NATIONAL STRATEGIES FOR THE PROTECTION OF CHILDREN INVOLVED IN TERRORISM AND VIOLENT EXTREMISM CASES IN NIGERIA

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Abstract

The activities of the Islamist extremist group, Jama'atu Ahlis Sunna Lidda'awatiwal (JAS), commonly known as the Boko Haram, have grossly undermined Nigeria's security and threatened human rights protection, especially the rights of children in the affected northeast states. The impact of the violence, which has lasted over a decade now, is felt more by children, as they are usually affected by both the actions of the terrorists and the counter-terrorism actions of the government. Government's counter-terrorism action had reportedly led to the rescue and arrest of several children. With the arrest or rescue of children during counter-terrorism operations, often comes the question of what to do with them. In the midst of this uncertainty, many of the arrested children have been, and are held in detention facilities pending a resolution to either free or put them through criminal justice processes. Where the decision is to subject such children to the criminal justice processes for their involvement in terrorism as perpetrators, victims, or witnesses, there are recommended guidelines that need to be followed to ensure their protection throughout the process. Using a doctrinal approach, this paper examines national

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strategies for the protection of children involved in terrorism and violent extremism cases in Nigeria. The paper finds that although measures exist for their protection, gaps and other challenges also exist that make practical implementation ineffective. Concluding that these challenges work to exacerbate the vulnerabilities of children, recommendations are proffered towards strengthening protection measures for children in Nigeria.

KEYWORDS: Children, Child's Rights, Terrorism, Violent Extremism, Boko Haram, Child Justice Administration

Introduction

The outbreak of insurgency and terrorism in Nigeria remains one of the most shocking intervening moments in our national history to date. These depravities had occurred in parts of the world for decades before they were popularised by the September 11, 2001 bombing of the United States of America (US).[128] In Nigeria, the signs were there, as seen in the *Maitatsine* riots that occurred in northern Nigeria between 1980 and 1985;[129] and even though the riots evinced a major wave of violence, they were regarded as religious acrimony and never treated as or associated with terrorism or violent extremism, since terrorism was principally viewed as a foreign activity at the time, which was a perilous mistake. Nigeria came to the realisation of the presence of terrorism in the country with the activities of *Jama'atu Ahlis*

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[128]The National Counter Terrorism Center, *Report on Terrorism* (2011) <https://irp.fas.org/threat/nctc2011.pdf> accessed 11 March 2021.

[129]Harvard Divinity School, "Religion and Public Life: *Maitatsin*e Riots, The"? <https://rpl.hds.harvard.edu/faq/maitatsine-riots> accessed 23 March 2022.

Sunna Lidda'awatiwal Jihad (people committed to the propagation of the Prophet's Teachings and Jihad) movement referred to as JAS, and commonly known as Boko Haram around 2009.[130]

The dastardly activities of this group, which began in northeast Nigeria, led to the wanton destruction of lives, and properties that led to displacements, which exposed many, especially women and children, to other forms of dangers, including people smuggling and human trafficking.[131] The quest by the Boko Haram to succeed in its mission to supplant the government of Nigeria and to establish their extremist Islamic regime saw them adopting a myriad of strategies to advance their cause, including the recruitment and exploitation of children for purposes of prosecuting their war.[132]

These children were incessantly and shockingly used as fighters and suicide bombers.[133] While some of them lost their lives in the course of suicide bombing attacks perpetrated by them,[134] others were apprehended. Referencing the arrest of a group of children accused of terrorism offences in 2016,[135] the Institute for

[130] NIALS, Dealing with the Past: Justice, Reconciliation and Healing in the North East of Nigeria (Nigeria: NSRP/NIALS, 2017) 6-12.
[131] I. O. Ifeakandu and Peter T. Akper, 'Terrorism and Insurgency as Triggers for Irregular Migration in the Lake Chad Region: Issues and Challenges for Nigeria'. *Journal of Criminal Justice* [2021] (9) (1) 20-35.
[132] United States Department of State, *Trafficking in Persons Report* (US Department of State, 2021) 424.
[133] Ibid.
[134] UNODC, Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (United Nations, 2017)
[135] Institute for Security Studies, 'Nigeria Faces Complex Legal, Ethical and Practical Dilemmas when Implicated in Terrorism are-Related Offences' (2016)

Security Studies expressed the view that there are no easy answers for Nigeria in terms of whether to treat such children as victims or offenders.[136]

As with every situation for which one is not prepared, Nigeria's response was a bit wobbly initially before it became firm. The country's first response was the military option, with a retinue of personnel from the armed forces being deployed to the northeast to quell the insurgency. This was immediately followed by a terrorism specific legal framework in 2011, amended in 2013, before a number of other counter-terrorism strategies were adopted. For example, in 2014, the Office of the National Security Adviser (ONSA) developed the National Security Strategy (NSS) which was updated in 2019.[137] In the same year 2014, a National Counter-Terrorism Strategy (NACTEST) was adopted[138] and updated in 2016. The NACTEST highlights that counter-terrorism strategy in Nigeria is woven around 5 streams – *Forestall, Secure, Identify, Prepare, and Implement.* Preventing and Countering Violent Extremism (PCVE) programmes were also adopted in-between to stem the tide of insurgency.

