustainable development in Nigeria’ 14 (1) *Journal of Sustainable Development in Africa*, 2012, 35.

¹⁴ For an extensive overview see generally; Pham JP, ‘Boko Haram’s evolving threat’ 20, *Africa Security Brief*, 2012, 1 – 8; Oftedal E, *Boko Haram - an overview*, Norwegian Defence Research Establishment, 2013, 1 – 108; Mantzikos I, ‘Introduction’, in Mantzikos I, (ed.), *Boko Haram: Anatomy of a crisis*, E-International Relations, Bristol UK, 2013, 1 – 91; Copeland F, ‘The Boko Haram insurgency in Nigeria’ *Civil-Military Fusion Centre (CFC)*, 2013, 1 – 7; Onuoha FC, ‘A danger not to Nigeria alone - Boko Haram’s transnational reach and regional responses’ *Peace and Security Series – FES*, 2014, 1 – 13; Bamidele O, ‘Beyond the shadows of terrorism: Boko Haram crisis in North-Eastern Nigeria’ *Conflict Studies Quarterly*, 2015, 41 – 57; Asfura-Heim P and McQuaid J, ‘Diagnosing the Boko Haram conflict: Grievances, motivations, and institutional resilience in Northeast Nigeria’ *CNA Analysis & Solutions*, 2015, 1 – 72; Amao O and Maiangwa B, ‘Has the giant gone to sleep? Re-assessing Nigeria’s response to the Liberian Civil War (1990-1997) and the Boko Haram insurgency (2009 – 2015)’ *African Studies*, 2017, 1 – 22.

Some of these include the 16 June 2011 bombing of the Police Headquarters in the Federal Capital Territory (FCT), Abuja; the 26 August 2011 bombing of the United Nations (UN) Building in the same Abuja; the 16 April 2013 massacre in Baga, Borno state; the 31 March 2014 attack on the Department of State Services (DSS) facility; the 1 May 2014 bombing in Nyanya, a suburb in the FCT Abuja; the 25 June 2014 bombing in Wuse, another part of the FCT Abuja; and the 3 January 2015 attack in Baga, Borno state. The group has also used criminal abduction as a major tool, with close to 2,000 persons abducted since 2011.¹⁵ The two most daring of these abductions have been the 14 April 2014 Chibok girls' abduction,¹⁶ and the 19 February 2018 Dapchi girls' abduction. In addition, it has used lone attacks to its benefit¹⁷ as well as seeking territorial holdings, such as its capture of some areas in the north-east of the country in July 2014.¹⁸

The group has also extended its acts of terror to neighbouring countries such as Cameroon, Chad and the Niger Republic.¹⁹ In 2012, the group was rated the second deadliest terror group in the world, running on the heels of the Afghan Taliban.²⁰ This was due to the threshold of deaths from its attacks, in which over 1,000 persons were killed in about 363 attacks.²¹

In recent times, it claims to have become affiliated with other terrorist networks in the West African Sahel.²² Consequent to this purported alliance, membership and activities of these groups are now spread around the West African Sahel.²³

¹⁵ Oyewole S, 'Boko Haram: *insurgency and the war against terrorism in the lake Chad region*' 39 (4) *Strategic Analysis*, 2015, 428 – 432.

¹⁶ The abduction happened on the nights of April 14 and 15 when close to two hundred Boko Haram fighters disguised as soldiers from the Nigerian Military stormed the school and abducted about 276 girls who were about to take their final exams. The abduction later attracted widespread international condemnation, leading to the 'BringBackourGirls Campaign'.

¹⁷ Onuoha F, 'The audacity of the Boko Haram: background, analysis, and emerging trends' 25 (2) *Security Journal*, 2012, 134 – 151.

¹⁸ Bamidele S, 'terrorism in Mali and Nigeria: assessment and projection' 7 (8) *Counter Terrorist Trends and Analyses*, 2015, 10.

¹⁹ Oyewole S, 'Boko Haram: *Insurgency and the war against terrorism in the Lake Chad region*', 428 – 432.

²⁰ Aghedo I and Osumah O, 'Bread, not bullets: Boko Haram and insecurity management in Northern Nigeria' 35 (3) *African Study Monographs*, 2014, 205 – 229.

²¹ Aghedo I and Osumah O, 'Bread, not bullets: Boko Haram and insecurity management in Northern Nigeria', 205.

²² Olaniyan RA and Faley OA, 'Civil society and terrorism in Africa: rethinking borderland security in North-east Nigeria', in Olaniyan RA and Akinyele RT (eds), *Nigeria's ungoverned spaces*, Obafemi Awolowo University Press, Ile-Ife, 2016, 71 – 90.

²³ Ogonnaya UM, Ogujiuba K, and Stiegler N, 'Terrorism in Nigeria: Implications of Boko Haram's movement for security and stability in the ECOWAS Sub-region' 23 (3) *Africa Security Review*, 2014, 145 – 160.

It is also reported that Al Qaeda in the Islamic Maghreb (AQIM) trained breakaway Boko Haram insurgents who formed a group called 'Ansaru' in 2011.²⁴ The Ansaru group later reunited with Boko Haram, which enhanced its capacity and ferocity of attacks in 2013.²⁵ In 2014 the group was added to a UN Security Council's list of terrorist organisations.²⁶ Importantly, the impact of Boko Haram's terrorism on Nigeria became more significant when in November 2013, the State Department of the US government designated the group as a Foreign Terrorist Organisation (FTO), which effectively put the country in the international spotlight.²⁷

To contain this challenge, the Nigerian government had to respond. This led to the development of a counterterrorism architecture made up largely of military mobilisation.²⁸ Almost ten years later, the country is apparently still at loggerheads with Boko Haram. So far, the growth of Boko Haram and its brand of violent extremism as well as Nigeria's effort at countering the group has remained a huge paradox.²⁹ While the government continues to claim that it has greatly degraded Boko Haram, the continued changes in the group's pattern of violence appear to suggest otherwise.

Against this background, this article examines Nigeria's counterterrorism legal regime since Boko Haram's terrorism began. It benchmarks this with the United States (US) experience with the aim of drawing out issues such as the inadequacy in the counterterrorism strategy and the lack of a specialised institutional framework to support the existing legislation.

To achieve this, the article is divided into five parts. Part II examines Boko Haram's terrorism against the Nigerian state and how this fit in the global terror landscape. This part tries to establish the problem of domestic terrorism in Nigeria as the basis upon which the need for a counterterrorism legislation became urgent. It also presents the definition of terrorism, and what the concept

²⁴ Zenn J, 'Boko Haram's conquest for the Caliphate: How Al Qaeda helped Islamic State acquire Territory', 43 (2) *Studies in Conflict & Terrorism*, 2020, 89 – 122.

²⁵ Zenn J, 'Boko Haram's conquest for the Caliphate: How Al Qaeda helped Islamic State acquire Territory', 89 – 122.

²⁶ Foyou VE, Ngwafu P, Santoyo M, and Ortiz A, 'The Boko Haram insurgency and its impact on border security, trade and economic collaboration between Nigeria and Cameroon: An exploratory study' 9 (1) *African Social Science Review*, 2018, 71.

²⁷ Bamidele O, 'Beyond the shadows of terrorism: Boko Haram crisis in North-Eastern Nigeria', 41.

