

REVISITING THE PROSCRIPTION OF TERRORISM IN NIGERIA: HOW DOBOKO HARAM AND MOVEMENT FOR THE EMANCIPATION OF NIGER DELTA (MEND) FIT IN?

Gogo George Ntor*

Abstract

Terrorism is a threat to peace and security all over the world. Nigeria's security has been prejudiced within the last two decades principally by two major groups: Boko Haram and the Movement for the Emancipation of Niger Delta (MEND) who have been tagged different names by necessary actors in the scene. While the groups may consider themselves as fighting for a particular "lawful" or "moral" objective, the government has responded to them as insurgents and terrorists, overriding whatever speculation may exist as to their nature. The principal legislation dealing with terrorism is the TPA as amended. This Act has proffered a definition of terrorist and has attempted to break down the acts of terrorists. This paper compares the activities of the Boko Haram sect and the Movement for the Emancipation of Niger Delta (MEND) alongside the definition of terrorism provided by the Terrorism (Prevention) Act 2011 as amended (TPA) and render a legal opinion on whether these groups actually qualify as "terrorist". It concludes that placing organisations such as Boko Haram and MEND into their proper designation is necessary for any proper anti-terrorism approaches-whether legal or military, and for avoidance of a breach of basic international and municipal law norms.

Introduction

Nigeria ranks third for countries most impacted by terrorism in the Global Terrorism Index 2019, with an average of 8.597 out of 10 points.¹ The implication of this is that the state is only next to Iraq and Afghanistan and is among the top five states with the highest impact of terrorism in the world.² Of the worst 20 terrorist attacks in 2018, Nigeria records one of such attacks, an improvement from three which was recorded in 2013.³ Nigeria's security has been prejudiced within the last two decades principally by two major groups: Boko Haram and the Movement for the Emancipation of Niger Delta (MEND).⁴ Boko haram, roughly translated "western education is forbidden", hopes to make Nigeria an Islamic state applying strict Islamic laws. The sect is

* LL.B, B.L, MILD, LLM. Executive Secretary, Nigerian Society of International Law, Lagos, Nigeria. Email: georgentor@yahoo.com

¹ The Global Terrorism Index is a comprehensive study that accounts for the direct and indirect impact of terrorism in 162 countries in terms of lives lost, injuries suffered, property damage and the psychological after-effects of terrorism, covering about 99.6 per cent of the world's population. See, Global Terrorism Index: "Measuring and Understanding the Impact of Terrorism", Institute for Economics and Peace, Sydney, p. 8, available online at: < <http://visionofhumanity.org/app/uploads/2019/11/GTI-2019web.pdf>> accessed 29 June 2020.

² Ibid.

³ Ibid. at p. 11. This singular attack involved assailants who attacked Gwaska, Kaduna, Nigeria. At least 58 people were killed in the attack. No group claimed responsibility for the incident. However, sources attributed the attack to Fulani extremists. For the 2013 report, see, Global Terrorism Index: "Measuring and Understanding the Impact of Terrorism", Institute for Economics and Peace, Sydney, New York, Oxford, p. 10, available online at: <http://www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014_0.pdf> accessed 29 December 2019

⁴ Other groups that have had their toll on the security of the nation, though not as pronounced as the two listed include: Ansaru, Niger Delta People Volunteer Force (NDPVF), the Coalition for Militant Action in the Niger Delta, and the Martyrs Brigade.

ranked as the fourth deadliest terrorist group in 2018, and remains the deadliest in Sub-Saharan Africa.⁵

MEND on the other hand has a large membership base estimated at about 15,000 as at 2013, but responsible for fewer deaths than Boko Haram.⁶ The major aim of the group has been to force the government to share the proceeds of crude oil sale with the impoverished region or better still, allow for resource control of oil. Both groups have been linked to various attacks in the Northern and Southern part of the country. The activities of both groups have resulted in the loss of life of both Nigerians and non-Nigerians and destruction of properties. The waterways in the Gulf of Guinea have become increasingly risky for commercial ships that traverse. So these groups are incredibly important not only to Nigeria but also to her West African neighbours, her surrounding neighbours, the West and the entire world. The government have had to respond to these attacks with military measures, legal procedure and negotiation. The classification of these groups, whether as “terrorists” or “militants” or “freedom fighters” is obfuscating as writers tend to use different description interchangeably and for convenience.

In Nigeria, terrorist attacks have never always been acknowledged as such. As early as in 1965, history records the well planned and coordinated attack carried out by Isaac Boro’s group under the auspices of the Niger Delta Volunteer Force (NDVF) which included oil pipeline breakage and hostage taking. In an ironical twist, same Isaac Boro after his release by the new military government in 1966 after the counter coup joined the Federal government in fighting the Nigerian civil war.⁷ The last few decades also saw the flourishing of various ethnic militant groups such as the O’dua People Congress (OPC), Movement for the Actualization of the Sovereign State of Biafra (MASSOB), Arewa Youth Consultative Forum, Niger Delta Volunteer Force of Nigeria, The Ogoni Youths, Ijaw Youths, *Jama’atu Ahlis Sunnah Lidda’awatiwal-Jihad* (Yobe Taliban) later known as Boko Haram, MEND and various vigilantes. Their activities have been classified as acts of terrorism.⁸ The principal legislation dealing with terrorism is the TPA as amended. This Act has proffered a definition of terrorist and has attempted to break down the acts of terrorists.

This paper is divided into five parts. Part II and III deals with Boko haram and MEND respectively, while Part IV takes an objective analysis of the proscription of terrorism under the TPA and its applicability to the groups under consideration. Part V is the concluding part of the paper.

The Boko Haram sect

Boko Haram, originally called *Jama’atu Ahlus-Sunnah Lidda’Awati Wal Jihad* (“People Committed to the Propagation of the Prophet’s Teachings and Jihad”), carries out its operations in Nigeria and her neighbouring countries. It adheres to the strict Wahhabi understanding of “tawhid” (the oneness of God or monotheism). The sect sees the state as secular and corrupt, therefore permitting violence against the state or government. Furthermore, the state is sustained by Western values and education, both of which are against the will of Allah and opposed by the sect. The group poses a threat both to the state and the traditional Islamic establishment.⁹ The

⁵ Global Terrorism Index 2018, *supra* note 1 at p. 16

⁶ Global Terrorism Index 2013, *supra* note 3 at p. 19

⁷ Elias Coulton, “Movement for the Emancipation of the Niger Delta (MEND): Political Marginalisation, Repression and Petro-Insurgency in the Niger Delta”, Discussion Paper 47, 2009, Stockholm, p. 12

⁸ Raji Rafiu Boye, “Nigeria Anti-Terrorism Law and Global Security”, p. 8

⁹ The group has tried to murder both the sultan if Sokoto and the Shehu of Borno. It claimed responsibility for the killing of the bodyguards of the sultan and the Shehu’s brother.