<https://issafrica.org/iss-today/nigerias-child-terror-suspects-no-easy-answers> accessed 13 November 2021.

[136]Ibid.

[137] Office of National Security Adviser, *National Security Strategy* (Abuja, 2019) <https://ctc.gov.ng/wp-content/uploads/2020/03/ONSA-UPDATED.pdf> accessed 13 March 2021.

[138] Office of National Security Adviser, *The National Counter-Terrorism Strategy* (Abuja, 2014). See the 2016 update at < https://ctc.gov.ng/national-counter-terrorism-strategy-2016/ > accessed 13 March 2021.

In 2017, President Muhammadu Buhari signed the PCVE Policy Framework and National Action Plan[139] that aims to partner with stakeholders and groups to achieve "safer and resilient communities".[140] Adopting an approach tagged "a whole-of-government and a whole-of-society",[141]the document recognised the importance of mainstreaming human rights and the rule of law into PCVE programmes; hence a set of guiding principles were developed for critical stakeholders. Priority components of the intervention, strategies, and expected outcomes that are necessary for the successful implementation of the National Action Plan on a short, medium, and long-term basis were also developed.[142] Although the core constituents of the policy framework include youths and students, women and girls, families, policing as well as schools and teachers among others, the document does not specifically provide guidelines on the handling of children before, during, and after counter-terrorism operations, particularly how children involved in terrorism should be treated, particularly in the context of the criminal justice process.

This paper examines national strategies for the protection of children involved in terrorism and violent extremism cases, whether as victims, witnesses or perpetrators. Using a doctrinal approach, the paper probes the availability and effectiveness or otherwise of legal and policy frameworks established to deal with

[139] ONSA, *PCVE Policy Framework and National Action Plan* (2017) < https://ctc.gov.ng/national-counter-terrorism-strategy-2016/ > accessed 13 March 2021.
[140]Ibid.
[141]Ibid.
[142] Ibid.

children involved in terrorism cases. The research finds that Nigerian government has made a commendable effort to ensure the protection of children more generally, and those involved in terrorism and violent extremism cases specifically. However, practical implementation of these measures is ineffective due to gaps and other identified challenges. Based on the findings, overarching recommendations are made toward the adoption of more holistic, comprehensive, proactive, and integrated measures for the protection of children involved in terrorism and violent extremism cases. The paper is divided into 7 parts. Part 1 is the introduction, while concepts such as children, terrorism, violent extremism, and child justice administration are discussed in part 2. Part 3 examines children and terrorism/violent extremism in Nigeria. While part 4 examines the child justice system in the specific context of terrorism and violent extremism, part 5 scrutinises protection measures for children, particularly, the special provisions designed for their protection. Part 6 discusses the practical challenges impeding the effective application of protection measures for children, and part 7 makes some vital recommendations and concludes the paper.

Conceptual Clarification

Children

It is not in doubt that children form part of the groups that are usually most affected by conflicts. This is due to their level of vulnerability, which is three-pronged.[143] Firstly, children are exploited and recruited by terrorists as child soldiers and suicide

[143]Damilola S. Olawuyi, 'Terrorism, Armed Conflict and the Nigerian Child: Legal Framework for Child Rights Enforcement in Nigeria' (2015) <https://www.researchgate.net/publication/305611530> accessed 13 March 2021.

bombers, thereby jeopardising their innocence and lives. Secondly, children are orphaned, displaced, and rendered homeless, especially where families are shattered. Thirdly, government's anti-terrorism actions sometimes exert devastating impact on children.[144]

Several reports by Amnesty International and other humanitarian agencies have indicated grave anti-terrorism actions by government troops in the northeast over the years.[145] Needless to state that since the start of violent extremist and terrorist activities and the attendant counter-terrorism efforts in Nigeria, several persons have been arrested as suspects, including children. In September 2019, Human Rights Watch reported that thousands of children, including 5-year-old children, had been "arrested and detained" by the Nigerian military for "suspected involvement" with the Boko Haram.[146] The emphasis stated further that suspects are sometimes arrested while perpetrating or attempting to perpetrate the act, and sometimes after investigations;[147]and called on the Nigerian government to stop jailing children.[148]