²⁸ Oyewole S, 'Boko Haram and the challenges of Nigeria's war on terror' 29 (3) *Defence & Security Analysis*, 2013, 253 – 262.

²⁹ Sampson II, 'Between Boko Haram and the Joint Task Force: Assessing the dilemma of counter-terrorism and human rights in Northern Nigeria' 59 (1) *Journal of African Law*, 2015, 25 - 63.

of counterterrorism means. The intent of defining the term is to establish how it is conceptually distinct from other related crimes.

Parts III and IV examine the counterterrorism legal regime in Nigeria and the US respectively, and highlight areas that Nigeria needs to improve on in terms of its counterterrorism legal regime. They present an overview of both the Terrorism Prevention (Amendment) Act (2013) in Nigeria and the Patriot Act (2001) in the US, highlighting some significant differences. They additionally draw from the US National Counterterrorism Strategy policy document as well as the establishment of the Department of Homeland Security (DHS) as pointers to areas that the Nigerian regime requires immediate attention.

II. Terrorism – A Conceptual Approach

The problem of terrorism is one that the international community continues to develop strategies towards combatting. This is more so given the morbid fear of its endless nature.³⁰ Given its complicated nature and hydra-headedness, it robs even the most sophisticated nations of initiatives on how best to address it. That is why a sufficient understanding of the term becomes needful in fashioning effective counterterrorism legislation.

It is in this light that scholars have spent the last four decades trying to gain an understanding of the phenomenon. This has much benefit in the sense that sound knowledge in this area can be useful for policymaking and an understanding of the root causes of terrorism can help eliminate it. However, as it is with every problem, providing a fitting solution must first start with an accurate definition of what the problem itself means. This helps to determine which, out of the available options, will be best suited in the instance.

i. Defining Terrorism and the Challenge of a Universally Acceptable Definition

When it comes to defining terrorism, a sore point is the challenge of arriving at a universally acceptable definition. While there is a side pushing for a universally acceptable definition, there is another arguing that any attempt at

³⁰ Cronin AK, 'The 'War on terrorism: What does it mean to win?' 37 (2) *Journal of Strategic Studies*, 2014, 174 – 197.

defining terrorism would remain elusive.³¹ There is also the caution that over-ambitiously defining an individual as a terrorist may just be counter-productive in the war against terror.³²

Generally, therefore, there is no universally acceptable definition of terrorism.³³ This is notwithstanding efforts that have been made to define the term. The Black's Law Dictionary defines it as 'the use of threat of violence to intimidate or cause panic, especially as a means of achieving a political end'.³⁴

According to Hoffman terrorism is 'the deliberate creation and exploitation of fear through violence or the threat of violence in pursuit of political change'.³⁵ Another definition that has attracted scholarly interest is that by Schmidt, where he said that:

'an anxiety inspiring method of repeated violent action, employed by a semi-clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby in contrast to assassination, the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population and serve as message generators. Threat and violence-based communication processes between terrorist organization, imperilled victims, and main targets are used to manipulate the main target audience(s), turning it into a target of terror, a target of demands, or a target of attention, depending on what the intimidation, coercion, or propaganda is primarily seeking'.³⁶

In addition, Sandler defines terrorism as 'the premeditated use or threat to use violence by individuals or sub-national groups to obtain a political or social objective through the intimidation of a large audience, beyond that of the immediate victims'.³⁷ The scholar further states that a major aspect of terrorism is violence and the presence of a political motive.³⁸ It has been argued that in defining terrorism, a general approach should be adopted over a specific approach

³¹ Begorre-Bret C, 'The definition of terrorism and the challenge of relativism' 27 (5) *Cardozo Law Review*, 2006, 1987 - 1992.

³² O'Connell ME, 'The legal case against the global war on terror' 36 (2) *Case Western Reserve Journal of International Law*, 2004, 349 - 356.

³³ Kimari B, 'Terrorism as a form of Imperialism: A Case for the Rule of Law', 1 (1) *Strathmore Law Review*, 2016, 191 - 219, 200.

³⁴ *Black's Law Dictionary*, St. Paul, Minnesota, Thomson Reuters, 2004, 1701.

³⁵ Hoffman B, *Inside terrorism*, Columbia University Press, New York, 1998, 13 - 44.

³⁶ Schmidt A, 'Terrorism - The definitional problem' 36 (2) *Case Western Reserve Journal of International Law*, 2004, 375.

³⁷ Sandler T, 'The analytical study of terrorism: Taking stock: Taking stock' 51 (2) *Journal of Peace Research*, 2014, 257.

³⁸ Sandler T, 'The analytical study of terrorism: Taking stock', 257.

and that legislation must remain the primary means of defining the term.³⁹ In this respect, terrorism has been recognised in the counterterrorism legislations of the two countries under examination in this article. Nigeria's counterterrorism legislation does not exactly define terrorism in any of its provisions, rather it states in Section 1 (1) that, 'all acts of terrorism and financing of terrorism are hereby prohibited'.⁴⁰ The US Patriotic Act, however, defines the term as follows:

'Acts dangerous to human life that are a violation of the criminal laws of the United States or of any State that appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States'.⁴¹

Notwithstanding the seeming lack of consensus as to what terrorism means in Nigeria and in the US, both jurisdictions recognise acts constituting terrorism; namely, crimes such as murder, kidnapping and other violent attacks.⁴² According to Muzan, terrorism takes several forms, which may be ethnic, ideological, racial, religious, political, and philosophical.⁴³ These forms are themselves a product of different factors. As regards Boko Haram's terrorism, scholars across different spectra have identified a number of causative factors. While Chilaka and Idika argue that Boko Haram's upsurge is a counter-offensive against Western civilisation,⁴⁴ Iyekekpolo makes the point that the group should be viewed within the historical frame of Northern Nigeria and the role that matters such as economic greed, religious ideology, and political opportunism have played in insurgencies in the region.⁴⁵ He then goes ahead to identify issues such as North-South identity fractionalisation, poverty, and religious ideology as factors responsible for the group's acts of terrorism.⁴⁶ In another breath, Ayegba's position is that there

³⁹ Golder B, and Williams G, 'What is terrorism? Problems of legal definition' 27 (2) *University of New South Wales Law Journal*, 2004, 270 - 295.

⁴⁰ *Terrorism prevention (Amendment) Act*, 2013.

⁴¹ *US Patriot Act*, 2001.

⁴² Section 3, *Terrorism (Prevention) Act*, (2011).

⁴³ Muzan AO, 'Insurgency in Nigeria: Addressing the causes as part of the solution' 14 *African Human Rights Law Journal*, 2014, 222.

⁴⁴ Chilaka FC and Idika I, 'The Phenomenon of Boko Haram in Northern Nigeria', Oshita, O, Alumona, I, and Onuoha, F. (eds.) *Internal Security Management in Nigeria*, Palgrave Macmillan, 2019, 85 – 97.

⁴⁵ Iyekekpolo WO, 'Boko Haram: Understanding the Context', 37 (12) *Third World Quarterly*, 2016, 2211 – 2228.