major objective of the group is to implement strict sharia law in Nigeria. It has also pledged to wage war against Christians, western education, democracy and constitution.¹⁰

However, the name Boko Haram is derived from one of Yusuf's main teachings that asserts that Western-style education (boko) is religiously forbidden (haram) under Islam. Mohammed Yusuf, organised his body of followers in Maiduguri around 2003. He was a charismatic preacher and sought to establish God's kingdom on earth by isolating itself from the wider society. The group was generally non-violent until 2009. The height of attacks in 2009 came in July when the sect clashed with security forces in Borno, Bauchi, Yobe and Kano states, who were bent on suppressing the uprising. By July 30, Mohammed Yusuf was captured, and later reported by the Police to have been killed in a shoot-out.¹¹ The group went underground before later reemerging with Abubakar Shekau, Yusuf's deputy, as its new leader. The reorganised group sought revenge for the killing of its leaders and supporters and gave itself to the violent overthrow of the government and Islamic establishment which it deemed had been compromised. Since then it has carried out attacks against a wide range of targets ranging from the government authorities to religious leaders,¹² politicians and others who are perceived as being sympathetic to the government. The government attempt to halt the sect activities have been through many measures such as troops reinforcement, setting up of an International Joint Task Force (JTF) and Civilian Joint Task Force, declaration of state of emergence, imposition of curfew, banning and restoration of GSM services, etc.

Some of the notable attacks by the group that has drawn international ire include: the Christmas Eve bombings and church attacks in Jos that left dozens dead;¹³ the New Year's Eve bombings in Abuja; bomb attacks on Abuja Police Head Quarters;¹⁴ bombing of the United Nations Building;¹⁵ attack on College of Agriculture, Gujba;¹⁶ attack on Federal Government College, BuniYadi;¹⁷ kidnap of Chibok School girls at Government Secondary School, Chibok,

¹⁰ "Brethren cut out infidels from their necks, brothers you should capture slaves; just because I took girls in western school they are worried. I said they should even desert the school, they should go and marry. Nonsense, I am the one that captured your girls and I will sell them in the market. I have my own market of selling people; it is the owner that instructed me to sell. Yes, I will sell the girls people, I am selling the girls like Allah said until we soak the ground of Nigeria with infidels blood and so called Muslims contradicting Islam. After we have killed, killed, killed and get fatigue and wondering on what to do with smelling of their corpses, smelling of Obama, Bush, Putin and Jonathan worried us then we will open prison and be imprisoned the rest. Infidels have no value...All those clerics are to be killed for following democracy, all of them are infidels. I will tell Muslims what Allah wants them to do. We are anti-Christians, and those that deviated from Islam, they are forming basis with prayers but infidels..." – For full transcript, see "Full English Transcript of Boko Haram Leader Abubakar Shekau's Latest Video" CKN Nigeria, 7 May 2014, available online at: <<http://www.cknnigeria.com/2014/05/full-english-transcript-of-boko-haram.html>> accessed 29 January 2015

¹¹ Taye Obateru et al., "Boko Haram Leader, Yusuf, Killed", the Vanguard, 30 July 2009, available online at: <<http://www.vanguardngr.com/2009/07/boko-haram-leader-yusuf-killed/>> accessed 22 December 2014.

¹² The sect have attacked Muslim clerics in the past and of recent, threatened the Emir of Kano, Sanusi Lamido. Agency Reporter, "New Video Shows B'Haram Killing Captives in Dormitory", Punch Newspapers, 22 December 2014, available online at: <www.punchng.com/news/new-video-shows-bharam-killing-captives-in-dormitory/> accessed 22 December 2014.

¹³ "Radical Islamist Sect Says it Carried out Nigeria Church Attacks", The Guardian, 28 December 2010, available online at: <<http://www.theguardian.com/world/2010/dec/28/islamist-sect-responsibility-nigeria-attacks>> accessed 22 December 2014

¹⁴ "Blasts Rocks Police Headquarters in Nigeria" Aljazeera, 16 June 2011, available online: <<http://www.aljazeera.com/news/africa/2011/06/20116111451344807.html>> accessed 22 December 2014

¹⁵ Ndahi Marama, "UN House Bombing: Why We Struck – Boko Haram", Vanguard, 28 August 2011, available online at: <<http://www.vanguardngr.com/2011/08/un-house-bombing-why-we-struck-boko-haram/>> accessed 22 November 2014

¹⁶ Ndahi Marama, "Scores of Students Feared Dead as Boko Haram Attacks Girls College in Yobe", 25 February, Vanguard, available online: <<http://www.vanguardngr.com/2014/02/scores-of-students-feared-dead-as-boko-haram-attacks-fggc-yobe/>> accessed 22 December 2014

¹⁷ Ndahi Marama, "Scores of Students Feared Dead as Boko Haram Attacks Girls College in Yobe", Vanguard, 25 February 2014, available online: <<http://www.vanguardngr.com/2014/02/scores-of-students-feared-dead-as-boko-haram-attacks-fggc-yobe/>> accessed 22 December 2014

Borno;¹⁸ Nyanya bus station bomb blast;¹⁹ twin bomb blast in Jos²⁰. While Boko Haram was responsible for more suicide attacks than any other terrorist group in 2018, suicide attacks have contributed to 19 per cent of Boko Haram's death toll, compared to a group such as ISIL which recorded 38 per cent.²¹

Their weapons of war include knives or swords, AK 47 rifles, bombs etc. Funding for the sect suggestively comes from bank robberies, kidnaping ransoms, theft of weapons from government armouries, smuggling and support from wealthy members and supportive benefactors.²² The total number of members of the sect is not known but has been estimated at 9,000.²³

Following the plea by the Sultan of Sokoto, Alhaji Muhammad Abubakar III for an amnesty for the group,²⁴ President Jonathan in April 2013 set up a Boko Haram Amnesty Committee, and an Amnesty Implementation Committee to engage Boko Haram. However, in May 2013, the government was forced to declare a state of emergency in Borno, Yobe, and Adamawa state over the incessant spate of attacks. On 4 June 2013, President Jonathan proscribed the group as terrorist organisation under Nigerian law.²⁵ The British followed suit in mid-2013.²⁶ The U.S on 24 December 2013 designated the group as a terrorist organisation. The implication of this is: "a prohibition against knowingly providing, or attempting or conspiring to provide, material support or resources to, or engaging in transactions with, Boko Haram... and the freezing of all property and interests in property of the organizations that are in the United States, or come within the United States or the control of U.S. persons".²⁷ By 2014, the UN designated the group an Al-Qaeda affiliate and consequently a terrorist group.²⁸

Statistics on the life implications of Boko Haram activities is staggering. According to the Nigeria Social Violence Project, over 5,000 people were killed in the first three quarters of the year 2014, and the numbers is increasing almost daily.²⁹ The National Emergency Management Agency figure of those displaced is put at over 1.5 million people since the beginning of the state

¹⁸ Farouk Chothia, "Will Nigeria's Abducted Schoolgirls ever be Found?" BBC News, 12 May 2014, available online at: <<http://www.bbc.com/news/world-africa-27293418>> accessed 29 January 2015; Following the abduction of the Chibok girls, several countries pledged to help the country to find and liberate the girls and fight terrorism.