[144] Ibid.
[145] Amnesty International, 'Nigeria: "We Dried Our Tears": Addressing the Toll on Children of Northeast Nigeria's Conflict' [2020] <https/www.amnesty.org/en/documents/afr44/2322/2020/en/> accessed 17 March 2021.
[146] Ibid.
[147] Human Rights Watch, '"They Didn't Know if I Was Alive or Dead": Military Detention of Children for Suspected Boko Haram Involvement in Northeast Nigeria' <http://www.hrw.org> accessed 16 March 2022.
[148] Human Rights Watch, 'Nigeria: Stop Jailing Children for Alleged Boko Haram Ties (14 December 2020) <http://www.hrw.org/news/2020/12/14/nigeria-stop-jailing-children-alleged-boko-haram-ties> accessed 17 March 2021.

When dealing with children who have come into conflict with the law, there are usually, sets of guidelines on how they should be treated. This also means that to benefit from this, it must be shown that the perpetrator, victim or witness is a child. The question, therefore, is: who is a child within the framework of law and policy for purposes of administering child justice?

Apart from international law instruments such as the UN Convention on the Rights of the Child (CRC), [149] African Charter on the Rights and Welfare of the Child (ACRWC)[150], among others, section 29 (4) (a) of the Constitution of the Federal Republic of Nigeria, 1999, as amended (CFRN), and several state and federal provisions define a child as any person below the age of 18. Such states and federal provisions include, but are not limited to the following: section 494 of Administration of Criminal Justice Act, 2015 (ACJA); section 277 of the Child's Rights Act (CRA) 2003; section 82 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEAA), 2015; section 2 of Oyo State Administration of Criminal Justice Law, 2017, section 2 of Oyo State Child Rights Law (OSCRL) 2006; section 3 of Kaduna State Administration of Criminal Justice Law (KadACJL), 2017; and section 3 of Kaduna State Penal Code Law (KadPCL), 2017 (amended in 2018 and 2020). The implication is that irrespective of what the definition of a

149 The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force September 2, 1990, in accordance with article 49.

150 The African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49; was adopted by the Heads of government of the Organization of African Unity (OAU), now African Union (AU) in 1990. It came into force November 29, 1999; available at, http://www.africa-union.org/root/au/documents/treaties/treaties.htm; accessed 22 March 2021

child is under any other law, any person below the age of 18 years has to be subjected to child justice administration governed by the CRA or CRL of the applicable state.

Terrorism

Although terrorism has existed for decades, there is currently no universally accepted legal definition of the concept due to its (a) subjective nature,[151] and (b) inclination towards politics and democracy.[152] While the general perception is that there is no generally accepted definition of terrorism, the Special Tribunal for Lebanon took a different view. In its 2011 interlocutory judgement,[153] the Tribunal ruled that, at least, since 2005, a definition of "transnational terrorism" has existed within customary international law;[154] and went further to find that a number of treaties, UN resolutions as well as the judicial practice of states demonstrate the formation of *opinion juris*[155] in the international community, accompanied by a practice consistent with such opinion, to the effect that a customary rule of international law regarding the international crime of terrorism, at least in time of peace, has indeed emerged. The customary rule

[151]Szurlej, Christina "Protecting human rights while countering terrorism a decade after 9/11" *Essex Human Rights Review* [2011) (8) 1-6.
[152]The National Counterterrorism Centre, *Report on Terrorism* (Washington DC, Office of the Director of National Intelligence, 2011) <https://fas.org/irp/threat/nctc2011.pdf> accessed 10 October 2020.
[153] Special Tribunal for Lebanon, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, 16 February 2011.
[154] Ibid.
[155]*Opinion Juris* is the second element necessary to establish a legally binding custom. It simply means an opinion of law or necessity. See Cornell Law School, *Opinion Juris*<https://www.law.cornell.edu/wex/opinio_juris_(international_law> accessed 23 March 2021

requires three key elements – perpetration of a criminal act, intent to spread fear; when the act involves a transnational element.[156] This decision sought to establish the fact that a form of "partial, customary definition of terrorism" possibly exists. This position was widely criticised and remains controversial even though the UNODC tried to justify the Tribunal's position because it relied on "relevant UN policies, practices and norms";[157] and also on national and international jurisprudence.[158]

Some existing definitions of terrorism include those proffered by the Federal Bureau of Investigation (FBI) of United States[159], Nigeria's TPA and the Black's Law Dictionary. The FBI defined both international and domestic terrorism, stating that international terrorism is: "violent, criminal acts committed by individuals and/or groups who are inspired, or associated with, designated foreign organisations or nations (state sponsored)";[160] while domestic terrorism is "violent, criminal acts committed by individuals and/or groups to further ideological goals stemming from domestic influences, such as those of a political, religious, social, racial or environmental nature".[161]This definition reflects the two dimensions of terrorism – international and domestic.