⁴⁶ Iyekekpolo WO, 'Political Elites and the Rise of Boko Haram Insurgency in Nigeria', *Terrorism and Political Violence*, 2018, 1 – 19. Adesoji and others have also identified factors such as extreme religious feelings, extreme political ideology, unemployment, poverty and economic problems as possible causes. Adesoji O, Adelaja AL, and Eva P, 'Public Opinion on the Root Causes of Terrorism and Objectives of Terrorists: A Boko Haram Case Study', 12 (3) *Perspectives on Terrorism*, 2018, 35 – 49.

exists a strong nexus between poverty and insecurity in the northern part of the country.⁴⁷ Stressing this argument, he notes that while poverty is prevalent in every part of the country, it is of high severity in the north.⁴⁸

It is worth stating that, within the context of causatives, two major factors appear to be dominant in the Boko Haram narrative; namely, the role played by political opportunism and the upsurge of Islamic fundamentalism in Northern Nigeria. In chronicling the origin of the group in Part I of this Article, it was established how the frenzied demand for implementation of Sharia law upon the return to democracy in 1999 was carefully exploited by the Northern political class. Making the point on political opportunism, Iyekekpolo again notes that Boko Haram's insurgency can be explained as the fallout of a once politically beneficial relationship between local politicians and a politically useful group, now gone sour.⁴⁹ Akinola also argues that the interplay between Islamic fundamentalism, politics and poverty may help one understand how Boko Haram emerged in Nigeria.⁵⁰ He further notes that, in a way, the Nigerian government has been unable to defeat the group due to a lack of understanding of this interplay.⁵¹ Thus, where other earlier highlighted factors may be regarded as secondary, it is important to emphasise that political opportunism and Islamic fundamentalism are to be taken as primary factors. Interestingly, in the development of the country's counterterrorism regime, both these factors were not taken into cognisance. This represents a gaping hole in the entire regime.

Admittedly, terrorism is broadly divided into two classes. One is domestic terrorism and the other is transnational terrorism.⁵² Domestic terrorism involves terrorist acts that are homegrown, with the impact mostly felt by the host country alone.⁵³ Where a domestic terrorist incident takes place, the terrorists, victims and target are often all from the same country.⁵⁴ Transnational terrorism on the

⁴⁷ Ayegba US, 'Unemployment and Poverty as sources of and consequences of Insecurity in Nigeria: The Boko Haram Insurgency revisited', 9 (3) *African Journal of Political Science and International Relations*, 2015, 90 – 99 at 93.

⁴⁸ Ayegba US, 'Unemployment and Poverty as sources of and consequences of Insecurity in Nigeria: The Boko Haram Insurgency revisited', 94.

⁴⁹ Iyekekpolo WO, 'The Political Process of Boko Haram Insurgency Onset: A Political Relevance Model', 12 (4) *Critical Studies in Terrorism*, 2019, 673 – 692.

⁵⁰ Akinola O, 'Boko Haram Insurgency in Nigeria: Between Islamic Fundamentalism, Politics, and Poverty', 8 (1) *Africa Security*, 2015, 1 – 29.

⁵¹ Adeleke MO, Raimi LA, and Adegbite OB, 'Insurgency, Islamic Fundamentalism and Boko Haram Conundrum: Engaging the Contest Between the Right to Religion and Supremacy of the Constitution in Nigeria', 24 – 45.

⁵² Sandler T, 'The analytical study of terrorism: Taking stock', 258.

⁵³ Sandler T, 'The analytical study of terrorism: Taking stock', 258.

⁵⁴ Sandler T, 'The analytical study of terrorism: Taking stock', 258.

other hand involves a mixture of both domestic and foreign elements such that the terrorists, victims and target are from different countries.⁵⁵ Of course the requirement for transnational terrorism is more extensive and, in the same vein, its ramifications and carnage are likely to be more far-reaching. It is instructive to state that this distinction between domestic and transnational terrorism is important because the type of terrorism in view may determine the choice of counterterrorism strategy.

For the purpose of this Article, the focus is on domestic terrorism and whether legislations in the two countries under review are able to respond effectively. This is not to say that sometimes there may not be an overlap between domestic and transnational terrorist acts. What is equally instructive to note is that given that the same factors are not likely to cause terrorism in two different countries. Therefore, any effort at designing counterterrorism legislations must appreciate the peculiarities of a country.

III. Domestic Counterterrorism Legal Regimes – Nigeria and the United States

i. Nigeria

Nigeria, as a member state of the United Nations (UN), has for long been a signatory to several international instruments related to terrorism.⁵⁶ However, the prevailing attitude on the African continent was that terrorism was not seen as much of a security issue.⁵⁷ This position began to give way after the events of 11 September 2001. With regard to Nigeria, the country did not develop any counterterrorism legislation until the events of 25 December 2009 spiralled a chain of reactions. The event involved a young Nigerian, Umar Abdulmutallab, who attempted to set off an explosive on a US Airline—the Delta/North West Airlines Flight 253—but whose attempt was unsuccessful as he was overpowered by passengers.⁵⁸ This led Nigeria to being blacklisted as a ‘Country of Interest’,

⁵⁵ Sandler T, ‘The analytical study of terrorism: Taking stock’, 258.

⁵⁶ Sampson IT, ‘Legal framework for the punishment of terrorism in Nigeria: A critique of the EFCC establishment Act’ 4 (3) *The Nigerian Army Quarterly Journal*, 2008, 314.

⁵⁷ Sampson IT and Onuoha FC, ‘Forcing the horse to drink or making it realise its thirst? Understanding the enactment of anti-terrorism legislation (ATL) in Nigeria’ 5 (3) *Perspectives on Terrorism*, 2011, 33 – 49 at 33.

⁵⁸ Ejeh EU, Bappah AI, and Dankofa Y, ‘Nature of terrorism and anti-terrorism laws in Nigeria’ 10 (1) *Nnamdi Azikiwe University International Law Journal*, 2019, 189.

by the US Transportation Security Administration (TSA).⁵⁹ Nigeria had to fulfil four conditions to be removed from the black list, amongst which was enacting a counterterrorism legislation.⁶⁰ This is how the Terrorism (Prevention) Act, 2011 came into being.⁶¹ In establishing terrorism as a high crime, the Act states that:

‘A person who knowingly does, attempts or threaten to do an act preparatory to or in furtherance of an act of terrorism; commits to do anything that is reasonably necessary to promote an act of terrorism; facilitates the activities of persons engaged in an act of terrorism, commits an offence under this Act’.⁶²

The above provision has been substantially amended under Section 1 (1) of the 2013 Act which expanded the definition of terrorism, stating that ‘all acts of terrorism and financing of terrorism are hereby prohibited’.⁶³ The important innovations in the 2013 Act lie in two key matters — the addition of ‘Terrorism Financing’ and ‘Extraterritoriality’ to the counterterrorism legislative framework. Essentially, the 2013 Act provides for a better legal framework through its extensive amendments and it is the applicable law.

Section 1A (1) of the Act provides for the Office of the National Security Adviser (ONSA) as the coordinating body for all security and enforcement agencies that would operate under the Act. Some of these agencies include the Nigeria Police, the Department of State Services, the Economic and Financial Crimes Commission (EFCC). Under the Section, the ONSA is also expected to provide support and ensure the effective formulation of a counterterrorism strategy for the country.⁶⁴ This function is unique as an effective strategy is at the core of any counterterrorism framework. However, the key questions are whether the Section seen the light of day and how much of a counterterrorism strategy Nigeria has in place today. Addressing these questions is central to the theme of this Article, particularly when the Nigerian counterterrorism framework is benchmarked with that of the US one in the next part of the Article. Before doing this, it is important to present an overview of the entire framework of the TPA 2013 so as to establish its key features.