¹⁹ "Boko Haram Claims Responsibility for Nyanya Bomb Blast", 19 April 2014, Leadership, available online at: <<http://leadership.ng/news/366853/boko-haram-claims-responsibility-nyanya-bomb-blast>> accessed 22 December 2014

²⁰ Ahmed Saka, Michelle Faul, "Nigeria Bombings: Dozen Killed in Twin Attacks in Jos", the Independent, 11 December 2014, available online at: <<http://www.independent.co.uk/news/world/africa/nigeria-bombings-dozen-killed-in-twin-attacks-in-jos-9919224.html>> 22 December 2014

²¹ See Global Terrorism Index 2019, p. 16

²² See also, Global Terrorism Index 2013, *supra* note 3 at p. 53

²³ *Ibid.*

²⁴ Abdulfafar Alabelewe, Sultan Wants Amnesty for Boko Haram, Sun News Online, 6 March 2013, available online at: <<http://sunnewsonline.com/new/?p=19949>> accessed 25 February 2015

²⁵ Davidson Iriekpen and Mohammed Bello, "Jonathan Proscribes Boko Haram, Ansaru, Declares them Terrorist Groups" Thisday Live, 5 June 2013, available online at: <<http://www.thisdaylive.com/articles/jonathan-proscribes-boko-haram-ansaru-declares-them-terrorist-groups/149455/>> accessed 29 January 2015

²⁶ Senator Iroegbu and Muhammad Bello, "Insecurity: UK Declares Boko Haram as Terrorist Organisation" Thisday Live, 24 July 2013, available online at: <<http://www.thisdaylive.com/articles/insecurity-uk-declares-boko-haram-as-terrorist-organisation/154224/>> accessed 10 January 2015

²⁷ Office of the Spokesperson, Washington DC, "Terrorist Designations of Boko Haram and Ansaru", US Department of State, 13 November 2013, available online at: <<http://www.state.gov/r/pa/prs/ps/2013/11/217509.htm#.UoOamr6s8zA.twitter>> accessed 31 December 2014

²⁸ "United Nations Blacklists Boko Haram as Terror Group" Vanguard, 22 May 2014, available online at: <<http://www.vanguardngr.com/2014/05/united-nations-blacklists-boko-haram-terror-group/>> accessed 10 January 2015

²⁹ R29 Monitor, Global Centre for the Responsibility to Protect, Issue 18, 15 November 2014, p. 7, available online at: <http://www.globalr2p.org/media/files/r2p_monitor_nov2014_final.pdf> accessed 8 January 2015

of emergency.³⁰ The current trend of the group is to capture towns, and declaring those towns as part of the Islamic State.³¹ Most notable among seized territories was the capture of Mubi, in Adamawa State, a city next to the state capital.³² In a Human Rights Watch report, the group has been accused of having abducted at least 500 women and girls since 2009 in Nigeria, while perpetrating numerous human rights abuses against them in captivity.³³

Internal rifts have led Boko Haram to split into multiple factions, which now appear relatively distinct.³⁴ The largest splinter group is the ISIL-aligned Islamic State West African Province (ISWAP), led by Musab al-Barnawi. ISWAP is reported to control territory on the shores of Lake Chad and collect taxes in north-east Nigeria.³⁵ Rival to ISWAP is the Shekau faction, led by Abubakar Shekau. While ISWAP predominantly targets the Nigerian military and government agents, the Shekau faction is known for considering any Muslims that do not follow him as potential targets. This ideological difference is thought to have motivated their split.³⁶ Terrorism-related deaths committed by Boko Haram dropped 42 per cent in 2018 compared to the previous year, an 89 per cent decline from their peak in 2014. Furthermore, the fatality rate of Boko Haram attacks has fallen from 15 deaths per attack to four in the past five years. Consistent with previous years, about 85 per cent of attacks in 2018 were in Nigeria.³⁷

Many other efforts have been carried out at the international level to curb the threat including a 17 May Paris Summit where the leaders pledged a total war on the sect,³⁸ and a 12 June London Ministerial meeting, where regional and international partners committed to increase coordinated action against Boko Haram.³⁹ Other partners like the US, France and the UK pledged support in the area of intelligence through the use of drones.⁴⁰ What has been more worrisome for the government, has been the refusal of the group to negotiate. Recent efforts and claim of a cease fire were proven false with the denial of AbubakarShakau and the continuing of violence by the group.⁴¹

³⁰ R29 Monitor, Global Centre for the Responsibility to Protect, Issue 18, 15 November 2014, p. 7, available online at: <http://www.globalr2p.org/media/files/r2p_monitor_nov2014_final.pdf> accessed 8 January 2015

³¹ Mubi was called Madinatul Islam or 'City of Islam' and Gwoza in Borno was called Darul Hikma or 'House of Wisdom'. – Agency Reporter, "Boko Haram Changes the Name of Captured NE Nigerian Towns: Witnesses" the Sun, 6 November 2014, available online at: <<http://sunnewsonline.com/new/?p=89600>> accessed 9 January 2015

³² "Nigeria's Boko Haram Renames Seized Town in Adamawa State" BBC News 5 November 2014, available online at: <<http://www.bbc.com/news/world-africa-29921047>> accessed 9 January 2015

³³ "Those Terrible Weeks in their Camp": Boko Haram Violence Against Women and Girls in Northeast Nigeria, Human Rights Watch, October 2014, p. 1, available online at: <<http://www.hrw.org/sites/default/files/reports/nigeria1014web.pdf>> 8 January 2015.

³⁴ Campbell, J. (2019). Boko Haram Evolves and Persists in Northeast Nigeria. Council on Foreign Relations. Retrieved October 21, 2019, from <https://www.cfr.org/blog/boko-haram-evolves-and-persists-northeast-nigeria>

³⁵ Campbell, J. (2019). Understanding the Threat Posed by ISWA in Nigeria. Council on Foreign Relations. Retrieved October 21, 2019, from <https://www.cfr.org/blog/understanding-threat-posed-iswa-nigeria>

³⁶ *Ibid.*

³⁷ Global Terrorism Index 2019, p. 16.