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[156]See the Interlocutory Decision, 2011, paragraph 85.
[157]UNODC, "Defining Terrorism", available at <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html> accessed 23 March 2021.
[158]Ibid.
[159] The FBI is an intelligence-driven and threat-focused national security and law enforcement organisation with responsibilities to protect the US from terrorism, espionage, cyber-attacks and major criminal threats, among others. See more at <https://www.fbi.gov/about> accessed 23 March 2021
[160]FBI, What we Investigate: Terrorism <https://www.fbi.gov/investigate/terrorism> accessed 23 March 2021.
[161] Ibid.

In Nigeria, the Terrorism Prevention Act (TPA), 2011 defines an act of terrorism as any act, which is done with malice and calculated to unduly compel a government or international emphasisings to do or refrain from doing any act.[162] The Black's Law Dictionary[163] also defines terrorism as: "the use of threat of violence to intimidate or cause panic, especially as a means of affecting political conduct".[164] These definitions show enormous variations on what is considered as terrorism even though they all capture the very essence of terrorism, which is the element of *violence*, and *threat*.

The ramifications of an absence of a universally agreed definition of terrorism and violent extremism are immense. This is not only because it can potentially enable the misapplication of the concept of terrorism to check non-terrorist or non-criminal activities, but also because it may result in human rights violations.[165] It is even worse where domestic laws fail to proffer a clear and concise definition or has one that suffers from ambiguity, as this would naturally offend the principle of *nullum crimen, nulla poena sine lege,*[166](no crime without law), which applies in international and Nigerian criminal laws. The thrust of the principle is the certainty of criminal law provisions, i.e., acts

[162] The Terrorism (Prevention) (Amendment) Act 2013 prohibits all acts of terrorism and financing terrorism. The Act makes supplemental and elaborate provisions criminalizing acts of terrorism.
[163] Bryan Garner (Ed.), *Black's Law Dictionary* (USA: Thomson Reuters, 2009)
[164] Ibid, p. 1611.
[165]Ibid.
[166] See more on this maxim at <https://www.law.cornell.edu/wex/nullum_crimen_sine_lege> accessed 22 March 2021.

must be clearly defined as crimes and punishment prescribed for them.

This principle is given effect under sections 4 of Nigeria's Criminal Code (CC) and 36 (12) of CFRN, which stipulate that conduct cannot be deemed to constitute an offence unless that conduct is specifically defined as a crime and punishment prescribed for it in a law made by the National Assembly or the House of Assembly of a State. In line with these provisions, the TPA was enacted to give effect to the conducts that constitute terrorism in Nigeria and to prescribe punishment for them. The scope of terrorist offences under the TPA, as amended, is very wide; and each conduct constitutes an offence, upon which a person can be tried and punished on conviction as a terrorist offence if committed pursuant to a terrorist objective(s). This means that a single terrorist act can represent several offences, each of which requires the presence of the subjective element as expressly provided under section 1 (1) of TPA.

Violent Extremism

Like terrorism, the term "violent extremism" is prone to varied definitions as there is no universally accepted definition. The absence of a universally accepted definition means just one thing – states and organisations proffer definitions that best suit their context. Some of the commonest definitions include those proffered by the United States Agency for International Development (USAID),[167] the Organization for Economic and

[167] USAID is the world's premier international development agency and a catalytic actor driving development results. The organisation works to help lift lives, build communities and advance democracy. See more at <https://www.usaid.gov> accessed 20 March 2022.

Cooperation Development (OECD).[168] USAID defines the term as "advocating, engaging in, preparing, or otherwise supporting ideologically motivated or justified violence to further social, economic or political objectives".[169] The OECD on the other hand defines "violent extremism" thus: "Promoting views which foment and incite violence in furtherance of a particular belief, and foster hatred which might lead to inter-community violence".[170]

The definition proffered by USAID seems basic and simplistic on the face of it. However, it has raised a number of issues, including the question of whether "violent extremism" is something that relates solely to actions of non-state actors;[171] and the uncertainty surrounding how violent extremists can be differentiated from others involved in the conflict even if they are legitimate.[172] Another issue relates to the determination of whether violent extremism must be ideological; and whether it can simply be regarded as a synonym of terrorism or that the term means different things to different people.[173] According to UNODC, these issues are not merely academic or rhetorical, they are germane and should be given consideration, mainly because

[168] Established over 60 years ago with a goal to shape policies that foster prosperity. The organisation works to build better policies for better lives. See more at <http://www.oecd.org/about> accessed 23 March 2022
[169] USAID, The Development Response to Violent Extremism and Insurgency (2011) 2
[170] Ibid.
[171] Ibid.
[172] Ibid.
[173]UNODC, "Defining Terrorism", available at <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html> accessed 23 March 2021.

what people "call a phenomenon helps to determine"[174] how it is perceived as well as responses to it.