The Act further states in Section 1A (2) that the Attorney-General of the Federation (AGF), ‘shall be the authority for the effective implementation and

⁵⁹ Ejeh EU, Bappah AI, and Dankofa Y, ‘Nature of terrorism and anti-terrorism laws in Nigeria’, 189.

⁶⁰ Ejeh EU, Bappah AI, and Dankofa Y, ‘Nature of terrorism and anti-terrorism laws in Nigeria’, 189.

⁶¹ *Terrorism (Prevention) Act* (Act No.10 of 2011).

⁶² Section 1, *Terrorism prevention (Amendment) Act* (2013).

⁶³ *Terrorism prevention (Amendment) Act* (2013).

⁶⁴ Section 1A 1(b), *Terrorism prevention (Amendment) Act* (2013).

administration of this Act, and shall strengthen and enhance the existing legal framework'.⁶⁵ This is to ensure that the framework conforms with international standards such as the United Nations Convention on Terrorism while also maintaining the international cooperation required for combatting international terrorism. The AGF is also expected to ensure effective prosecution of terrorism cases in courts. Section 1A (4) provides that the law enforcement agencies shall have powers of enforcement of all laws regarding counterterrorism in the country.⁶⁶ They shall also take steps to prevent and fight terrorism, ensure the exchange of information between Nigeria and the rest of the international community on terrorism matters, and work hand in hand with civil society organisations on educating the public on the prevention of acts of terrorism.⁶⁷ To this end, Section 1A (5) empowers them to carry out investigations on acts of terrorism, execute court-sanctioned search warrants, effect arrest, seize properties as well as funds traced to terrorist activities, and seal up premises, track down properties and proceeds from terrorist activities and confiscate them.⁶⁸

Amongst the stated purposes of the Act, it provides for a broad framework of offences that can be classified as terrorism related. For instance, Section 3 states that, 'any person who intentionally murders, kidnaps, or commits other attacks on the person or liberty of an internationally protected person, carries out a violent attack on the premises private accommodation or means of transport of an internationally protected person in a manner likely to endanger his person or liberty, or threatens to commit such attack', would be liable to a sentence for life upon conviction.⁶⁹ Section 4 expands these offences by stating that anyone who arranges or assists in arranging a meeting geared towards a terrorist activity, or provides for equipment or support for such a meeting, or attends a meeting which he or she knows is in support of a proscribed organisation, would be liable to an imprisonment of 20 years upon conviction.⁷⁰ Additionally Section 5 (1) provides that 'any person who knowingly, in any manner, directly or indirectly, solicits or renders support for the commission of an act of terrorism; or for a terrorist group', is deemed to have committed an offence and liable to an imprisonment of not less than twenty years upon conviction'.⁷¹ Section 6 also provides that:

⁶⁵ *Terrorism prevention (Amendment) Act* (2013).

⁶⁶ *Terrorism prevention (Amendment) Act* (2013).

⁶⁷ *Terrorism prevention (Amendment) Act* (2013).

⁶⁸ *Terrorism prevention (Amendment) Act* (2013).

⁶⁹ *Terrorism prevention (Amendment) Act* (2013).

⁷⁰ *Terrorism prevention (Amendment) Act* (2013).

⁷¹ *Terrorism prevention (Amendment) Act* (2013).

‘Any person, who knowingly harbours, conceals, or causes to be harboured or conceals, hinders or interferes with the arrest of a person, who to his knowledge has committed or is about to commit an act of terrorism, or is likely to commit an act of terrorism, is a member of a terrorist group, has been convicted of an act of terrorism but escaped from punishment, or against whom he knew that a warrant of arrest has been issued, is liable to an imprisonment of not less than twenty years.’⁷²

Thus, this Section criminalises being an accessory to an act of terrorism, or acts showing the concealment or aiding of persons alleged to be a terrorist.⁷³ Section 7 additionally deals with providing or receiving training that helps further acts of terrorism and provides that anyone found guilty will be liable to an imprisonment of not less than 20 years.⁷⁴ Under Section 8, where a person conceals material information that would be useful in preventing the commission of a terrorist act, or that would ensure the arrest and prosecution of terrorist suspects, such a person would be liable to imprisonment of not less than ten years.⁷⁵ It would, however, be a defence where such a person can prove that it was not within his or her knowledge that such information could affect investigation or where he or she has a reasonable excuse for not disclosing it.⁷⁶

While Section 9 criminalises the provision of devices or materials to terrorist organisations, Section 10 makes it criminal for anyone to be part of a recruitment exercise for a terrorist organisation, and Section 11 criminalises the solicitation of property for terrorist activities. Section 13 deals with financing of terrorism. It provides that any person who receives or makes available funds, properties, or any means, for terrorist activities, or possess funds that are intended to be used for terrorist activities, is liable to imprisonment for life upon conviction.⁷⁷ The provision also extends to anyone who enters into any arrangement for the transfer of terrorist funds, providing that such person is liable to imprisonment for life upon conviction.⁷⁸ This provision also adds that it is not relevant that the funds in question be used for terrorist activities.⁷⁹

Another important provision is Section 16 (1), which deals with membership to terrorist or proscribed organisations. It provides that ‘any person who is a member or professes to be a member of a terrorist group, commits an offence

⁷² *Terrorism prevention (Amendment) Act* (2013).

⁷³ *Terrorism prevention (Amendment) Act* (2013).

⁷⁴ *Terrorism prevention (Amendment) Act* (2013).

⁷⁵ *Terrorism prevention (Amendment) Act* (2013).

⁷⁶ Section 8 (2), *Terrorism prevention (Amendment) Act* (2013).

⁷⁷ Section 13 (1), *Terrorism prevention (Amendment) Act* (2013).

⁷⁸ Section 13 (2), *Terrorism prevention (Amendment) Act* (2013).

⁷⁹ Section 13 (3), *Terrorism prevention (Amendment) Act* (2013).

and is liable on conviction to imprisonment of a term not less than 20 years'.⁸⁰ The same applies to membership of a proscribed organisation.⁸¹ Under Section 17, conspiring to commit terrorism carries a term of imprisonment for life where the act of terrorism is committed and a term of not less than 20 years where the act is not committed.⁸² Section 18 provides for a similar sentence with regard to aiding and abetting terrorism.⁸³ Section 20 deals with an attempt to commit an offence under the Act, stipulating imprisonment for life for anyone found guilty.⁸⁴ An interesting provision is Section 25, which deals with offences by entities or corporate bodies. It stipulates that where an offence under the Act committed by an entity is proved to have happened under the instigation or direction of one of the officers of the company, such officer will be liable upon conviction to imprisonment for life.⁸⁵ It further provides that where such entity is convicted under the Act, it is liable to the forfeiture of any fund or property used in the commission of such offence and may end up being wound up by an order of a court.⁸⁶ Where winding up takes place, the properties of the company would be transferred to the federation account.⁸⁷

Recognising the great benefit that an effective fight against terrorist financing can bring to counterterrorism efforts, the new Section 10 of the TPA 2013, which replaces Section 10 of the 2011 Act, covers what is known as 'funds to support terrorism'. As noted earlier, one of the two key improvements in the 2013 Act is the expanded framework covering terrorist financing. The new Section 10 provides that:

'Any person, or body corporate who, in any manner, directly or indirectly, willingly provides, solicits, or collects any fund or attempts to provide, solicit, or collect any fund with the intention or knowledge that they will be used in full, or in part to finance a terrorist or terrorist organization, commits an offence in breach of an enactment specified in the schedule to this Act, or does any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation of an armed conflict, when the purpose of such act, by its nature or context, is to intimidate a group of people or to compel a government or an international organization to do or abstain from doing any act, commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than

⁸⁰ *Terrorism prevention (Amendment) Act* (2013).