³⁸ Martin Williams, "African Leaders Pledge 'Total War' on Boko Haram after Nigeria Kidnap" the Guardian, 17 May 2014, available online at: <<http://www.theguardian.com/world/2014/may/17/west-african-countries-must-unite-fight-boko-haram-nigeria>> accessed 9 January 2015

³⁹ Adelani Adepegba, "Ministerial Meeting on Boko Haram Holds in London June 12" the Punch, 5 June 2014, available online at: <<http://www.punchng.com/news/uk-ministerial-meeting-on-boko-haram-holds-june-12/>> accessed 9 January 2015

⁴⁰ *Ibid.*; Madu Onuorah, "Five Lake Chad Region Nations Meet Over Boko Haram" the Guardian, 24 November 2014, available online at: <<http://www.ngrguardiannews.com/news/national-news/187812-five-lake-chad-region-nations-meet-over-boko-haram>> accessed 10 November 2015

⁴¹ "What Now After Nigeria's Boko Hara Ceasefire Fiasco" BBC News, 3 November 2014, available online at: <<http://www.bbc.com/news/world-africa-29881291>> accessed 6 January 2015

The Movement for the Emancipation of Niger Delta (MEND)

MEND emerged in the midst of tensions in the Niger Delta which had been on-going, as an umbrella body for militants. These men who had served as private armies to politicians and helped in rigging elections, had turned their back on their bosses and their guns on the government and oil companies.⁴² The name of the group suggests a kind of liberation movement.⁴³ The arrest and detention of Dokubo-Asari by the government and Governor Alamieseigha of Bayelsa state are amongst contributory factor to the formation of this group.⁴⁴ MEND's objective was to destroy the capacity of the government to make profit from oil in the region. Boyloaf the then MEND Commander explained that:

Like you may have known, I don't believe in fighting human beings, I believe in crumbling the economy. On my way crumbling the economy, if any military man comes across me and tries to stop me, I mean those people will kiss their grave. My bullet, my nozzle is always targeted at the flow stations, pipelines, etc, I don't believe in fighting human beings. Before we formed the MEND, our people were fighting, but it was a war between the Ijaw and Itsekiri, that was not the Niger-Delta struggle.⁴⁵

The group was formed sometime in 2005 and had over 30 camps. They have an estimated membership as at 2013 of 15,000.⁴⁶ Most of their attacks were against oil multinationals, oil pipelines and installations and government security forces in the Niger Delta region.⁴⁷ They also extended their operations to Lagos.⁴⁸ The major thrust of the group is to "win the right of local oil producing communities to participate in Nigeria's oil industry...with a view to securing benefits – royalties, employment, infrastructure, and compensation for the degraded environment caused by oil activities...".⁴⁹ Their aim is set out in the Kiama Declaration and Ogoni Bill of Rights amongst several documents.⁵⁰

The leadership structure of MEND is diverse and amorphous, except for known personalities like Boyloaf and its anonymous spokesperson Jomo Gbomo. This tactics is to avoid the elimination or compromising of the leadership of the group by the government or oil companies as other groups such as MOSOP, NDPVF and EBA suffered.⁵¹ The tactics of the group include hostage taking, attacks on oil infrastructure, use of bombs and other explosive devices in public places. The group gets its fund majorly from illegal crude oil sale, which is also

⁴² Caroline Duffield, "Who Are Nigeria's MEND Oil Militants?", BBC News, 4 October 2010, available online at: <<http://www.bbc.co.uk/news/world-africa-11467394>> accessed 29 December 2014.

⁴³ Ibaba Samuel Ibaba, "Terrorism in Liberation Struggles: Interrogating the Engagement Tactics of the Movement for the Emancipation of the Niger Delta", 5 *Perspectives on Terrorism*, Issues 3-4, p. 18

⁴⁴ Coulson, *supra* note 7 at p. 17

⁴⁵ Sahara Reporter, "General Boyloaf Says, I don't Think There'll be Peace – Vanguard Newspaper", 31 December 2008, available online at: <<http://saharareporters.com/2008/12/31/general-bayloaf-says-i-don%E2%80%99t-think-there%E2%80%99ll-be-peace-vanguard-newspaper>> accessed 20 December 2014

⁴⁶ Global Terrorism Index 2013, *supra* note 1 at p. 19

⁴⁷ Coulson, *supra* note 7 at p. 7; the Niger Delta is home to enormous oil and gas, which is the main stay of Nigeria's economy. The region is swampy and constituted by minority ethnic nationalities. It comprises the states of Akwa Ibom, Corss River, Edo, Imo, Rivers, Bayelsa, Delta, Abia and Ondo.

⁴⁸ Nick Wadhams, "Nigerian Oil Rebels Attack Lagos" Telegraph, 13 July 2009, available online at: <<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/5818102/Nigerian-oil-rebels-attack-Lagos.html>> accessed 6 February 2015

⁴⁹ Coulson, *supra* note 7 at p. 8; see also, Wadhams, *ibid*.

⁵⁰ Felix Akpan, Okonette Ekanem, Angela Olofu-Adeoye, "Boko Haram Insurgency and the Counter-Terrorism Policy in Nigeria," (2014) 10 *Canadian Social Science*, 151 at 153

⁵¹ *Ibid* at 19

used to purchase arms. While the government tagged the group as criminals, others suggest that the group are terrorists owing particularly to their tactics.⁵²

The government response against the group has been with deployment of troops and weapons to neutralize the group. In response to continuous government bombardment, the group responded by attacking the Forcados oil export terminal and taking about nine expatriate hostages. In April 20, 2006, the group detonated two bombs: one in Bori Camp military barrack, Port Harcourt, and the other at a petrol tanker garage in the city of Warri. President Olusegun Obasanjo in a bid to restore peace called for dialogue and created the Council on Social and Economic Development of Coastal States (COSEDECS) and offered other palliatives to calm nerves. This did not make much difference as a 20 August 2006 ambush by the military JTF sparked further attacks. The attacks of the group spread to most corners of the delta, making it hard for the government to effectively rein in the group. President Umaru Yar'Adua seemed to have offered hope of peace with the release of Asari Dokubo on bail and freeing of Governor Alamieyeseigha after serving prison sentence while kick starting a dialogue process that had the support of Henry Okah, a MEND leader. Henry Okah was later arrested in Angola and repatriated to Nigeria. His arrest and trial jeopardised the pace process resulting in more attacks. In June 20 2008, SPDC Bonga Oil platform was attacked, resulting in the shutdown of 225,000 barrels per day of oil.⁵³ By early 2009, the government stepped up military action against the group in the Niger Delta region. However, pressures from the international community and a desire to get peace saw the announcement of amnesty to the militants by the federal government after consultations with relevant players. The amnesty programme offered to re-integrate militants to the society who were willing to lay down their arms. Charges against Henry Okah were also dropped and he was released.⁵⁴