In a report that examined extant state practice, policies, and measures regulating "violent extremism" across many states,[175] the United Nations High Commissioner for Human Rights (UNHCHR), underscored diverse national approaches and challenges associated with defining the concept;[176]and emphasised the fact that a "variety of definitions used do not show clearly whether 'violent extremism' presupposes violent action or inciting violent action, or whether lesser forms of conduct that do not normally trigger criminal law sanctions would also be included".[177] For the UNHCHR, diversity of definitions does not depict strict negativity, mainly because it also portrays a certain level of consistency, particularly the fact that the concept of "violent extremism" is regarded as being broader than that of terrorism.[178]

This position was also reflected in the Plan of Action to Prevent Violent Extremism[179] where the Secretary-General noted that "violent extremism encompasses a wider category of manifestations"[180] than terrorism since it includes forms of ideologically motivated violence that do not qualify as terrorist

[174] Ibid.
[175]General Assembly, Human Rights Council report A/HRC/33/29.
[176]Ibid.
[177]See paragraph 17 of the Report.
[178](Report A/HRC/33/29, para. 19).
[179] United Nations Office of Counter-Terrorism, Plan of Action to Prevent Violent Extremism, available at, <http://www.un.org/counterterrorism/plan-of-action-to-prevent-violent-extremism> accessed 23 March 2022.
[180] Ibid.

acts.[181] The mixture of activities and conducts that can be regarded as "violent extremism" has been largely designed by the activities of terrorist groups such as Al Qaeda and Boko Haram, among others, which propagate messages of violence, hate, socio-cultural and religious bigotry, etc. Boko Haram for example, garnered many followers by distorting and exploiting religious and ethnic differences as well as political ideologies to mislead gullible followers and also legitimise their actions. These antics also formed part of recruitment and retention strategies.[182]

Generally, both concepts can, and have sometimes been used interchangeably and share similarities, particularly in their manner of impact.[183] However, using certain parameters, both concepts can be somewhat differentiated. For example, while "violent extremism" is more inclusive and is normally applied more narrowly than terrorism, both concepts convey identical meaning in their use.[184]

Child Justice Administration

Normally, it is better for a child not to come into conflict with the law. However, where this happens, the generally accepted position is for the child not to be made to face the formal justice apparatus except where there is no other option.[185] If the child is

[181]General Assembly report A/70/674, paragraph 4.
[182](Romaniuk, 2015, pp. 7-8).
[183] Institute for Economics and Peace, Global Terrorism Index 2015: Measuring and Understanding the Impact of Terrorism (2015, Sydney, Australia: IEP)
[184] A. P. Schmid, Violent and Non-Violent Extremism: Two Sides of the Same Coin (2014) ICCT Research Paper. The Hague: International Center for Counter Terrorism (ICCT)
[185]Section 209 (3) CRA provides that police investigation and adjudication before the court shall be used only as measure of last resort.

to face a formal justice process, then he or she should only be subjected to child justice administration.[186] Accordingly, the courts in Nigeria have, for a long period, emphasised the need to subject children only to the justice system prescribed by juvenile laws. In the case of *Amaike Doripolo v. The State,*[187] the Court of Appeal stated:

> *Now the principle of law is trite, that – where a child or young person is brought before the court or a Magistrate court charged with an offence, the charge shall be inquired into in accordance with the Children and Young Persons Act…Per Saulawa JCA (pp. 35-36, paras F-C)*

The need for children to be subjected to a unique justice system arises from their distinctive nature, their fragility as well as vulnerability to external or adult influences and pressures.

Children and Terrorism/Violent Extremism in Nigeria

Generally, terrorism and violent extremism affect everybody but children, indigenous people, women, minorities, less privileged, and refugees are considered victims due to their physical and mental limitations. Age as a major limitation makes children the most vulnerable group of people to the far-reaching impact of terrorism and violent extremism.[188] There is a limited amount of protection they can give to themselves while trying to escape violent situations. The fear associated with terrorism and violent

[186] See section 204 CRA.
[187] (2012) LPELR-15415 (CA)
[188]Damilola S. Olawuyi, 'Terrorism, Armed Conflict and the Nigerian Child: Legal Framework for Child Rights Enforcement in Nigeria' (2015) <https://www.researchgate.net/publication/305611530> accessed 13 March 2021

extremism, most times, means that children are separated from their parents or families, watch their loved ones die, and suffer long-lasting mental and physical disabilities.[189]