⁸¹ Section 16 (3), *Terrorism prevention (Amendment) Act* (2013).

⁸² *Terrorism prevention (Amendment) Act* (2013).

⁸³ *Terrorism prevention (Amendment) Act* (2013).

⁸⁴ *Terrorism prevention (Amendment) Act* (2013).

⁸⁵ *Terrorism prevention (Amendment) Act* (2013).

⁸⁶ Section 25 (2), *Terrorism prevention (Amendment) Act* (2013).

⁸⁷ Section 25 (3), *Terrorism prevention (Amendment) Act* (2013).

ten years and, in the case of a body corporate, to a fine of not less than N100,000,000, the prosecution of the principal officers of the body corporate who are on conviction are liable to imprisonment for a term of not less than ten years, and the winding up of the corporate body and prohibition from its reconstitution or incorporation under any form or guise'.⁸⁸

The implication of the new Section 10 is quite far-reaching, as it provides for new dimensions to counterterrorism using terrorist financing as a bridge. Firstly, it extends the crime of terrorist financing to cover companies and their officers, which was not present under the 2011 Act.⁸⁹ Secondly, the offence under this Section shall apply, irrespective of whether the person alleged in this respect is in the same, or a different country as the terrorist organisation or proscribed organisation, or whether the act actually happened or not.⁹⁰ Thirdly, it provides that in establishing this crime it is unnecessary to prove that the funds were actually deployed to carry out terrorist acts or attempted acts, or that they were connected to those acts.⁹¹ Fourthly, it also provides that 'intention may be inferred from objective factual circumstances'.⁹²

The above provisions are unique as they provide the relevant security agencies with more robust and wider powers to investigate suspected cases of terrorist financing. The idea is that once it can be established that the suspected funds formed a part of a chain of transaction connected to terrorism or terrorist organisations, the question of whether it was directly used for a specific terrorist act would be immaterial. Such financing may be done directly. In other instances, terrorists may choose indirect means of generating money to finance their activities. Terrorist organisations, with the intention of totally concealing the flow of their funds, may claim to be business partners, or engaging in commercial activities with companies, where they make investments or trade together for profit-making. Where it is established that the goal of such business arrangements is towards profiting terrorism, this provision may become applicable.

The Act empowers law enforcements agencies to enter and search any premises upon reasonable suspicion of commission of an offence under the Act, likelihood of commission of an offence, or the need to prevent the commission of an offence.⁹³ The Act also provides for the power of detention for offences

⁸⁸ *Terrorism prevention (Amendment) Act* (2013).

⁸⁹ *Terrorism prevention (Amendment) Act* (2013).

⁹⁰ Section 10 (2), *Terrorism prevention (Amendment) Act* (2013).

⁹¹ Section 10 (3), *Terrorism prevention (Amendment) Act* (2013).

⁹² Section 10 (4), *Terrorism prevention (Amendment) Act* (2013).

⁹³ Section 25 (1), *Terrorism prevention (Amendment) Act* (2013).

related to terrorism, pending the conclusion of investigations and prosecution.⁹⁴ The new Section 32 designates the Federal High Court (FHC) as the court with jurisdiction over terrorism and related matters, with the important clause stating that the court would have jurisdiction;

‘Whether or not the offence was commenced in Nigeria, and completed outside Nigeria and the victim is a citizen or resident of Nigeria; not a citizen of any country but ordinarily resident in Nigeria; in transit or has a link with Nigeria; dealing with or on behalf of the Government of Nigeria, or a citizen of Nigeria or an entity registered in Nigeria, or; the alleged offender is in Nigeria, and not extradited to any other country for prosecution’.⁹⁵

The above provision demonstrates the intention of the Act to have and exercise jurisdictional application beyond the shores of Nigeria. In furtherance of the powers of the FHC, upon conviction and sentencing, the court may order the forfeiture of any terrorist fund, property, device or material by which the act was carried out, or conveyance, so long as it was used for the commission of the offence or connected to it.⁹⁶

Notwithstanding the milestones under the Act that the author has discussed in this part of the Article, the larger counterterrorism regime in Nigeria is still lacking in some material aspect. The current regime can do more, particularly where the necessary support-structure to the legal framework are put in place. The Nigerian government appears to think that a robust counterterrorism regime is only about laws and the use of brute force. That, however, is hardly the thinking in other jurisdictions that are dealing with this same problem. The Act cannot self-execute itself. There is a need for strategy and institutional support to implement it. It becomes useful therefore, to take a look at what obtains in a similar jurisdiction to see what lessons Nigeria can learn.

ii. *The United States*

Just like Nigeria, the US is one of the countries that continue to contend with the menace of terrorism. The US experience is slightly different, however, in that it has to contend with both domestic and transnational terrorism. Several examples abound, but notable amongst the list is the 1995 bombing of the Alfred

⁹⁴ Section 27 (1), *Terrorism prevention (Amendment) Act* (2013).

⁹⁵ *Terrorism prevention (Amendment) Act* (2013).

⁹⁶ Section 32 (3), *Terrorism prevention (Amendment) Act* (2013).

P Murrah Federal Building in Oklahoma city;⁹⁷ and the 1998 bomb attacks on the US Embassies in Dar es Salaam, Tanzania and Nairobi, Kenya killing 224 persons, including 12 US citizens.⁹⁸ The most horrific act of terror against the US happened in its home soil on 11 September 2001 when Al Qaeda-linked terrorists hit the twin towers of the World Trade Centre in New York. The terrifying impact of the attack and the shocking revelations that were to later follow established that terrorism, transcends national and ethnic boundaries to which the UN Security Council declared that ‘acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century’.⁹⁹

The 9/11 attacks brought about heightened reaction to terrorism and increased efforts were rapidly made towards comprehensive counterterrorism in the US.¹⁰⁰ This led to the enactment of the ‘Patriot Act’, an acronym standing for ‘Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001’ (hereinafter referred to as ‘The Patriot Act’).¹⁰¹ The Patriot Act was passed with speed as an emergency response to the 9/11 attack¹⁰² and signed into law by President George W Bush on 26 October 2001. It provides a definition of terrorism within the context of ‘domestic terrorism’ referring to it as:

‘Acts dangerous to human life that are a violation of the criminal laws of the United States or of any State that appears to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States’.¹⁰³

Before the enactment of the Patriot Act, the US counterterrorism legal regime was governed by other legislations such as the Act to Combat International Terrorism, 1984 (which established a system of rewards for

⁹⁷ Givens AD, Busch NE, and Bersin AD, ‘Going global: The international dimensions of US Homeland Security’ 11 (3) *Journal of Strategic Security*, 2018, 4.

⁹⁸ Lyman PN and Morrison JS, ‘The terrorist threat in Africa’ 83 (1) *Foreign Affairs*, 2004, 75.