In 2013, in response to Boko Haram killing of Christians, the group had threatened to launch an operation code named "Operation Barbarossa" which would feature "the bombings of mosques, hajj camps, Islamic institutions, large congregations in Islamic events and assassinations of clerics that propage the doctrine of hate" except the Christian Association of Nigeria (CAN), the Catholic church and Henry Okah intervenes.⁵⁵ Recent attacks by the group include the 20 March 2014 attack on the Agip crude oil and gas pipelines in Ikarama Oil Fields located in Bayelsa, 27 March 2014 attack by scuba divers from MEND on Shell Forcados Sub-C pipeline in the Western Delta, which had previously been sabotaged, amongst others.⁵⁶

Attacks reportedly carried out by MEND include: 10 January 2006 attack on Shell's EA offshore oil platform located some 15km offshore and the kidnap of four foreign oil workers from a support vessel anchored at the platform who were later released later that month; 15 January 2006 attack on Shell's Benisede flow station, killing 16 people (14 soldiers and 2 civilians); 18 February 2006 attack on *Forcados* offshore oil loading terminal and abduction of

⁵² Ibaba, *supra* note 38, pp. 18 – 30; Global Terrorism Index 2013, *supra* note 1 at p. 19

⁵³ Akanimo Sampson, "Army to Use Minimum Force in Niger Delta", the Nation, 29 July 2008, available online at: <http://www.thenationonlineng.net/archive2/tblnews_Detail.php?id=57308> accessed 6 January 2015

⁵⁴ However, Henry Okah got a 24 year jail term for his involvement in the October 1 twin car bombing in Abuja that disrupted Nigeria's 50th independence anniversary in 2010, and threats made to the South African government. – See Ernest Chinwo et al., "Henry Okah Gets 24-year Jail Term for Abuja Bombings", Thisdaylive, 27 March 2013, available online at: <<http://www.thisdaylive.com/articles/henry-okah-gets-24-year-jail-term-for-abuja-bombings/143332/>> accessed 6 January 2015

⁵⁵ Shola O'Neil and Bisi Olaniyi, "MEND Threatens to Bomb Mosques, Hajj Camps, Clerics", the Nation, 15 April 2013, available online at: <<http://thenationonlineng.net/new/mend-threatens-to-bomb-mosques-hajj-camps-clerics/>> accessed 6 January 2015

⁵⁶ Mike Odiegwu, "MEND Attacks Shell Forcados' Pipeline", the Nation, 27 March 2014, available online at: <<http://thenationonlineng.net/new/mend-attacks-shell-forcados-pipeline/>> accessed 6 January 2015

nine workers who were later released; 1 May 2007 attack on Chevron's *Oloibiri* floating storage and offloading unit, with one sailer killed and six other foreign oil workers abducted, who were later released; 26 October 2007 attack on FPSO *Mystras* operated by Saipem, taking hostage six oil workers; 19 June 2008 attack on Royal Dutch Shell's *Bonga* floating production storage and offloading vessel (FPSO), resulting in injuries hijacking of an offshore support vessel and kidnapping of its US captain who was later released; 21 June 2009 detonation of explosives resulting in damage to two oil pipelines at Adamakiri and in Kula and an offshore facility at the Afremo oil fields operated by Shell-no lives were lost; 29 June 2009 attack on Shell's *Forcados* offshore terminal facility in Delta state resulting in the sinking of a military patrol gunboat with 20-25 soldiers on board; 5 July 2009 attack on *Shell's Well Head 20* platform located at Cawthorn Channel and Okan manifold which controlled about 80 per cent of Chevron Nigeria Limited offshore crude oil to its BOP Crude Loading Platform in Delta State; 12 July 2009 attack on an offloading facility in Lagos, its first operation outside the Niger Delta; 7 November 2010, MEND insurgents attacked the *High Island VII* offshore drilling jack-up rig at the Okoro offshore field, kidnapping 19 crew members who were freed days later.⁵⁷

Proscription Of Boko Haram And Mend Under Nigeria's Anti-Terror Law

Nigeria for long has been seen as a peaceful nation made up of people considered to be amongst the happiest on earth. The idea of people sacrificing their lives under the undesirable 'suicide bombing' would formerly be thought impossible in a culture that cherished life and merriment. Today, the country is easily associated with terrorism and violent acts as it is with crude oil. This urgent threat informed the view of President Jonathan at his inauguration as the President to aid a speedy passage of the Anti-Terrorism legislation. The Executive sponsored Bill was read in the Senate on December 10 2010, and passed on February 22 2011. The lower House passed the Bill also on 22 February 2011. The President on 2 June 2011, gave his assent to what is Nigeria's first anti-terrorism legislation. The Act gave sweeping powers to law enforcement agencies in tackling terrorism. However, barely a year later, an amendment Bill was brought forward to both Houses of Parliament. The current law is the Terrorism (Prevention) (Amendment) Act, 2013 [TPA as amended].

A terrorist under the Act is given two definitions. First, it means "any person involved in the offences under sections 1-4 of this Act and includes his sponsor."⁵⁸ It also means "any natural person who commits any of the following acts –

- (i) Commission or attempting to commit, terrorist acts intentionally by any means, either directly or indirectly,
- (ii) Participation as an accomplice in terrorist acts, or
- (iii) Organising terrorist acts or directing others to commit such acts,
- (iv) Contributing to the commission of terrorist acts with a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;⁵⁹

⁵⁷ See Mikhail Kashubsky, "A Chronology of Attacks on and Unlawful Interferences with, Offshore Oil and Gas Installations, 1975 – 2010" (2011) 5 *Perspectives on Terrorism*, available online at: <<http://www.terrorismanalysts.com/pt/index.php/pot/article/view/offshore-gas-and-oil-attacks/html>> accessed 29 January 2015. The list is not exhaustive.

⁵⁸ Section 40 TPA (amended)

⁵⁹ *Ibid.*

However, according to subsection 3 of section 1 of the Act "act of terrorism" means an act which is deliberately done with malice, aforethought and which:

- (a) May seriously harm or damage a country or an international organization;
- (b) Is intended or can reasonably be regarded as having been intended to—
 - (i) Unduly compel a government or international organization to perform or abstain from performing any act;
 - (ii) Seriously intimidate a population;
 - (iii) Seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or
 - (iv) Otherwise influence such government or international organization by intimidation or coercion; and
- (c) Involves or causes, as the case may be—
 - (i) An attack upon a person's life which may cause serious bodily harm or death;
 - (ii) Kidnapping of a person;
 - (iii) destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
 - (iv) the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b)(iv) of this subsection ; *
 - (v) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of biological and chemical weapons without lawful authority ;
 - (vi) the release of dangerous substance or causing of fire, explosions or floods, the effect of which is to endanger human life;
 - (vii) interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life ;
- (d) An act or omission in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria.