Keeping in mind that terrorism deprives children of their rights which has been entrenched in the Child's Right Act[190] and the CFRN,[191] the distinctive vulnerabilities of children to terrorist and violent extremists' activities are evident in the following circumstances: first, they are orphaned, rendered homeless, become stranded, through the actions of the terrorists. They may also be subjected to torture by the terrorists. Secondly, children are often recruited by violent extremist and terrorist groups as child soldiers. It has become a strategy among these groups to abduct children because they are less likely to resist because of their inability to understand their environment or issues around them.[192] Some children abductees may even suffer from Stockholm syndrome where the victim identifies and empathises with their captors.[193] Thirdly, the government has directly or indirectly added to the vulnerabilities of children from their actions to counter terrorism actions.[194]

[189]Crisis Group, 'Preventing Boko Haram Abductions of School Children in Nigeria' <https://www.crisisgroup.org/africa/west-africa/nigeria/b137-preventing-boko-haram-abductions-schoolchildren-nigeria> accessed 24 March 2021
[190] See sections 3-20, Part II, CRA
[191] Chapter 4 of CFRN
[192]Crisis Group, n.62
[193]Ibid.
[194] Child Rights International Network, 'The Effects of Terrorism and Counter-Terrorism Measures on Enjoyment of Children's Rights' (2016) <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/NegativeEffectsTerrorism/CRIN.pdf> accessed 24 March 2022.

On the issue of recruitment of children by terrorist groups, it is important to highlight its significance to the status of children involved in terrorism. Usually, children are recruited for intricate and multifarious reasons, which vary according to context.[195] According to UNODC, they are not just recruited among adults but are specifically targeted because they afford more benefits to violent extremist groups.[196] For example, as child bombers, no one expects a child to be a suspect in possession of bombs and other weapons. This is a way of boosting their visibility as terrorists.[197] There have been cases where the analysis of the ISIL propaganda has revealed about 254 events that included the images of children involved in acts of violence; these images were used to shock the public and show how ruthless the terrorists are.[198] Just to reiterate, the fact that children form the bulk of Boko Haram membership is public knowledge, and so is the fact that many of them were forcefully recruited.

Child Justice System in the Context of Terrorism

The essence of justice administration in the context of children are to (a) seek, obtain and provide just and timely remedy through formal and informal institutions of justice that complies with human rights standards,[199] (b) counter complex phenomena of

[195] Amy-Louise Watkin, '" The Lions of Tomorrow": A News Value Analysis of Child Images in *Jihadi* Magazines' [2019] *Studies in Conflict and Terrorism* 42(1-2) 120-140.
[196] UNODC, Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (Vienna, 2017) 40-58.
[197] Ibid.
[198] Ibid.
[199] Office of the UN High Commissioner for Human Rights, *Protecting the Rights of Children in Conflict with the Law,* available at < https://www.unodc.org/pdf/criminal_justice/Protecting_children_en.pdf> accessed 22 March 2021.

children recruited by terrorist and violent extremist groups; and (c) end impunity and offer pre-emptive measures targeted at curbing violence against children.[200] Bearing in mind the recruitment of children as one of the three scenarios that give rise to children getting involved in terrorism and violent extremism,[201] there is a second scenario which involves the capturing or demobilising of children during terrorist operations.[202] The third scenario is that the child is an actual perpetrator of violent extremist activities.[203] In all these scenarios, the conclusion would be that the child(ren) are involved in terrorism and violent extremism; and should face justice in order to be held accountable for their actions.

When dealing with such children, however, specific questions and issues must be raised and addressed, including whether the child's involvement warrants him or her to be treated as a perpetrator, victim or witness. This is to enable the authorities to determine appropriate measures to be applied. In every context, it is important to implement the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).[204] This is to be done in consideration of whether a child can be validly regarded as a suspect. To that end, there are contentions that children, in all situations of terrorism and violent extremism, should be treated either as victims or witnesses or

[200] Ibid.
[201] Ibid.
[202] Ibid.
[203] Ibid.
[204] Beijing Rules was adopted by the United Nations General Assembly on 29 November 1985. They were first named the Bill of Rights for Young Offenders before they were subsequently renamed.

both but never as suspects in compliance with the Beijing Rules.[205] Such treatment must also be in line with the protective provisions of the law. In Nigeria, children in terrorism cases/situations were not contemplated in the child protection or terrorism-specific laws. However, there are legal provisions that seek to protect children in criminal investigation and trial, whether as victims, witnesses, or suspects in criminal matters. These provisions are examined below.