⁹⁹ Security Council Resolution 1377, Annex, UN. Doc. S/RES/1377 (Nov. 12, 2001).

¹⁰⁰ Defiem M and McDonough S, ‘The fear of counterterrorism: Surveillance and civil liberties since 9/11’ 52(1), *Society*, 2015, 70 – 79.

¹⁰¹ Section 1, Patriot Act 2001 Pub. L. No. 107-56, 115 Stat. 272. Zelman JD, ‘Recent developments in international law: Anti-terrorism legislation-part one: An overview’ 11 (1), *Journal of Transnational Law & Policy*, 2001, 183 - 193.

¹⁰² Thomas PA, ‘Emergency and anti-terrorist powers 9/11: USA and UK’ 26 (4), *Fordham International Law Review*, 2003, 1193.

¹⁰³ *US Patriot Act* 2001.

information regarding terrorism);¹⁰⁴ the Diplomatic Security and Antiterrorism Act, 1986 (which facilitated sanctions against states that sponsored terrorism and criminalised murder or the causing of serious harm to US citizens abroad if the Attorney General judged that the act was ‘intended to coerce, intimidate or retaliate against a government or civilian population’);¹⁰⁵ the Anti-terrorism Act, 1990 (defining terrorism and providing for civil remedies);¹⁰⁶ Foreign Intelligence Surveillance Act;¹⁰⁷ and the Anti-Terrorism and Effective Death Penalty Act, 1996.¹⁰⁸

The purpose of the Patriot Act is to identify and prevent terrorist activities and where necessary, to prosecute terrorists where the act has occurred. Recognising the interconnectedness of terrorism with several other criminal acts, the Patriot Act consists of ten Titles, covering a broad range of key aspects of the US counterterrorism framework and incorporating several other relevant domestic criminal legislations. A general overview of these ten Titles, which are relevant to this Article, will be presented to provide a basis for determining where there are gaps in the Nigerian counterterrorism regime and what lessons can be learnt from the US. Title I of the Patriot Act provides for ‘enhancing domestic security against terrorism’, which is directed at expanding the capacity of domestic security services to prevent terrorism.¹⁰⁹ Important provisions under this Title include Section 101, which establishes a ‘Counterterrorism Fund’ for rebuilding US infrastructures that may be destroyed by terrorist acts and Section 106 which empowers the US President to confiscate assets belonging to foreign persons, organisations, or countries found to have been a part of an attack on the US.¹¹⁰

Title II covers ‘enhanced surveillance procedures’.¹¹¹ This title which amended the earlier Electronic Communications Privacy Act of 1986 (ECPA), and Foreign Intelligence Surveillance Act of 1978 (FISA), provides an extensive framework in which federal agencies can covertly monitor persons suspected of terrorism activities.¹¹² They do this by intercepting both conventional and

¹⁰⁴ Pub. L. No. 98–533, 98 Stat. 2706 (codified as amended at 18 U.S.C.A. Section 3071 (1984).

¹⁰⁵ Pub. L. No. 99–399, Section 1202(e), 100 Stat. 853 (codified as amended at 18 U.S.C.A.2331 (1986).

¹⁰⁶ Pub. L. No. 101–519, § 132, 104 Stat. 2240 (codified as amended at 18 U.S.C.A 2331–38 (1990)).

¹⁰⁷ 50 U.S.C. § 1801(c) (2006).

¹⁰⁸ The Act is cited as Pub. L. No. 104–132, 110 Stat. 1217.

¹⁰⁹ Title I, *US Patriot Act*, (2001).

¹¹⁰ Title I, *US Patriot Act*, (2001).

¹¹¹ Title II, *US Patriot Act*, (2001).

¹¹² Title II, *US Patriot Act*, (2001).

electronic communications and sharing the information so retrieved.¹¹³ Key provisions under this Title include Section 203, which permits agencies to share information connected to criminal activities; Section 207, which expands FISA's search and surveillance orders; Section 212, relating to emergency disclosure of electronic information; and Section 218, which allows agencies to gather intelligence about both US citizens and non-US citizens.¹¹⁴ Title III provides for 'International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001'.¹¹⁵ This Title, which amended the Money Laundering Act of 1986 (MLA) and the Bank Secrecy Act of 1970 (BSA), targets the crime of money laundering which is seen as the major resource base for terrorists and terrorist activities.¹¹⁶ It focuses on strengthening US banks and financial institutions against this crime as well as ensuring that they work hand in hand with law enforcement agencies.¹¹⁷ It also deals with issues of counterfeiting and currency smuggling. It is targeted at tracking, detecting and preventing money laundering activities connected to terrorism or financing of terrorism.¹¹⁸

Title IV covers 'protecting the border'. It focuses on tightening the different border posts and making it difficult for those suspected of terrorist activities to enter the US homeland.¹¹⁹ It grants wider investigative and enforcement powers to the US Attorney General and also increases funding to the Customs and Border Patrol.¹²⁰ Title V relates to 'removing obstacles to investigating terrorism', effectively dealing with the capture and eventual prosecution of terrorists.¹²¹ It provides for financial rewards for those who have assisted the Department of Justice in combatting terrorism. It also details how foreign intelligence gathered may be used and provides room for organisations to be mandated to turn over data relating to individuals.¹²² Title VI deals with 'Victims and families of victims of terrorism' and guarantees how families of public safety officers injured or killed in terrorist activities are to be taken care of.¹²³ It amended the Victims of Crimes Act of 1984 (VCA), providing for assistance to victims of terrorism or

¹¹³ Title II, *US Patriot Act*, (2001).

¹¹⁴ Title II, *US Patriot Act*, (2001).

¹¹⁵ Title III, *US Patriot Act* (2001).

¹¹⁶ Title III, *US Patriot Act*, (2001).

¹¹⁷ Title III, *US Patriot Act*, (2001).

¹¹⁸ Title III, *US Patriot Act*, (2001).

¹¹⁹ Title IV, *US Patriot Act*, (2001).

¹²⁰ Title IV, *US Patriot Act*, (2001).

¹²¹ Title V, *US Patriot Act*, (2001).

¹²² Title V, *US Patriot Act*, (2001).

¹²³ Title VI, *US Patriot Act*, (2001).

other kinds of violence.¹²⁴ Title VII focuses on ‘increased information sharing for critical infrastructure protection’.¹²⁵ The goal under this Title is to further expand the framework for information sharing among state and local criminal agencies towards effective counterterrorism.¹²⁶ Title VIII covers ‘strengthening the criminal laws against terrorism’.¹²⁷ This Title generally expanded the domestic US criminal law framework to cover a range of issues when a terrorist attack occurs.¹²⁸ It expands the definition of domestic terrorism to include crimes such as assassination and kidnapping as well as the punishment to be handed down to convicted terrorists.¹²⁹ Title IX deals with ‘improved intelligence’.¹³⁰ The Title, which amends the National Security Act of 1947 (NSA), goes towards ensuring that information gathered from both physical and electronic surveillance systems is well deployed for use in foreign intelligence.¹³¹ Title X provides for the amendment of miscellaneous legislations that does not fall directly under any part of the Patriot Act.