Subsection 4 of section 1 further stretches an act of terrorism to include an act which disrupts a service but is committed in pursuance of a protest. However, demonstration or stoppage of work is not a terrorist act within the meaning of the definition provided that the act is not intended to result in any harm referred to in subsection (2) (b)(i), (ii) or (iv) of section 1.

Section 40 also provides that terrorist acts also include acts which constitute an offence according to a specific list of international agreement.⁶⁰

⁶⁰ The list includes: Convention for the Suppression of Unlawful Seizure of Aircraft, 1970, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973, International Convention against the Taking of Hostages, 1979, Convention on the Physical Protection of Nuclear Material, 1980, Protocol for the Suppression of Unlawful Acts of

The Act under subsection 2 makes it punishable for any person or body corporate who knowingly in or outside Nigeria directly or indirectly willingly –

- (a) does, attempts or threatens any act of terrorism,
- (b) commits an act preparatory to or in furtherance of an act of terrorism,
- (c) omits to do anything that is reasonably necessary to prevent an act of terrorism,
- (d) assists or facilitates the activities of persons engaged in an act of terrorism or is an accessory to any offence under this Act,
- (e) participates as an accomplice in or contributes to the commission of any act of terrorism or offences under this Act,
- (f) assists, facilitates, organizes or directs the activities of persons or organizations engaged in any act of terrorism,
- (g) is an accessory to any act of terrorism, or
- (h) incites, promises or induces any other person by any means whatsoever to commit any act of terrorism or any of the offences referred to in this Act, commits an offence under this Act and is liable on conviction to maximum of death sentence.⁶¹

The Act also defines a terrorist organization as any group of terrorist that commits, or attempts to commit terrorist acts by any means, directly or indirectly, unlawfully and wilfully; participates as an accomplice in terrorist acts; organizes or directs others to commit terrorist acts, or contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

In analysing the definition of terrorism under the Nigerian Act, three principal criteria or issues will be considered:

- a. Commission of crime
- b. Motive/intention
- c. Extraterritoriality

A. Commission of crime

The Nigerian Act specifies the objective element of commission of crime. It talks about acts which ‘may seriously harm or damage a country or an international organisation’. It further includes an act which involves or causes an attack on the life of a person that may cause harm or death; kidnapping of a person; destruction of a government or public or private property that could endanger human life or result in economic loss; hijacking of any transport means in order to intimidate or coerce a government or international organisation; “manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of biological and chemical weapons without lawful authority”; releasing dangerous substances or causing of fire, explosions or floods,

Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988, The International Convention for the Suppression of Terrorist Bombing, 1997, The Convention Against Terrorist Financing, Convention on Offences and certain other Acts committed on Board Aircraft, and Convention on the Making of Plastic Explosives for the Purpose of Detection.

⁶¹ Section 1(2) TPA as amended

interfering with water supply or power or any natural resources, the effects of which is to endanger human life.

Boko Haram has carried out numerous attacks against Nigerians and foreign interests mostly in Nigeria and also in neighbouring countries. Most of these attacks have resulted in harm, death, and destruction of properties. This has also resulted in economic loss to the northern region as the unsafe climate has driven away businesses and potential investors. More recently, it has been involved in kidnapping operations, both in Nigeria and neighbouring Cameroon. In fact the Boko Haram leader had stated that they delighted in killing.⁶² MEND has on its part stated clearly that it is not after human lives, except where security operatives interferes in its operations

Major recent terrorist attacks and activities for which Boko Haram and MEND has claimed responsibility or which are reliably attributed to them include:

Attack upon life causing harm or death

On the basis of available information, there are clear grounds to believe Boko Haram attacks have either caused intentional harm or death to the assailants. Some of such attacks include: the 5 May 2014 attack on the town of Gamboru Ngala and reportedly killed 300 civilians; the 14 April 2014 attack on a bus interchange on the outskirts of Abuja, killing 75 people.⁶³ On 19 February 2014, the group attacked the town of Bama, Borno State, Nigeria, killing well over 40 people.⁶⁴ On 17 September 2013, the sect killed at least 140 civilians, including women and children, in an attack at Benisheikh City, Borno State.⁶⁵ Churches were not spared the attacks as on 17 June 2012, the sect attacked churches in Kaduna State, killing at least 40 people and wounding many others.⁶⁶ Boko Haram detonated vehicle borne improvised explosive devices (VBIEDs) at the Abuja and Kaduna offices of Nigerian newspaper This Day on 26 April 2012, killing several people.⁶⁷ On 26 August 2011, at least 23 people, including 15 United Nations (UN) personnel, were killed and 60 others were wounded in an SVBIED attack targeting the UN offices in the capital Abuja.⁶⁸ Responsibility for the attack subsequently was claimed by Boko Haram. Also on 16 June 2011, an SVBIED attack in the car park of the national police headquarters in the capital Abuja killed a traffic police officer and the bomber.⁶⁹ This is the first reported suicide bombing to take place in Nigeria. On 28 January 2011, suspected members of Boko Haram shot dead Alhaji Modu Fannami Gubio, the All Nigeria People's Party

⁶² "Therefore I tell you (that) we have not made ceasefire with anyone. Only battle, hitting, striking and killing with gun which we long for like tasty meal. This what we believe in and fight for" – Ola' Audu, "Full Transcript of Shekau's Latest Video on Ceasefire Deal, Chibok Girls" Premium Times, 1 November 2014, available online at: <<http://www.premiumtimesng.com/news/170441-full-transcript-of-shekaus-latest-video-on-ceasefire-deal-chibok-girls.html>> accessed 9 February 2015

⁶³ "Boko Haram claims Responsibility for Nyanya Bomb Blast", *supra* note 104

⁶⁴ Michael Olugbode, "Boko Haram Bama Attack: Death Toll Rises to 47", Thisday live, 19 February 2014, available online at: <<http://www.thisdaylive.com/articles/boko-haram-bama-attack-death-toll-rises-to-47/171922/>> accessed 25 February 2015

⁶⁵ Timothy Olanrewaju, "Benisheikh Still Desolate, Days After Boko Haram Attack", The Sun, 22 September 2013, available online at: <<http://sunnewsonline.com/new/?p=39003>> accessed 25 February 2015

⁶⁶ Luka Binniyat, Henry Umoru and Emman Ovuakporie, "48 Killed in Kaduna, Zaria Church Attacks" the Vanguard, 18 June 2012, available online at: <<http://www.vanguardngr.com/2012/06/48-killed-in-kaduna-zaria-church-attacks/>> accessed 25 February 2015

⁶⁷ Camillus Eboh and Garba Mohammed, "Suicide Car Bombs Hit Nigerian Newspaper Offices" Reuters, 26 April 2012, available online at: <<http://www.reuters.com/article/2012/04/26/us-nigeria-bomb-idUSBRE83P0NR20120426>> accessed 25 February 2015