Protection Measures for Children in the Context of Terrorism

Following Nigeria's ratification of the CRC[206] in 1991, and membership of the 1990 ACRWC,[207] the CRA was enacted in 2003 as a federal law to regulate child justice administration in the country. As already stated, the CRA, which is the most comprehensive legislation for child protection in Nigeria, principally domesticates the provisions of the CRC and ACRWC which enjoin state parties to adopt measures – legislative, administrative, etc. for child justice administration. It established a formidable child justice system for all children whether they are offenders, victims, witnesses or non-offenders. In recognition of this, the ACJA provides that when a child that comes into conflict with the law needs to face trial, he or she should be tried under the CRA[208] except with regards to bail, in which case, provisions on bail under the ACJA shall apply.[209]

[205] Ibid.
[206] G.A Res 44/25, 1989.
[207] OAU Doc. CAB/LEG/24.9/49, 1990.
[208]See section 452 (1) ACJA.
[209]See section 452 (2) ACJA.

The 278 sectioned CRA commences by introducing the principle of *Best Interest of the Child* which stipulates that every decision or action taken on behalf of or regarding a child must be in consideration of the *best interest of the child* in section 1. One of the highlights of the CRA is the provision of additional/special rights that accrue to children in addition to the general rights covered under Chapter IV of CFRN,[210] and the fact that children are given some responsibilities which they owe to their families and the society under sections 19 and 20. Generally, children must be protected against forms of exploitation, including child marriage and betrothal, child labour, sexual exploitation and child trafficking, among others. Furthermore, the Act imposes obligation on parents and *guardian ad litem,*[211]government and the general society to care for and protect children in all aspects. The Act also provides guidelines to regulate child adoption,[212] wardship,[213] guardianship,[214]custody,[215]fostering,[216] family court– at Magistrate and High Court levels[217] and more elaborately, child justice administration,[218] among others.

Under the provisions regulating Child Justice Administration in Part XX, the CRA emphasises the need to protect the child's

[210]See sections 3-18 CRA
[211]See section 89 CRA. *Guardian ad litem* is a guardian appointed to prosecute or defend a suit on behalf of a party incapacitated by infancy or otherwise. See Black, C. A; Black's Law Dictionary (6thEdn); (St. Paul: Minn West Publishing Co, 1990), p. 43.
[212] CRA, Part XII.
[213] Ibid, X.
[214] Ibid, Part IX.
[215] Ibid, Part VIII.
[216] Ibid, Part XI.
[217] Sections 149—159 CRA.
[218] Part XX CRA.

privacy, and to provide enhanced capacity building for police officials and others responsible for administering child justice. The Act also emphasises the principle of presumption of innocence for the child, the right to be notified of charges, right to remain silent, and right to presence of parent or guardian and legal representation, as encapsulated in the principle of fair hearing under section 36 CFRN. Effective implementation of the provisions of the Act, particularly those relating to investigation and trial of child offenders will, indeed engender a responsive justice system that adequately protects children and shows Nigeria's fulfilment of its obligation to protect children under international law.

Investigation Relating to Children Involved in Terrorism

As stated above, the CRA instituted *Child Justice Administration* in section 204, Part XX, wherein children are prohibited from being subjected to a formal justice system and this is applicable at all stages of the investigation, adjudication and disposition of any case against or involving a child in whichever capacity. Under section 209 (3) of CRA, the police, prosecutor or any other person dealing with a case involving a child is encouraged to dispose of the case without resorting to a formal trial. Where a trial is inevitable, how the case is to be adjudicated is as set out in sections 213-232. The Act also provides guidelines on how institutions should treat the child,[219] and how non-institutions should treat the child also.[220]

[219] Sections 236-238 CRA.
[220]Sections 233-235 CRA.

There is need to emphasise that neither the TPA nor the CRA contemplated the situation of terrorism involving children. Therefore, provisions of these laws apply to children in terrorism cases as they apply to them in all other criminal cases. With regards to investigation proper, sections 211 and 212 of CRA set out the procedure from when the child is apprehended until detention pending trial. Once a child offender is apprehended, the following procedure is to be followed: (a) the parents or guardian of the child is to be *immediately* informed or within the shortest possible time if it is impossible to notify them *immediately;* (b) the court or police is to consider the release of the child without delay, and (c) contact between the police and the child should be well managed. Such contact must be within a framework that respects the status of the child, promotes the *best interest of the child,* and avoids harm to the child. Harm in this context includes "the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt". By and large, the fragility and vulnerability of the child should be borne in mind during the process of investigation and beyond. If there is a *prima facie* case against the child that requires his or her detention pending trial, then this should be for the shortest possible time and as a measure of last resort.