The Act, from the very beginning, provides for the legal foundation for the US to build the superstructure of her counterterrorism framework, which carefully deploys the doctrine of covering the field from investigation, though arrest and all the way to prosecution. The Patriot Act, in dealing with the definition of terrorism, further broadens its scope and application, giving it an extraordinary reach, as opposed to the limited original application of the FISA definition to the non-criminal purpose of intelligence-gathering. It tries to balance the usual confrontation between intelligence gathering and the right to privacy.¹³² It is on this basis that the US government can today conduct very complex investigations and, upon the collation of strong evidence, go ahead and arrest anyone suspected of terrorism-related activities and prosecute them. Even though there was controversy as to who can and cannot be brought under the charge of providing material support to FTOs,¹³³ the Patriot Act has generally

¹²⁴ Title VI, *US Patriot Act*, (2001).

¹²⁵ Title VII, *US Patriot Act*, (2001).

¹²⁶ Title VII, *US Patriot Act*, (2001).

¹²⁷ Title VIII, *US Patriot Act*, (2001).

¹²⁸ Title VIII, *US Patriot Act*, (2001).

¹²⁹ Title VIII, *US Patriot Act*, (2001).

¹³⁰ Title IX, *US Patriot Act*, (2001).

¹³¹ Title IX, *US Patriot Act*, (2001).

¹³² Seay P, ‘Practicing globally: Extraterritorial implications of the US patriots’ act’s money laundering provisions on the ethical requirement of US lawyers in an international environment’ 4 (1) *South Carolina Journal of International Law and Business*, 2007, 1 – 70, 69.

¹³³ Said WE, ‘The material support prosecution and foreign policy’ 86 (2) *Indiana Law Journal*, 2011, 543 - 578.

brought a lot more vigour to US counterterrorism efforts and significantly broadened the definition of terrorism.

IV. Building an Effective Counterterrorism Framework

i. Lessons Nigeria can draw from US Counterterrorism Regime

An appraisal of the counterterrorism legal regime in the two countries under review is bound to bring up a number of issues. These matters relate to the gaps under Nigeria's counterterrorism framework, which are areas where the US has made good progress. Examining these issues would provide important lessons that Nigeria can learn going forward.

To start with, a key area of weakness in the counterterrorism structure in Nigeria is the absence of a robust counterterrorism strategy. Whereas the US counterterrorism legal regime is well complemented by a national strategy document called 'National Strategy for Homeland Security',¹³⁴ the Act in Nigeria does not appear to enjoy much of this. A brief overview of this US document would help establish how much of an important role it plays in the entire counterterrorism framework. This strategy encompasses the legal regime represented by the Patriot Act, as well as other relevant aspects of US counterterrorism. Recognising that terrorists can strike at any place, at any time, or with any weapon, the idea behind this policy document is to mobilise and organise the entire country to secure the US homeland from terrorist attacks.¹³⁵ The document provides a unique definition for both terrorism and homeland security. While it refers to Homeland Security as 'a concerted national effort to prevent terrorist attacks within the United States, reduce US vulnerability to terrorism and minimise the damage and recover from attacks that do occur',¹³⁶ it describes terrorism as 'any premeditated, unlawful act dangerous to human life, or public welfare that is intended to intimidate or coerce civilian populations or the government'.¹³⁷ This labelling of terrorism covers other acts such as kidnappings, hijackings, shooting, conventional bombings, attacks involving chemical, biological, radiological or nuclear weapons; cyber-attacks and any

¹³⁴ US Government, *National Strategy for Homeland Security*, Office of Homeland Security, 2002, 1.

¹³⁵ US Government, *National Strategy for Homeland Security*, 1.

¹³⁶ US Government, *National Strategy for Homeland Security*, 2.

¹³⁷ US Government, *National Strategy for Homeland Security*, 2.

number of other forms of malicious violence.¹³⁸ Terrorists can either be US citizens or foreigners, acting by themselves, with others or on behalf of an enemy country.¹³⁹

The three core objectives of the strategy are; firstly, ‘prevent terrorist attacks within the United States’; secondly, ‘reduce US vulnerability to terrorism’; and thirdly, ‘minimise the damage and recover from attacks that do occur’.¹⁴⁰ The document identifies four foundations of homeland security in the US; namely, laws, science and technology, information sharing and systems, and international cooperation.¹⁴¹ To achieve its objectives of counter-terrorism, the US spends about \$100 billion yearly on homeland security, an amount which includes federal, state, and local law enforcement.¹⁴²

As already established in this Article, Section 1A (1) of the TPA 2013 imposes a duty on the ONSA to develop an effective counterterrorism strategy for the country.¹⁴³ In 2014, the Federal Government of Nigeria in response to this put in place a communication structure for implementing the nation’s National Counterterrorism Strategy (NACTEST), which was further reviewed in 2016.¹⁴⁴ However, effort in this area has been stunted by the supremacy battle amongst the several security agencies.¹⁴⁵ To this end, the strategy so envisioned has not enjoyed wide acceptance and development as it obtains under the US National Strategy for Homeland Security. The absence of such a comprehensive strategy means that important aspects of counterterrorism such as mobilisation of the citizenry, funding, institutional support, international cooperation, and a clear a road map become missing. If there is something of value that Nigeria can learn from the US that should be in the area of a counterterrorism strategy of this nature. It is therefore suggested that the appropriate authority begin to take steps towards the development of an effective strategy in this regard. Also, and importantly, it has been advised that such a strategy should be directed towards development and social justice.¹⁴⁶

¹³⁸ US Government, *National Strategy for Homeland Security*, 2.

¹³⁹ US Government, *National Strategy for Homeland Security*, 2.

¹⁴⁰ US Government, *National Strategy for Homeland Security*, 3.

¹⁴¹ US Government, *National Strategy for Homeland Security*, 4.

¹⁴² US Government, *National Strategy for Homeland Security*, 63.

¹⁴³ *Terrorism Prevention (Amendment) Act* (2013).

¹⁴⁴ Eme OI, ‘Inter-agency security rivalry as an impediment to national counter terrorism strategy’, 1.

¹⁴⁵ Eme OI, ‘Inter-agency security rivalry as an impediment to national counter terrorism strategy’, 1.

¹⁴⁶ Makinda SM, ‘Terrorism, counter-terrorism, and norms in Africa’ 15 (3) *Africa Security Review*, 2006, 19 – 31.

Compared to the US, Nigeria lacks a specialised institutional framework to support counterterrorism efforts. In the US, the legal regime has been greatly enhanced by the establishment of the Department of Homeland Security (DHS). The DHS was established pursuant to the Homeland Security Act of 2002 and it is the third largest department of in the US government with over 200,000 employees and an annual budgetary allocation of over \$55 Billion.¹⁴⁷ It emerged out of the merger of 22 erstwhile federal agencies, with the mandate of preventing as well as preparing for terrorist attacks against the US.¹⁴⁸ Strikingly, Nigeria has no such important agency in place. The TPA 2013 simply provides that the ONSA will coordinate all security and enforcement agencies under the Act,¹⁴⁹ stating also the AGF would be responsible for the effective administration of the Act.¹⁵⁰ The ONSA as the principal office on national security matters in the country already coordinates several other things such that the establishment of a more specialised agency in the mould of the DHS would have been a better policy initiative. Such an agency when established would provide for better coordination of the country's counterterrorism against Boko Haram. This agency, just like the DHS, does not have to start from scratch. Rather, existing security agencies in the country whose work is counterterrorism related — such as units in the Department of State Services (DSS), the Nigeria Police, and the Armed Forces — can simply be somehow merged together in order to respond in a concerted manner. Given the present threat of terrorism in Nigeria, the absence of such a key agency is a matter requiring immediate attention, as its continued absence is bound to have an extensive impact on the effective implementation of the Act.