⁶⁸ Marama, "UN House Bombing: Why We Struck – Boko Haram" *supra* note 100

⁶⁹ "Blasts Rocks Police Headquarters in Nigeria", *supra* note 99

gubernatorial candidate in Borno State, along with six other civilians in Maiduguri. The brother of the Borno State Governor Ali Modu Sheriff was also killed in the attack.⁷⁰

On the contrary, MEND attacks have majorly been against oil installations. The following are some of the available record of lives lost during their operation. On 15 January 2006, MEND attacked on Shell's Benisede flow station, killing 16 people (14 soldiers and 2 civilians); on 1 May 2007 attack on Chevron's *Oloibiri* floating storage and offloading unit, with one sailerkilled; also, on 29 June 2009 the group attacked Shell's *Forcados* offshore terminal facility in Delta state resulting in the sinking of a military patrol gunboat with 20-25 soldiers on board.⁷¹

Kidnap/abduction

The Boko Haram sect has also been involved in kidnapping and abduction of both locals and foreigners. In some cases, kidnapped or abducted individuals were later killed, released or are still held in bondage. Some instances of kidnap include the 14 April 2014 kidnap of more than 200 girls from a secondary school in Chibok, Borno State;⁷² the kidnap of a French priest in northern Cameroon on 15 November 2013,⁷³ although, he was released on 31 December 2013; the 19 February 2013 kidnap of seven French nationals in far northern Cameroon.⁷⁴ The hostages were later released, probably following a ransom payment.⁷⁵ On 27 January 2012, a German engineer was also kidnapped from Kano State and later killed. Boko Haram is suspected of involvement.⁷⁶

MEND have also been involved in a number of kidnappings. Usually, kidnapped persons are later freed as the organisation is uninterested in their death. Some of the notable ones include: 10 January 2006 attack on Shell's *EA* offshore oil platform resulting in the kidnap of four foreign oil workers from a support vessel; 18 February 2006 attack on *Forcados* offshore oil loading terminal and abduction of nine workers who were later released; 1 May 2007 attack on Chevron's *Oloibiri* floating storage and offloading unit, with six foreign oil workers abducted, who were later released; 26 October 2007 attack on FPSO *Mystras* operated by Saipem, taking hostage six oil workers; 19 June 2008 attack on Royal Dutch Shell's *Bonga* floating production storage and offloading vessel (FPSO), resulting in kidnapping of its US captain who was later released; 7 November 2010, MEND insurgents attacked the *High Island VII* offshore drilling jack-up rig at the Okoro offshore field, kidnapping 19 crew members who were freed days later.⁷⁷

⁷⁰ Anthonia Onwuka, "Boko Haram's Dastardly Acts" the Vanguard, 11 September 2011, available online at: <<http://www.vanguardngr.com/2011/09/boko-haram%E2%80%99s-dastardly-acts/>> accessed 25 February 2015

⁷¹ Kashubsky, *supra* note 52.

⁷² Chothia, *supra* note 18.

⁷³ Tansa Musa and Leigh Thomas, "French Priest Kidnapped by Gunmen in Northern Cameroon" Reuters, 14 November 2013, available online at: <<http://www.reuters.com/article/2013/11/14/us-france-cameroon-kidnap-idUSBRE9AD0J120131114>> accessed 26 February 2015

⁷⁴ Angelique Chrisafis, "French Family Seized in Cameroon by Suspected Boko Haram Islamists Freed" The Guardian, 19 April 2013, available online at: <<http://www.theguardian.com/world/2013/apr/19/french-family-kidnapped-cameroon-freed>> accessed 26 February 2015

⁷⁵ Musa and Thomas, *supra* note 68.

⁷⁶ Nicole Crowder, "The Enemy Within: A Closer Look at Survivors of Boko Haram Attacks Across Northern Nigeria, Part II" The Washington Post, 27 January, available online at: <<http://www.washingtonpost.com/news/in-sight/wp/2015/01/27/the-enemy-within-a-closer-look-at-survivors-of-boko-haram-attacks-across-northern-nigeria-part-ii/>> acceded 26 February 2015

⁷⁷ Ibid.

Destruction of property

In most cases of attack by the Boko Haram group, there has been destruction of properties. These include both civilian and military items. On 26 February 2014, suspected Boko Haram members conducted three simultaneous attacks throughout Adamawa State, Nigeria.⁷⁸ The first killed eight people in Kirchinga Village. The second killed 20 people including school children in the Shuwa village. The third killed more than four people and destroyed more than 100 shops in the village of Michika.

MEND attacks have principally been directed at oil installation. The group on 19 June 2008 attacked a Royal Dutch Shell's *Bonga* floating production storage and offloading vessel (FPSO), resulting in injuries hijacking of an offshore support vessel and kidnapping of its US captain who was later released.⁷⁹ It also detonated explosives resulting in damage to two oil pipelines at Adamakiri and in Kula and an offshore facility at the Afremo oil fields operated by Shell on 21 June 2009-no lives were lost.⁸⁰ On 29 June 2009, Shell's *Forcados* offshore terminal facility in Delta state was attacked, resulting in the sinking of a military patrol gunboat with 20-25 soldiers on board.⁸¹ The group's other attacks include the 5 July 2009 attack on *Shell's Well Head 20* platform located at Cawthorn Channel and Okan manifold which controlled about 80 per cent of Chevron Nigeria Limited offshore crude oil to its BOP Crude Loading Platform in Delta State;⁸² and the 12 July 2009 attack on an offloading facility in Lagos, its first operation outside the Niger Delta.⁸³

The following acts would also qualify to under section 1(3)(a) and (b)(iii) of the Act: a 7 May 2013 coordinated attack in Bama, Borno State on a police station and prison by Boko Haram members killing 55 and leading to the escape of over 100 prisoners; a Boko Haram 3 May 2012 attack on a police station in Banki, near the border of Cameroon, and a prison in Kumshe, Borno State, resulted in the killing of two prison wardens and the escape of an unknown number of inmates; a 16 February 2012 attack on a prison in the town of KotonKarfe in Kogi State resulting in the killing of a prison guard and escape of 120 prisoners for which Boko Haram spokesman Abu Qaqa later claimed responsibility. On 12 May 2011, a Briton and an Italian citizen were kidnapped in Kebbi State. Both were killed on 8 March 2012 by AQIM-aligned members of Boko Haram during a failed rescue attempt by the Nigerian Security Service.