During the period of detention, section 212(2) imposes an obligation on detaining authorities to ensure that the child is well cared for, protected, and given all necessary assistance that the child may require, including educational, psychological, and medical assistance, etc. If the police detain the child on the order of the court, the court shall state the reasons in a certificate, for

issuing the order, i.e., lack of availability of secure accommodation, and keeping the child elsewhere would pose a security risk to the public. More importantly, detention is required to be replaced by *alternative measures.* Alternative measures may include close supervision, child placement with a family member or in an educational setting or home.

Practical Situation: Challenges and Recommendations

There is no gainsaying that measures to protect children involved in terrorism and violent extremism cases exist in Nigeria. However, the effective application of these measures remains a challenge.

One major practical challenge is ascertaining the personal and other details of the affected child, especially where the child is an alleged terrorist offender. As pointed out earlier, there have been reports of arrests and detention of children for their involvement with Boko Haram.

When children are arrested for terrorism offences, law enforcement operatives sometimes find it difficult to determine the true age of the affected children. As a result, courts have had to rely on a sworn affidavit from parents due to a lack of or ineffective birth registration system.[221] The snag is that sworn affidavits can be manipulated by parents, particularly where parents of a person who may be above the statutory age of 18 may lie for fear of the child being subjected to regular criminal trial for terrorism offences. But law enforcement agencies are

[221] United States Department of State, 'Nigeria 2020 Human Rights Report'. available at < https://www.state.gov/wp-content/uploads/2021/03/NIGERIA-2020-HUMAN-RIGHTS-REPORT.pdf> accessed 24 March 2021

now developing more reliable strategies, including medical examinations to determine the true age of the child, especially where the child is a suspect.[222]

There is also the issue of limited human and financial resources. The result is that, law enforcement agencies and stakeholders involved with child protection work find it difficult to effectively apply available measures, especially where witness protection is required for child victims and witnesses.

There are also issues around guaranteeing access to justice for children who are victims of crime, including terrorism and violent extremism. The Nigerian justice system has consistently failed to provide access to justice for children whose rights have been violated, and has certainly failed to provide recompense for their losses.[223] Therefore, children's rights remain in dire straits, not only in terrorism affected northeast states, but across the country.

Other challenges associated with practical implementation of child protection measures in Nigeria include:

a) Difficulties associated with tracing parents/guardians especially where the child is a suspect or is complicit in the offence, leading to complicated decisions with regards to bail.
b) Law enforcement agencies sometimes lack facilities to separate children from adults in holding rooms/detention centres, so children below 18 are sometimes held together

[222] Ibid.
[223] Ibid.

with adults, which poses significant risk to the wellbeing of the child.

c) Expertise on how to address the needs of children held in detention facilities is limited.
d) Expertise on de-radicalisation of radicalised children is also limited.

In the light of the above, it is recommended that the gaps in the law regarding treatment of children involved in terrorism cases should be closed. Furthermore, challenges identified above, should be addressed while effective application of protection measures for children are effectively implemented and applied.

Conclusion

The 2021 Global Terrorism Index (GTI),[224] released by the Institute for Economics and Peace (IEP)[225] lists Nigeria as the sixth country that is most impacted by terrorism in the world. This report signifies successes in the government's counter-terrorism actions and implementation of PCVE programmes, because it moved Nigeria from its 4th position in 2020 to 6th in 2021. However, there are no significant changes in the plight of

[224]Institute for Economics and Peace, *Global Terrorism Index 2022: Measuring the Impact of Terrorism* (Sydney, March 2021) p. 18. Available at <http://visionofhumanity.org/resources> accessed 22 March 2021; and also, at <https://reliefweb.int/sites/reliefweb.int/files/resources/GTI-2022-web.pdf> accessed 22 March 2021.

[225]The IEP is an independent, non-partisan, non-profit institution that is dedicated to shifting the world's focus to peace as a positive, achievable, and tangible measure of human well-being and progress. It is headquartered in Sydney with offices in New York, The Hague, Mexico City, Brussels, and Harare. It works with a wide range of partners internationally and collaborates with international organisations on measuring and communicating the economic value of peace. See more at <https://www.economicsandpeace.org/> accessed 22 March 2021.

children, especially those involved in violent extremism and terrorism. While it is true that the propagation of violent activities perpetrated by violent extremist group(s) in Nigeria has undoubtedly constituted a major security threat to the country, and warrants perpetrators to be held accountable by facing prosecution, it is also important to ensure that children involved in terrorism and violent extremism are treated rightly and in compliance with applicable laid down rules and procedures. The best interest of the child and international good practice must also be the guiding principles when dealing with child terrorist offenders, victims, and witnesses. It is good practice to uphold, respect, and protect the rights of these children no matter the circumstance. It is also good practice to strengthen protection measures. It is even more important to ensure the occupational expertise of those saddled with the responsibility of applying them.