Furthermore, the absence of enhanced capacity for domestic security agencies as obtainable under the US regime is another gap under the Nigerian framework. For instance, the provisions of Title I of the Patriot Act is an example of an area lacking in Nigeria's counterterrorism framework. Much, if not all, of the counterterrorism framework in Nigeria is situated at the centre, with the federal government shouldering the responsibility of counterterrorism all by itself. This is reflected in the provisions under Section 1A (1) and 1A (2) of the TPA 2013, which designates the ONSA and AGF as two focal points for coordination of counterterrorism efforts.¹⁵¹ No mention is made of what

¹⁴⁷ Zappile T, 'Department of Homeland Security (DHS)', *Encyclopaedia of US Intelligence*, 2014, 1.

¹⁴⁸ Zappile T, 'Department of Homeland Security (DHS)', 1.

¹⁴⁹ Section 1A (1), *Terrorism prevention (Amendment) Act* (2013).

¹⁵⁰ Section 1A (2), *Terrorism prevention (Amendment) Act* (2013).

¹⁵¹ *Terrorism prevention (Amendment) Act* (2013).

role governments at the state and local council levels are expected to play. This points to the heavily centralised nature of counterterrorism in Nigeria, yet for a country so diverse and heterogenous, effective counterterrorism can never be the business of just one tier of government. This is different from the US where Title 1 provides for the measures to develop the capacity of domestic security services ranging from the federal security arrangement, to local security agencies. Two things appear to have helped the US in this regard; namely, a well-entrenched federal structure and a broad understanding of domestic terrorism as a part of its counterterrorism objectives. In support of its federal structure, the Tenth Amendment to the US Constitution reserves to the States all powers not delegated to the Federal government.¹⁵² It is therefore important that the TPA 2013 is further reviewed to incorporate governments at other levels into the counterterrorism framework. Key areas that can be focused on in such incorporation would include involving state security agencies for the purpose of intelligence gathering and the provision of a pool of funds, both in support counterterrorism efforts.

Notwithstanding the aforesaid, it must be recognised that the US is a significantly more advanced country than Nigeria. The distinction between both countries is striking in areas such as US advanced Information and communications Technology (ICT), extensive and well-developed security/policing architecture, military might, legal development and the US being one of the largest economies in the world. These aspects may make a direct comparison between the US and Nigeria problematic. It is, therefore, worth emphasising that, for Nigeria to successfully apply some of the above suggestions, more work needs to be done in these aspects, particularly in matters such as improved ICT, a developed security/policing architecture and a more robust economy. Vigorously dealing with these issues would go a long way in driving any counterterrorism structure so developed.

ii. Addressing the causes of Boko Haram's terrorism as part of the solution

It is important to state at this point that simply drawing lessons from the US framework in areas already discussed in the previous parts of this Article is not enough. For an additional success of any counterterrorism structure to be developed, the Nigerian government must demonstrate the required political

¹⁵² US Government, *National Strategy for Homeland Security*, 11.

will, deployment of financial resources, and mobilisation of the entire country in its fight against terror. These three factors are important in eventually defeating the terrorists. In the context of the issues already highlighted in this Article, in displaying the right political will, the Nigerian government must be ready to recognise what the root causes of Boko Haram's terrorism are and address them frontally. It must not fall to the usual whims of political pressure and politicisation. As demonstrated in this Article, two major factors that have been identified as root causes of Boko Haram's terror. One is political opportunism that the then northern politicians rode on and the other is radical Islamic fundamentalism that later cashed in on this. Thus, for the Nigerian federal government to build a robust counterterrorism strategy, it must first recognise the link between these two key factors and Boko Haram's more than 10 years of terror. Secondly, in its determination to address these two causes, it must make of them terms of reference for any think-thank study group that would be commissioned to formulate an effective counterterrorism strategy in this regard. Thirdly, in commissioning such study group, it must forgo its own political interest and in a bi-partisan manner accommodate all views that may be useful in the overall interest of the country. Fourthly, it must also go across party lines to recruit the best of minds into such groups so as to have the benefit of a rich assortment of ideas that can provide effective solutions.

Additionally, the federal government must be ready to deploy commensurate budgetary allocation to drive counterterrorism efforts. This may come under budgetary allocations for defence and national security. It is in this way that a counterterrorism fund comparable to what obtains under Title I of the US framework becomes important. Under the national counterterrorism strategy to be developed, the ways of sourcing money for such a fund should be adequately provided for. Such provision may advisedly include government at all levels, the private sector, as well as grants that may come from foreign countries in support of the fight against terrorism. Providing for a fund of this nature under Nigerian law would not only strengthen counterterrorism efforts but would also help provide for the restoration of victims of terrorist attacks in the country.

Furthermore, the federal government must take seriously the need to mobilise the entire country in its counterterrorism effort. This is an important factor in any fight against terror. Where the people are bound in unity against terrorism, not only does it make it difficult for the terrorists to exploit perceived dissatisfactions such as political marginalisation and economic inequality; but also, it may help the government to destroy the propaganda machine of the terrorists. Such mobilisation must however start from the counterterrorism law

and then extend to other parts of the structure. For example, while the US legal regime is designed to mobilise the mass of the US population against terrorism, the Nigerian experience is a different matter entirely.

The Patriot Act has as its actual title ‘Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001’. This name is instructive as it introduces the Act and its objectives as two matters that must be built on mobilising the entire country against terrorism. Two words in the title are worthy of note; namely, ‘uniting’ and ‘strengthening’. These are the kind of words that inspire confidence and a sense of belonging in a people. On the other hand, the Nigerian TPA 2013 is shaped in the mould of the ordinary federal statute. The fact that the circumstances that led to the enactment of the Patriot Act is different from that of the TPA 2013 may be responsible for this. While the US government, by the way it designed the Patriot Act, clearly calls on all US citizens to own the whole counterterrorism structure and contribute to its success, this cannot be said of the Nigerian government since it enacted the TPA in response to pressure from the US and the international community. It is therefore important that in any review to follow the TPA 2013, whatever must be done must reflect one thing: that the fight against terror is the business of the entire country.

V. Conclusion

This article has examined the challenges posed by Boko Haram’s terrorism in Nigeria and how this has remained a recurring threat to Nigeria’s national security. It has also examined the counterterrorism legal regime in the country as well as in the US. Even though the Article has noted that the Terrorism Prevention (Amendment) Act 2013 has significantly advanced Nigeria’s legal framework as far as counterterrorism is concerned, it has also found that the counterterrorism regime still has inherent shortcomings. Some of these include inadequacies in the supposed counterterrorism strategy and the absence of a specialised counterterrorism agency. It has also identified important areas under the US regime, which Nigeria can draw gainful lessons from. Such areas include the development of a more robust counterterrorism strategy, the establishment of a specialised institution such as the DHS and the integration of governments at all levels into the nation’s counterterrorism efforts. It has also made the point about government addressing the root causes of Boko Haram’s terrorism as a part of the solution.