Motive/Intention

The intention criterion of terrorism introduced by the Nigerian law is quite interesting as it is rather quite broad. For an act to qualify as terrorism, it must have been intended to:

- i. unduly compel a government or international organisation to act in a certain way;
- ii. seriously intimidate the population
- iii. seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or of an international organisation
- iv. influence a government or international organisation by intimidation or coercion

⁷⁸ Lara Adejoro, "Scores Killed, Houses, Churches, Hospitals Destroyed in Fresh Adamawa Attack" Daily Times, 27 February 2014, available online at: <<http://www.dailytimes.com.ng/article/scores-killed-houses-churches-hospitals-destroyed-fresh-adamawa-attack>> accessed on 26 February 2015

⁷⁹ Kashubsky, supra note 52.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

Under ambit (i), Boko Haram and MEND actions are geared towards compelling the government to unduly act in a certain way. For Boko Haram, they intend that the government drops its adherence to western practices and laws and follows strict sharia. MEND hopes to compel the government in the long run to give more proceeds to the region that technically speaking, “owns the oil”.

In ambit (ii), Boko Haram has the intention of seriously intimidating the public into accepting sharia and its policies. It also hopes to stir the people against the government who cannot protect them. MEND on the other hand do not have such motive, except to put pressure on oil companies to follow the line of increased resources for the people of the Niger Delta.

Under paragraph (iii) Boko Haram obviously seeks to destroy the existing political and constitutional structure in place, which it sees as contrary to Islamic teachings. MEND intends to destabilize the oil economy by forcing oil companies to either abandon or reduce oil production until their demands are met. The sole objective of MEND’s action is to get the attention of the government to the inequitable distribution of revenue.

Boko Haram has sought to influence the Nigerian, Chad and Cameroonian government by intimidating and or using force against them.⁸⁴ The group has served out threats to other western governments and or recent, included the African governments in its war of words.⁸⁵ MEND also has sought to coerce the Nigerian government into giving more profits to the Niger Delta region and preventing environmental degradation.

Extraterritoriality

The Nigerian Act has extraterritorial application. In other words an act of terrorism means an act or omission in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria. This implication of this is that terrorism is made an international offence by defining it in line with international conventions and protocols ratified by Nigeria, thus granting Nigeria jurisdiction over such terrorism matters. Hence, where a person commits an offence in Nigeria or outside Nigeria that falls within the scope of international counter-terrorism legislations ratified by Nigeria, such an act is deemed as a terrorist act.⁸⁶ The hostage taking carried out by both sects would qualify to meet the offence stated under the Hostages Convention. Article 1 of the Convention states:

Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental

⁸⁴ Jennifer Newton, “Boko Haram Leader Threatens War with Niger, Cameroon, Chad and Nigeria and Warns of more Massacres in Rant-filled Video” Mailonline, 22 January 2015, available online at: <<http://www.dailymail.co.uk/news/article-2921905/Boko-Haram-leader-threatens-war-Niger-Cameroon-Chad-Nigeria-threatens-massacres-response-leaders-response-Charlie-Hebdo-massacre.html>> accessed 9 February 2015.

⁸⁵ Zachary Elkaim, “Boko Haram Leader Releases Video on Maiduguri Attack, Threatens US” Long War Journal, 13 December 2013, available online at: <http://www.longwarjournal.org/archives/2013/12/shekau_strikes_back.php> accessed 9 February 2015

⁸⁶ The following Conventions are listed in section 40 of the ACT as included in the meaning of terrorist acts: Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons; including Diplomatic Agents, 1973; International Convention against the Taking of Hostages, 1979; Convention on the Physical Protection of Nuclear Material, 1980; Protocol for the Suppression of Unlawful Acts of violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988; The International Convention for the Suppression of Terrorist Bombing, 1997; The Convention against Terrorist Financing; Convention on Offences and certain other Acts committed on Board Aircraft, and Convention on the Making of Plastic Explosives for the purpose of Detection;

organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

Conclusion

Recent violent acts in Nigeria have proved the need to clarify the issue of terrorism from other forms of violence. The result is the swift passage of an anti-terror law and its amendment and the subsequent proscription of Boko Haram as a terrorist organisation. The TPA 2011 as amended was passed into law owing more to the need for a concerted response to the growing threat from Boko Haram than from the declined threat posed by the Niger Deltan militants, MEND. This law provided for what terrorist acts and organisations is under Nigerian law.

Majority of the definitions provide for the objective element of causing harm, injury, death to person, or damage to public or private property or causing harm to the public; and the subjective element of intention to intimidate or coerce the government, an international organization or the populace to doing or restrain from doing certain acts. Terrorism is also given an extra territorial application with the effect that acts committed outside a national state that constitute a crime in the national state or in the other state where it was committed or where its effect stretched to, would be covered by the definition of terrorism.

Regardless of the previously stated fact that the problem inherent in the definition of terrorism has been political and not legal or linguistic, it is not out of place to extrapolate the essential elements of terrorism observed in the TPA. The following constitute its essential elements:

- (a) A threat or act of violence against a person or property;
- (b) Intention or motive to intimidate a population, government or international organisation; and excludes acts done in protest or dissent that is not intended to cause harm to persons.
- (c) Such act must constitute a crime either locally or internationally

Based on available information, there is a reasonable basis to believe that, Boko Haram is a terrorist group, committed to perpetuating terrorism under Nigerian law. The crimes committed involve a threat and actual use of violence against people and property in Nigeria and her neighbouring states, particularly, Cameroon, Chad and Niger; an intention or motive to intimidate the government; and those acts are crimes both in Nigeria. In fact for the Boko Haram group, the ICC believes that it has committed in the territory of Nigeria the crimes of (i) murder constituting a crime against humanity under article 7(1)(a) of the Statute, and (ii) persecution constituting a crime against humanity under article 7(1)(h) of the Statute.

Based on the available information, the position of MEND is rather unsettled. MEND official statement on their attacks shows that the group only intend to attack oil infrastructure and draw the attention of the government to the plight of the Niger Deltans whose economic resources had been over utilized to their disadvantage. Humans, particularly soldiers are attacked where they interfere or come in between the groups actions. Their acts are done in dissent and not intended to cause physical harm to the population. In most cases of kidnapping, they had freed/returned back their victims. However, under Nigerian anti-terror law, MEND would qualify as a terrorist group, committed to perpetuating terrorism. It is surprising that the Nigerian government has not found the need to designate the group as a terrorist entity.

Anti-terrorists laws should be proactive and not reactive. In other words, they should be directed in such a manner as to proscribe terrorists early and as much as possible, before they carry out major attacks. An analysis of the definition of terrorism and or terrorist acts under Nigerian counter terror law shows that the Boko Haram group qualify to be designated as terrorists. However, it is quite astonishing that it was the 2014 Chibok school-girls abduction that triggered the proscription of Boko Haram by Nigeria. Does this mean that this singular act qualified the group as terrorists? Or that was the earmark for designating the group? This tends to suggest that the proscription of a group based on a definition of terrorism will only be called into force where the government can no longer tolerate the excesses of such group. This signifies that the labelling and classification is still very much subjective, with the government's designation being based on the level of the security threat of a particular group. This should not be so. Groups should be gauged in line with terrorism laws and definition in place so as to enable an effective and timely response to the acts of such group.